

## **FIRST AMENDMENT TO AGREEMENT FOR ENTERPRISE ASSET MANAGEMENT SYSTEM**

This First Amendment ("Amendment") is entered into on this \_\_\_\_ of \_\_\_\_\_, 2018 by and between the City of Fort Lauderdale, a Florida municipality, (hereinafter "City") and Woolpert, Inc., an Ohio corporation authorized to transact business in the State of Florida, (hereinafter "Contractor"), individually referred to herein as "Party" and jointly referred to as "Parties" for the purpose of amending "AGREEMENT FOR ENTERPRISE ASSET MANAGEMENT SYSTEM" (hereinafter "Agreement"), dated March 6, 2018.

WHEREAS, a contract for an enterprise asset management system was awarded in the amount of \$ 1,693,847 (three year total); and

WHEREAS, the Parties desire to amend the Agreement by this writing to reflect the amended or additional terms and conditions to which the Parties have mutually agreed to; and

NOW, THEREFORE, in consideration of the mutual covenants, promises and consideration set forth herein, the Parties agree as follows:

1. Article II of the Agreement is hereby amended by replacing the sentence "Contractor acknowledges and agrees that the City's Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement" with the following sentences: "City or Contractor may request changes that would increase, decrease, or otherwise modify the scope of services, time, and/or materials to the original scope of work. Such change requests shall be prepared, reviewed, and processed by City or Contractor, as appropriate, and as per applicable sections of the executed Agreement and its amendments."
2. Article II, Section I, Term of Agreement is hereby amended by replacing the sentence "The initial contract period shall commence on March 6, 2018 and shall end on March 5, 2021" with the following sentence: "The initial contract period shall commence on the date the Notice to Proceed ("NTP") IS ISSUED BY City to the Contractor and shall end three years from the date of the NTP issuance."
3. Section II – Compensation is hereby deleted and replaced with the following revised section:

### **II. AMOUNT AND METHOD OF COMPENSATION**

The method of compensation for each Task Order shall be not to exceed as agreed upon per Task Order and described below:

### Lump Sum and Not To Exceed Amount Compensation

- a) City agrees to pay Contractor as compensation for performance of all services as related to each Task Order under the terms of this Agreement a Not to Exceed Amount as agreed upon per Task Order. This compensation does not include Reimbursables as described below in Section II (b). It is agreed that the method of compensation shall be either Lump Sum or "Not to Exceed Amount" which means that Contractor shall perform all services set forth in a Not to Exceed amount Task Order for total compensation in the amount of or less than that stated total. The hourly rate-billing schedule to be used in negotiating each Task Order is Section CC of this Agreement. No modification, amendment, or alteration to hourly rate-billing schedule shall be effective unless contained in a written document prepared with the same formality as this Agreement and executed by the City and Contractor.

A not to exceed proposal shall be accompanied by the Contractor's estimate. The estimate shall detail the direct labor costs by categories of employees, work hours, and hourly rate; overhead; direct non-salary expenses including Reimbursables; and profit, or as required by individual Task Order.

b) Reimbursables

Direct non-salary expenses, entitled Reimbursables, directly attributable to the Project will be charged at actual cost. Reimbursable expenses are in addition to the compensation for basic services and include actual expenditures made by the Contractor and the Contractor's employees directly attributable to the Project and will be charged at actual cost, without reference to the professional service fees above. CITY shall not withhold retainage from payments for Reimbursable Expenses. Contractor shall be compensated for Reimbursables associated with a particular Task Order only up to the amount allocated for such Task Order. Any reimbursable or portion thereof which, when added to the Reimbursables related to a particular Task Order previously billed, exceeds the amount allocated for such Task Order shall be the responsibility of the Contractor unless otherwise agreed to in writing by the Contract Administrator. Travel and subsistence expenses for the Contractor, his staff and subconsultants and communication expenses, long distance telephone, courier and express mail between Contractor 's and subconsultants' various offices are not reimbursable under this

Agreement. Reimbursables shall include only the following listed expenses unless authorized in writing by the Contract Administrator:

- i. Cost of reproduction, postage and handling of drawings and specifications which are required to deliver services set forth in this Agreement, excluding reproductions for the office use of the Contractor. Reimbursable printing and photocopying expenses shall include only those prints or photocopies of original documents which are (i) exchanged among Contractor, CITY and other third parties retained or employed by any of them or (ii) submitted to CITY for review, approval or further distribution. Documents, which are reproduced for Contractor's internal drafts, reviews, or other purposes, are not eligible for reimbursement.
- ii. Identifiable testing costs and special inspections approved by Contract Administrator.
- iii. All permit fees paid to regulatory agencies for approvals directly attributable to the Project. These permit fees do not include those permits required for the construction Contractor.
- iv. Overnight Delivery/Courier Charges (when CITY requires/requests this service).

4. Section V of Article IV of the Agreement is hereby deleted and replaced with the following revised section:

#### V. AMENDMENTS AND CHANGES IN SCOPE OF SERVICES

No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written Amendment prepared with the same formality as this Agreement and executed by the CITY and CONSULTANT.

CITY or CONSULTANT may request changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under a Task Order. Such changes must be contained in a written amendment, executed by the parties hereto, with the same formality and of equal dignity herewith, prior to any deviation from the terms of the Task Order including the initiation of any additional services. CITY shall compensate CONSULTANT for such additional services as provided in Article II.

In the event a dispute between the Contract Administrator and CONSULTANT arises over whether requested services constitute additional services and such dispute cannot be resolved by the Contract Administrator and CONSULTANT,

such dispute shall be promptly presented to the City Manager for resolution. The City Manager's decision shall be final and binding on the parties for amounts in the aggregate under \$100,000 per project. In the event of a dispute in an amount over \$100,000, the parties agree to use their best efforts to settle such dispute. To this effect, they shall consult and negotiate with each other, in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If they do not reach such solution within a period of sixty (60) days, then upon notice to the other, either party may commence litigation to resolve the dispute in Broward County, Florida. Any resolution in favor of CONSULTANT shall be set forth in a written document in accordance with this section. During the pendency of any dispute, CONSULTANT shall promptly perform the disputed services.

5. Article IV – General Conditions of the Agreement is hereby amended to add the following section:

#### CC. Task Orders

The Project will be divided into "Tasks." Task Orders shall be jointly prepared by the City and Contractor defining the detailed scope of services to be provided for the particular Project. Each Task Order shall be separately numbered and approved in accordance with this Agreement and all applicable City code requirements.

Under all Task Orders and Projects, City may require the Contractor, by specific written authorization, and for mutually agreed upon additional compensation, to provide or assist in obtaining one or more of the following special services. These services may include, at the discretion of the City, the following items:

Providing additional copies of reports, contract drawings and documents; and Assisting City with litigation support services arising from the planning, development, or construction. Prior to initiating the performance of any services under this Agreement, Contractor must receive a written Notice to Proceed and/or Purchase Order from the CITY. The Contractor must receive the approval of the Contract Administrator or his designee in writing prior to beginning the performance of services in any subsequent Task Order under this Agreement.

If, in the opinion of the City, the Contractor is improperly performing the services under a specific Task Order, or if at any time the City shall be of the opinion that said Task Order is being unnecessarily delayed and will not be completed within the agreed upon time, the City shall notify the Contractor in writing. The Contractor has within ten (10) working days thereafter to take such measures as will, in the judgment of the City, ensure satisfactory performance and completion of the work. If the Contractor fails to cure within the ten (10) working days, the City may notify the Contractor to discontinue all work under the specified Task Order. The Contractor shall immediately respect said notice and stop said work and cease to have any rights in the possession of the work and shall forfeit the Task Order and any remaining monies. The City may then decide, after City Commission approval, to issue a new Task Order for the uncompleted work to another consultant using the remaining funds. Any excess costs arising

therefrom over and above the original Task Order price shall be charged against Contractor, as the original Contractor.

6. Article IV – General Conditions – of the Agreement is hereby amended to add the Contractor's Professional Hourly Rates Table:

Resource Category	Standard Rate
Program Director	\$235.00/hr
Project Manager	\$220.00/hr
Deputy Project Manager	\$180.00/hr
Discipline Leader	\$150.00/hr
Team Leader	\$175.00/hr
Subject Matter Expert	\$225.00/hr
Senior Systems Analyst	\$150.00/hr
System Analyst	\$118.00/hr
Senior Developer	\$185.00/hr
Developer	\$168.00/hr
Administrative	\$60.00/hr

7. In the event of an explicit conflict between this Amendment and the Agreement, the terms and conditions of this Amendment shall take precedence in the interpretation of the explicit matter in question.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]  
[SIGNATURE PAGE FOLLOWS]**

IN WITNESS OF THE FOREGOING, the Parties have set their hands and seals the day and year first written above.

ATTEST:

CITY OF FORT LAUDERDALE

\_\_\_\_\_  
Jeffrey A. Modarelli, City Clerk

By: \_\_\_\_\_  
Lee R. Feldman, City Manager

Approved as to form:

By: \_\_\_\_\_  
Rhonda Montoya Hasan  
Assistant City Attorney

WITNESSES:

WOOLPERT, INC.

\_\_\_\_\_  
Print Name

By: \_\_\_\_\_  
Scott P. Cattran, President

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

(CORPORATE SEAL)

STATE OF \_\_\_\_\_:  
COUNTY OF \_\_\_\_\_:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018, by Scott P. Cattran as president for Woolpert, Inc., an Ohio corporation authorized to transact business in the State of Florida.

(SEAL)

\_\_\_\_\_  
(Signature of Notary Public)  
Notary Public, State of \_\_\_\_\_

\_\_\_\_\_  
(Print, Type, or Stamp Commissioned Name of  
Notary Public)

Personally Known \_\_\_\_ OR Produced Identification \_\_\_\_  
Type of Identification Produced \_\_\_\_\_