



TOWN OF LOXAHATCHEE GROVES
TOWN COUNCIL MEETING AGENDA
TUESDAY, JUNE 18, 2013

ADDENDUM #3: Under New Business, Item 11.a.
ENGINEERING CONTRACTS *(original Agenda indicated that this may be addressed as an addendum item)*

Mayor David Browning (Seat 4)

Vice Mayor Ron Jarriel (Seat 1)

Councilman Tom Goltzené (Seat 5)

Councilman Ryan Liang (Seat 3)

Councilman Jim Rockett (Seat 2)

KESHAVARZ GENERAL ENGINEERING CONTRACT

**AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES FOR
THE TOWN OF LOXAHATCHEE GROVES**

This **AGREEMENT** (“Agreement”) is made and entered into this ____ day of _____, 2013 (the “Effective Date”), by and between:

TOWN OF LOXAHATCHEE GROVES, a municipal corporation existing under the laws of the state of Florida, hereafter referred to as “TOWN,”

and

KESHAVARZ & ASSOCIATES, INC., a Florida corporation, with an address of 711 North Dixie Highway, Suite 201, West Palm Beach, Florida 33401, hereafter referred to as “ENGINEER,” (with the TOWN and ENGINEER each referred to as a “Party” and collectively as the “Parties”).

WITNESSETH:

WHEREAS, the TOWN is a municipal corporation of the State of Florida, the powers of which are defined in the TOWN’s Charter and State law; and

WHEREAS, the TOWN has a variety of operational and infrastructural needs which involve the assistance of licensed professionals; and

WHEREAS, the TOWN has identified specifically a need for a TOWN Engineer who will provide professional engineering services, which may include but are not limited to consultation, civil engineering design, environmental engineering design, civil engineering inspection services, assistance with construction documents, bidding services, construction administration services, on-site representation, assistance with budget estimates, services to secure engineering, drainage, and all other required permits for various engineering projects, as well as all other civil engineering services/miscellaneous civil engineering projects for the TOWN; and

WHEREAS, the TOWN undertook a competitive selection process in accordance with the Consultants’ Competitive Negotiation Act (CCNA), Section 287.055, Florida Statutes, requesting responses to an Invitation to its Request for Qualifications for General Town Engineering Services, Traffic Engineering, Land Surveying, Environmental Engineering Services, and Civil Engineering Inspection Services No. 2013-001 (the “RFQ”), attached hereto as **Exhibit “A,”** and incorporated herein; and

WHEREAS, the ENGINEER’s response to the RFQ (“Response”), attached hereto as **Exhibit “B,”** and incorporated herein, was the response selected by the TOWN Council as the most qualified response for professional engineering services; and

WHEREAS, TOWN has determined that ENGINEER has the experience, expertise, equipment, and materials to provide such professional engineering services, and is capable of providing the necessary materials and manpower to address the aforementioned engineering issues of the TOWN, subject to the agreement of the Parties on criteria for such services, and the TOWN's agreement to pay for such services and supplies; and

WHEREAS, ENGINEER has stated that it has staff currently employed and available and who are certified to perform such services; and

WHEREAS, ENGINEER agrees to commit the necessary personnel to perform the services at the corresponding rates as may be reviewed; and

WHEREAS, ENGINEER is willing to provide said services to the City pursuant to the terms and conditions set forth herein; and

WHEREAS, the TOWN Council and the ENGINEER have determined that this Agreement is in the best interest of the health, safety, and welfare of the residents within the TOWN.

NOW, THEREFORE, IN CONSIDERATION of the mutual terms, conditions, promises, covenants, and payments hereafter set forth, DISTRICT and ENGINEER agree as follows:

ARTICLE 1 - RECITALS

1.1 The foregoing recitations are true and correct and are hereby incorporated herein by reference. All exhibits to this Agreement are hereby deemed a part hereof.

ARTICLE 2 – PROFESSIONAL ENGINEERING SERVICES

2.1 The TOWN agrees to engage ENGINEER to perform the Services as described in **Exhibit “C,”** which is attached hereto and incorporated herein by reference.

2.2 ENGINEER shall perform the above Services as described in **Exhibit “C”** through its designated representatives, employees, or agents as may be designated by ENGINEER.

2.3 ENGINEER may provide additional services not included on **Exhibit “C”** to TOWN upon the execution of a written Amendment to this Agreement, as provided in Section 10.8 of this Agreement.

2.4 In connection with professional services to be rendered pursuant to this Agreement, ENGINEER further agrees to:

2.4.1 Maintain an adequate staff of qualified personnel at all times to ensure its performance of its obligations pursuant to the terms of this Agreement.

2.4.2 Comply within all Federal, State, and Local laws or ordinances applicable to the

performance of its obligations pursuant to the terms of this Agreement.

2.4.3 Cooperate fully with the TOWN in the scheduling and coordination of all services performed pursuant to the terms of this Agreement.

2.4.4 Confer with the TOWN staff at any time during the term of this Agreement in order to address issues of performance.

2.5 ENGINEER hereby represents to TOWN, with full knowledge that TOWN is relying upon these representations when entering into this Agreement with ENGINEER, that ENGINEER has the professional expertise, experience and manpower to perform the services to be provided by ENGINEER pursuant to the terms of this Agreement.

2.6 ENGINEER assumes professional and technical responsibility for performance of its services to be provided hereunder in accordance with recognized professional standards of good engineering practice. If within one year following completion of its services, such services fail to meet the aforesaid standards, and the TOWN promptly advises ENGINEER thereof in writing, ENGINEER agrees to re-perform such deficient services without charge to the TOWN.

ARTICLE 3 – CONFLICT OF INTEREST

ENGINEER agrees not to accept employment during the time this Agreement is in effect from any builder, land developer, utility company or others doing construction work within the corporate limits of the Town of Loxahatchee Groves which might be construed as a conflict of interest with ENGINEER's work for TOWN. The Town Manager, or his/her authorized representative, shall make the determination, in his or her sole discretion, of what is deemed a conflict.

ARTICLE 4 – TIME FOR PERFORMANCE

ENGINEER shall perform the services as identified in Section 2.1 as soon as is reasonably practicable.

ARTICLE 5 – PAYMENT

5.1 As set forth in **Exhibit "D,"** ENGINEER shall provide the following services to TOWN at the following prices to include cost for time and expenses.

5.2 Upon the commencement of this Agreement, ENGINEER will provide the TOWN invoices on a monthly basis in a timely manner for work actually completed by ENGINEER for the previous month.

5.3 Invoices submitted by ENGINEER to TOWN must be submitted on the fifth (5th) day of each month for the previous month's work performed.

- 5.4 All invoices must have a Notice to Proceed issued by the TOWN before it will be considered for payment.
- 5.5 All Notices to Proceed must provide a work authorization number, the scope of work to be completed including sufficient detail reflecting all engineering services or such other authorized services by the TOWN that have been performed, and time of completion. Notwithstanding the foregoing, the TOWN shall have no obligation to engage the services of ENGINEER for a specified number of times.
- 5.6 ENGINEER will submit an invoice for costs for such work. Should the TOWN determine that the documentation for such services is incomplete, it shall request additional information from the ENGINEER within ten (10) working days of receipt of the original invoice.
- 5.7 The TOWN shall pay the ENGINEER within thirty (30) days of receipt of the final written invoice and documentation from the ENGINEER.
- 5.8 The TOWN's obligation is limited to its payment obligation and shall have no obligation to any other person or entity.
- 5.9 Notwithstanding the foregoing, in accordance with section 287.055, Florida Statutes, all of ENGINEER's services shall meet the following cost limitations: professional services for study activity projects should not exceed two-hundred thousand dollars (\$200,000.00); or professional services for construction projects should not exceed two million dollars (\$2,000,000.00); or professional services for work of a specified nature as outlined in the future continuing contract with the TOWN.
- 5.10 TOWN makes no warranty to ENGINEER as to the types, volume, or quantities of service that ENGINEER will actually be required to perform. ENGINEER's services shall be based on TOWN activities and are dependent upon changing circumstances and the conduct of business within the TOWN.

ARTICLE 6 – CHANGES TO SCOPE OF WORK AND ADDITIONAL WORK

TOWN or ENGINEER may request changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement. Such changes or additional services must be in accordance with the provisions of the Code or Ordinances of the TOWN and must be contained in a written amendment, executed by the parties hereto, with the same formality and with equality and dignity prior to any deviation from the terms of this Agreement, including the initiation of any additional or extra work. In no event will the ENGINEER be compensated for any work which has not been described in a separate written agreement executed by the Parties hereto.

ARTICLE 7 - TERM OF AGREEMENT

- 7.1 This Agreement shall be deemed to have commenced on the Effective Date provided below, and shall continue for three (3) years with an option for the TOWN to exercise at its sole discretion (which does not confer any rights upon ENGINEER) for two (2) additional three (3) year periods, or until terminated as provided in Sections 7.2 through 7.7, below. The TOWN shall exercise its option by providing ENGINEER with not less than thirty (30) days written notice prior to the end of the then-current term. The notice period may be waived by the Parties.
- 7.2 Anything to the contrary notwithstanding, minor adjustments to the timetable for completion approved by TOWN in advance, in writing, will not constitute a delay by ENGINEER for which liquidated damages are due. Furthermore, a delay due to an Act of God, fire, lockout, strike or labor dispute, riot or civil commotion, act of public enemy, or other cause beyond the control of ENGINEER shall extend this Agreement for a period equal to such delay and during this period such delay shall not constitute a delay by ENGINEER for which liquidated damages are due.
- 7.3 Notwithstanding Section 7.2, this Agreement may be terminated for cause by either Party upon ninety (90) days' notice upon the other Party's failure to timely perform its responsibilities under this Agreement. Such written notice shall be given by the terminating party to the other party setting forth the breach. If the breaching party corrects the breach within thirty (30) days after written notice of same, to the satisfaction of the terminating party, the Agreement shall remain in full force and effect. If such breach is not corrected within thirty (30) days of receipt of notice of breach, the terminating party may terminate the Agreement.
- 7.4 Termination of this Agreement for cause shall include, but not be limited to: failure of the Parties to suitably perform the services required under this Agreement, and failure of the Parties to continuously perform the services required by the terms and conditions of this Agreement in a manner calculated to meet or accomplish the objectives set forth herein, notwithstanding whether any such breach was previously waived or cured.
- 7.5 The Agreement may be terminated for convenience by the TOWN, as evidenced by the adoption of a resolution by the TOWN. In that event, the TOWN'S sole obligation to ENGINEER shall be payment for services for work previously authorized and performed. Such payment shall be determined on the basis of the hours or percentage of work performed by ENGINEER up to the time of termination. Upon such termination, the TOWN may, without penalty or other obligation to ENGINEER, elect to employ other persons to perform the same or similar services.
- 7.6 Notice of termination shall be provided in accordance with Article 9, "NOTICES," herein except that notice of termination by TOWN Manager which TOWN Manager deems necessary to protect the public health, safety or welfare may be verbal notice which shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement. In the event this Agreement is terminated for convenience by the TOWN

Council, ENGINEER shall be paid for any services performed to the date the Agreement is terminated; however, upon being notified of TOWN's election to terminate, ENGINEER shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. ENGINEER acknowledges and agrees that Ten Dollars (\$10.00) of the compensation to be paid by TOWN, the adequacy of which is hereby acknowledged by ENGINEER, is given as specific consideration to ENGINEER for TOWN's right to terminate this Agreement for convenience.

- 7.7 In the event this Agreement is terminated, any compensation payable by TOWN shall be withheld until all documents are provided to TOWN. In no event shall the TOWN be liable to ENGINEER for any additional compensation, other than that provided herein, or for any consequential or incidental damages.

ARTICLE 8 - INDEMNIFICATION; INSURANCE

- 8.1 Independent Contractor: ENGINEER is an independent contractor and not an employee, agent, or servant of TOWN or its TOWN Council 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 Workers Compensation Act, and the State of Florida's unemployment insurance law. ENGINEER further acknowledges that the TOWN's duty under this Agreement is limited to contributing the identified funds to ENGINEER and that ENGINEER will use the funds to perform professional engineering services to the TOWN in the manner provided herein. ENGINEER agrees that it is a separate and independent enterprise from the TOWN, that it has full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between ENGINEER and the TOWN and the TOWN will not be liable for any obligation incurred by ENGINEER, including but not limited to unpaid minimum wages and/or overtime premiums. In the event a claim or lawsuit is brought against TOWN, its officers, employees, servants or agents, arising from or relating to the ENGINEER improvements or any matter that is the responsibility of ENGINEER under this Agreement, ENGINEER will indemnify and hold harmless the TOWN in the manner and to the extent set forth in Section 8.2, below.
- 8.2 Hold Harmless and Indemnification: ENGINEER hereto agrees, to the extent permitted by law, to:
- (A) indemnify, save and hold harmless the TOWN, its officers, employees, and agents (collectively the "Indemnitees"), and to defend said persons from and against any such loss, cost, penalties, fines, damages, claims, expenses (including attorneys' fees) or liabilities, causes of action, and judgments of any type whatsoever arising out of, resulting from, or in connection with (i) the performance or non-performance of the services contemplated by the Agreement which is or is alleged to be directly or indirectly caused, in whole or in part, by any act, omission, default, or negligence

(whether active or passive) of ENGINEER, regardless of whether it is, or is alleged to be, caused in whole or in part (whether joint, concurrent, or contributing) by any act, omission, default or negligence (whether active or passive) of the Indemnities, or any of them or (ii) the failure of ENGINEER to comply with any of the provisions of the Agreement or the failure of ENGINEER to conform to statutes, ordinances, or other regulations or requirements of any governmental authority, federal or state, in connection with the performance of the Agreement. ENGINEER expressly agrees to indemnify and hold harmless the Indemnitees, or any of them, from and against all liabilities which may be asserted by an employee or former employee of ENGINEER, or any approved subcontractors, as provided above, for which ENGINEER's liability to such employee or former employee would otherwise be limited to payments under state Workers' Compensation or similar laws.

ENGINEER further agrees to indemnify, defend, and hold harmless the Indemnitees from and against (i) any and all Liabilities imposed on account of any violation of law, ordinance, order, rule, regulation, condition, or requirements, in any action related, directly or indirectly, to ENGINEER's performance under the Agreement, compliance with which is left by the Agreement to ENGINEER, and (ii) any and all claims, and/or suits for labor and materials furnished by ENGINEER or utilized in the performance of the Agreement or otherwise.

Where not specifically prohibited by law, ENGINEER further specifically agrees to indemnify, defend, and hold harmless the Indemnitees from all claims and suits for any liability, including, but not limited to, injury, death, or damage to any person or property whatsoever, caused by, arising from, incident to connected with, or growing out of the performance or non-performance of the Agreement which is, or is alleged to be, caused in part (whether joint, concurrent, or contributing) or in whole by any act, omission, default, or negligence (whether active or passive) of the Indemnities. The foregoing indemnity shall also include liability imposed by any doctrine of strict liability.

- (B) The forgoing indemnity shall survive the termination or expiration of this Agreement. A party shall not be deemed to assume any liability for the negligent or wrongful acts, or omissions of the other party (or parties). Nothing contained herein shall be construed as a waiver by the TOWN of the liability limits established in Section 768.28, Florida Statutes.

- 8.3 Insurance. Certificates of Insurance reflecting evidence of the required insurance shall be filed with the TOWN Manager prior to the commencement of this Agreement. These Certificates shall contain a provision that coverages afforded under these policies will not be cancelled until at least thirty days (30) prior written notice has been given to the TOWN. Policies shall be issued by companies authorized to do business under the laws of the State of Florida. Financial Ratings must be not less than "A-VI" in the latest edition of "Best Key Rating Guide," published by A.M. Best Guide.

Insurance shall be in force until the obligations required to be fulfilled under the terms of the Agreement are satisfied. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, then in that event, the ENGINEER shall furnish, at least thirty (30) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Agreement and extension thereunder is in effect. ENGINEER shall not commence nor continue to provide any services pursuant to this Agreement unless all required insurance remains in full force and effect. ENGINEER shall be liable to TOWN for any lapses in service resulting from a gap in insurance coverage.

8.3.1 REQUIRED INSURANCE

Comprehensive General Liability insurance to cover liability bodily injury, accidental death, and property damages for bodily injury, including accidental death, and for property damage, which may arise from operations under this contract whether such operation by himself or by anyone directly or indirectly employed under ENGINEER. Coverage must be written on an occurrence basis, with the following limits of liability:

- | | | |
|----|---|-------------|
| A. | Comprehensive General Liability | |
| 1. | Each Occurrence | \$1,000,000 |
| 2. | General Aggregate | 1,000,000 |
| B. | Automobile and Truck Liability | |
| 1. | Each Occurrence | \$ 500,000 |
| 2. | General Aggregate | 500,000 |
| C. | Worker’s Compensation Insurance | |
| D. | Professional Liability/Errors and Omissions | |
| 1. | Each Occurrence | \$1,000,000 |
| 2. | General Aggregate | \$1,000,000 |

Shall be maintained during the life of this contract to comply with statutory limits for all employees. The following limits must be maintained:

- | | | |
|----|-----------------------|---------------------------------|
| A. | Worker's Compensation | Statutory |
| B. | Employer’s Liability | \$300,000 each accident |
| | | \$300,000 Disease-policy limit |
| | | \$300,000 Disease-each employee |

or such other amount that may be required by Florida law, whichever is greater.

Note: Comprehensive General Liability coverage and Automobile and Truck Liability coverage may be met with a combination of coverage including excess and umbrella liability coverage. Comprehensive General Liability Insurance covering bodily injuries and property damage shall also include coverage for: (a) injury to or destruction of wires, pipes, conduits, and similar property located below the surface of the ground, whether public or private; (b) collapse of or structural injury to any building or structure except those on which work under this Agreement is being performed; and (c) contractual liabilities related to bodily injury and property damage, i.e. X - explosion, C - Collapse, U - underground.

Automobile and Truck Liability shall cover bodily injury and property damage for the operation of all motor vehicles and equipment, whether or not owned by ENGINEER, being operated in connection with the work performed under this Agreement. Product and Completed Operations coverage shall be included in the amounts specified above for Comprehensive General Liability.

8.3.2 ENGINEER shall name the TOWN as an additional insured on each of the policies required herein and shall hold the TOWN harmless on account of claims or damages to persons, property or premises arising out of the services provided hereunder.

8.3.3 Evidence of Insurance. As evidence of insurance coverage, the TOWN may, in lieu of actual policies, accept official written statements from the insurance company certifying that all the insurance policies specified below are in force for the specified period. ENGINEER shall submit to TOWN evidence of insurance at the time of execution of this Agreement. Written notice shall be given to the TOWN at least thirty (30) days prior to nonrenewal of such insurance coverage.

ARTICLE 9 - NOTICES

- 9.1 Any and all notices given or required under this Agreement shall be in writing and may be delivered in person or by United States mail, postage prepaid, first class and certified, return receipt requested, or by hand-delivery with a request for a written receipt of acknowledgement 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 for in this article. For the present, the Parties designated the following:

TO TOWN:

Mayor David Browning
Town of Loxahatchee Groves
14579 Southern Blvd., Suite 2
Loxahatchee Groves, FL 33470

With copies to:

Mark Kutney, Town Manager
Town of Loxahatchee Groves
14579 Southern Blvd., Suite 2
Loxahatchee Groves, FL 33470

And

Michael D. Cirullo, Jr., Town Attorney
Goren, Cherof, Doody & Ezrol, P.A.
3099 East Commercial Boulevard
Suite 200
Fort Lauderdale, FL 33308

TO ENGINEER:

Maziar Keshavarz, P.E., Principal
Keshavarz & Associates, Inc.
711 North Dixie Highway
Suite 201
West Palm Beach, FL 33401

ARTICLE 10 - MISCELLANEOUS PROVISIONS

- 10.1 **ASSIGNMENT:** The Parties to the Agreement shall have no right to assign, transfer, or otherwise encumber this Agreement, without the express consent of the other party.
- 10.2 **WAIVER:** The waiver by any Party to this Agreement of any failure on the part of another Party to perform in accordance with any of the terms or conditions of this Agreement shall not be construed as a waiver of any future or continuing similar or dissimilar failure.
- 10.3 **THIRD PARTY BENEFICIARIES:** Neither TOWN nor ENGINEER intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based on this Agreement. The Parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.
- 10.4 **SEVERABILITY:** The invalidity of any provision of this Agreement shall in no way affect the validity of any other provision.
- 10.5 **ENTIRE AGREEMENT:** It is understood and agreed that this Agreement incorporates and includes the RFQ, ENGINEER's Response, all prior negotiations, agreements or understandings applicable to the matters contained herein and the Parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no

deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

- 10.6 **JOINT PREPARATION:** The Parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations here and that the preparation of this Agreement has been a joint effort. The language agreed to expresses their mutual intent and their resulting documents shall not, solely, as a matter of judicial construction, be construed more severely against one of the parties than the other.
- 10.7 **APPLICABLE LAW AND VENUE:** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State Courts of the 15th Judicial Circuit of Palm Beach County, Florida, and the venue site and shall be governed by the laws of the State of Florida. To encourage prompt and equitable resolution of any litigation that may arise hereunder, each Party hereby waives any rights it may have to trial by jury of any such litigation.
- 10.8 **AMENDMENTS:** No modification, amendment, or alteration of the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by both Parties.
- 10.9 **MULTIPLE ORIGINALS:** This Agreement may be fully executed in multiple copies by all Parties, each of which, bearing original signatures, shall have the force and effect of an original document.
- 10.10 **LICENSES.** All drivers must be properly licensed operators, if applicable. ENGINEER is responsible for updating operator information at any time throughout the duration of this Agreement. Failure to do so may be grounds for breach and subsequent termination of this Agreement. ENGINEER shall be responsible for providing phone numbers where employees can be reached. The inability of the TOWN to make contact with ENGINEER or an employee thereof within a reasonable amount of time is cause for the TOWN to terminate this Agreement as described in Section 7 of this Agreement.
- 10.11 **AFFIRMATIVE ACTION/EQUAL OPPORTUNITY EMPLOYER.** Pursuant to the RFQ and its Response, ENGINEER shall adhere to an affirmative action policy. In the performance of this Agreement, ENGINEER shall not discriminate against any firm, employee or applicant for employment or any other firm/individual in providing services because of sex, age, race, color, religion, ancestry or national origin.
- 10.12 **PROTECTION OF TOWN PROPERTY.** At all times during the performance of this Agreement, ENGINEER shall protect the property of the TOWN and adjacent property owners from all damage whatsoever on account of the work being carried on under this contract.

- 10.13 **CONFLICTS.** ENGINEER and TOWN hereby agree that the following Contract Documents are fully incorporated herein and made a part of this Agreement, as if written herein word for word: TOWN's RFQ No. 2013-01 including all addendums, and ENGINEER's Response to the RFQ as Exhibit "B". In the event that there is any conflict between any of the contract documents and the terms of this Agreement, this Agreement shall prevail.
- 10.14 **LEGAL REPRESENTATION.** It is acknowledged that each Party to this Agreement had the opportunity to be represented by counsel in the preparation of this Agreement and, accordingly, the rule that a contract shall be interpreted strictly against the Party preparing same shall not apply due to the joint contribution of both Parties.
- 10.15 **OWNERSHIP OF DOCUMENTS.** Reports, surveys, plans, studies and other data provided or created in connection with this Agreement are and shall remain the property of TOWN whether or not the project for which they are made is completed. TOWN hereby agrees to use ENGINEER's work product for its intended purposes. In the event of termination of this Agreement, any reports, photographs, surveys and other data and documents prepared by ENGINEER, whether finished or unfinished shall become the property of TOWN and shall be delivered by ENGINEER to the TOWN Manager within seven (7) days of termination of this Agreement by either party. Any compensation due to ENGINEER shall be withheld until all documents are received as provided herein.
- 10.16 **NO CONTINGENT FEES.** ENGINEER warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the ENGINEER, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for ENGINEER, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, the TOWN shall have the right to terminate the Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.
- 10.17 **BINDING AUTHORITY.** Each person signing this Agreement on behalf of either Party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.
- 10.18 **EXHIBITS.** Each Exhibit referred to in this Agreement forms an essential part of this Agreement. The exhibits if not physically attached should be treated as part of this Agreement and are incorporated herein by reference.
- 10.19 **HEADINGS.** Headings herein are for convenience of reference only and shall not be considered on any interpretation of this Agreement.

10.20 **ATTORNEYS' FEES.** In the event that either Party brings suit for enforcement of this Agreement, the prevailing party shall be entitled to attorneys' fees and court costs in addition to any other remedy afforded by law.

10.21 **AUDIT AND INSPECTION RIGHTS AND RETENTION OF RECORDS.**

10.21.1 **AUDITS.** TOWN shall have the right to audit the books, records and accounts of ENGINEER that are related to this Agreement. ENGINEER shall keep such book, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement. Such retention of such records and documents shall be at ENGINEER's expense. ENGINEER shall comply with inspection and reproduction obligations of Florida law relating to public records in its possession. 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 the TOWN to be applicable to ENGINEER's records, ENGINEER shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by ENGINEER. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for TOWN'S disallowance and recovery of any payment upon such entry.

10.21.2 **COMPLIANCE WITH FLORIDA'S PUBLIC RECORDS ACT.** (1) Pursuant to section 119.0701, Florida Statutes, ENGINEER shall (a) keep and maintain public records that ordinarily and necessarily would be required by TOWN in order to perform the service; (b) provide the public with access to such public records on the same terms and conditions that the TOWN 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) ENGINEER shall meet all requirements for retaining public records and transfer to the TOWN, at no cost, all public records in possession of the ENGINEER upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt. (2) ENGINEER shall preserve and maintain all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement, unless ENGINEER is notified in writing by the TOWN of the need to extend the retention period. (3) All records stored electronically must be provided to the TOWN in a format that is compatible with the information technology systems of the agency.

10.21.3 **GENERALLY.** In addition, ENGINEER shall respond to the reasonable inquiries of any successor companies and allow and successor companies to receive working papers relating to matters of continuing significance. In addition, ENGINEER shall provide a complete copy of all working papers to TOWN, prior to final payment, in accordance with this Agreement and the Schedule for ENGINEER's services.

10.22 **PALM BEACH COUNTY OFFICE OF THE INSPECTOR GENERAL.**

ENGINEER is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this Agreement, and in furtherance thereof may demand and obtain records and testimony from ENGINEER and, any, if applicable, subcontractors and lower tier subcontractors. ENGINEER understands and agrees that in addition to all other remedies and consequences provided by law, failure of ENGINEER or, if applicable, subcontractors and lower tier subcontractors to fully cooperate with the Inspector General when requested will be deemed to be a breach of this Agreement. ENGINEER shall be responsible for all costs incurred by it or the TOWN as a result of any investigation by the Inspector General which results in an adverse determination caused by ENGINEER, and if applicable, subcontractors and lower tier subcontractors.

10.23 **DRAFTING.** This Agreement has been negotiated and drafted by all Parties hereto and shall not be more strictly construed against any Party because of such Party's preparation of this Agreement.

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IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement between TOWN and ENGINEER on the respective dates under each signature: TOWN, signing by and through its _____, authorized to execute same by Council action on the ____ day of _____, 2013 and the ENGINEER, signing by and through its _____, authorized to execute same on the ____ day of _____, 2013.

Executed by **TOWN** this _____ day of _____, 2013

TOWN OF LOXAHATCHEE GROVES,
a Florida Municipal Corporation

ATTEST:

By _____
David Browning
Mayor

Town Clerk

[TOWN SEAL]

APPROVED AS TO FORM:

By _____
Town Attorney

Executed by **ENGINEER** this _____ day of _____, 2013

KESHAVARZ & ASSOCIATES, INC.

BY: _____

As _____,

ATTEST:

(CORPORATE SEAL)

STATE OF FLORIDA)
) SS
COUNTY OF PALM BEACH)

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared _____ of Keshavarz &

Associates, Inc. who is personally known to me or has produced _____ as identification, and acknowledged execution of the foregoing Agreement as the proper official of Keshavarz & Associates, Inc. of for the use and purposes mentioned in it and that the instrument is the act and deed of the Corporation.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at in the State and County aforesaid on this _____ day of _____, 2013.

NOTARY PUBLIC

My Commission Expires:

EXHIBIT "A"
THE RFQ

**EXHIBIT “B”
ENGINEER’S RESPONSE**

EXHIBIT “C”
ENGINEER’S SCOPE OF SERVICES

A. General Town Engineering Services:

Provide general consultation, civil engineering design, construction documents, bidding services, construction administration services, on-site representation, preliminary budget estimates, services to secure engineering, drainage, and all other required permits and other civil engineering services/miscellaneous civil engineering projects for the Town of Loxahatchee Groves. Required consultation services may be required to ensure compliance with FDEP, SFWMD, PBC Health Department and other applicable federal, state and local regulatory agencies. Upon request, the consultant may be asked to perform other services including the performance of responsible engineering related administrative work. The consultant may also be requested to attend Town of Loxahatchee Groves Town Council meetings, Loxahatchee Groves Water Control District meetings and any other selected meetings.

B. Environmental Engineering Services:

Provide general consultation, environmental engineering design, construction documents, bidding services, construction administration services, on-site representation, preliminary budget estimates, services to secure building and all other required permits and environmental engineering services for the Town of Loxahatchee Groves. The consultant may be requested to provide hazardous waste remediation, noise management studies, wetlands mitigation and other miscellaneous assignments. Environmental engineering services may also include environmental impact statements, phase one environmental analyses and other related environmental engineering services.

C. Civil Engineering Inspection Services:

Provide general consultation, civil engineering inspection services related to the conducting of field inspections regarding paving, grading, drainage, trail system improvements and other related inspections as required for the Town of Loxahatchee Groves. The consultant may also review preliminary and final plats, site and development plans, and civil engineering plans to the Town of Loxahatchee Groves specifications, Town Code of Ordinances and best engineering practices and techniques. Develop and revise as needed standard design details and construction specifications for town roadway and drainage systems.

**EXHIBIT “D”
ENGINEER’S FEE SCHEDULE**

H:_GOV CLIENTS\LOX 1574_070240 GM\AGMTS 2013\General Town Engineering - Final Proposed 070213.docx



KESHAVARZ & ASSOCIATES
Civil Engineers – Land Surveyors

TIME & EXPENSE RATES
Town of Loxahatchee Groves
Effective June 2013

Principal (P.E.)	\$215.00 per hour
Senior Project Manager (P.E.)	160.00 per hour
Project Manager (P.E.)	140.00 per hour
Project Engineer (P.E.)	115.00 per hour
Project Engineer (E.I.T.)	95.00 per hour
Construction Project Manager	120.00 per hour
Field Engineering Representative/Liaison	85.00 per hour
Principal Surveyor (P.S.M.)	150.00 per hour
Professional Surveyor (P.S.M.)	125.00 per hour
Project Surveyor (S.I.T.)	90.00 per hour
Survey Crew	125.00 per hour
Global Positioning System (GPS) Receiver	25.00 per hour
Total Station with Data Collection	10.00 per hour
Senior Engineering Technician/CADD	85.00 per hour
Senior Surveying Technician/CADD	85.00 per hour
Engineering Technician/CADD Technician	80.00 per hour
Regulatory Liaison	80.00 per hour
Administrator	70.00 per hour
Bond Copies/Black line/Blueprints	2.50 each
Plot Media	10.00 each
CAD Drawing Files/Digital Transmission	50.00 each
Mileage	0.50 per mile
Deliveries	40.00 each
Other Supplies	Cost plus 20%

**SIMMONS AND WHITE TRAFFIC ENGINEERING
CONTRACT**

**AGREEMENT FOR PROFESSIONAL TRAFFIC ENGINEERING
SERVICES FOR THE TOWN OF LOXAHATCHEE GROVES**

This **AGREEMENT** (“Agreement”) is made and entered into this ____ day of _____, 2013 (the “Effective Date”), by and between:

TOWN OF LOXAHATCHEE GROVES, a municipal corporation existing under the laws of the state of Florida, hereafter referred to as “TOWN,”

and

SIMMONS & WHITE, INC., a Florida corporation, with an address of 5601 Corporate Way, #200, West Palm Beach, FL 33407, hereafter referred to as “TRAFFIC ENGINEER,” (with the TOWN and TRAFFIC ENGINEER each referred to as a “Party” and collectively as the “Parties”).

WITNESSETH:

WHEREAS, the TOWN is a municipal corporation of the State of Florida, the powers of which are defined in the TOWN’s Charter and State law; and

WHEREAS, the TOWN has a variety of operational and infrastructural needs which involve the assistance of licensed professionals; and

WHEREAS, section 316.006(2), Florida Statutes, grants to chartered municipalities original jurisdiction over all streets and highways located within their boundaries, except state roads, and grants to those municipalities the ability to place and maintain such traffic control devices which conform to the manual and specifications of the Department of Transportation upon all streets and highways under their original jurisdiction; and

WHEREAS, the TOWN has identified specifically a need for a Traffic Engineer who will provide professional traffic engineering services, which may include but are not limited to general consultation, traffic engineering design, review, and preparation of traffic studies, and other related traffic engineering services for the TOWN; and

WHEREAS, the TOWN undertook a competitive selection process in accordance with the Consultants’ Competitive Negotiation Act (CCNA), Section 287.055, Florida Statutes, requesting responses to an Invitation to its Request for Qualifications for General Town Engineering Services, Traffic Engineering, Land Surveying, Environmental Engineering Services, and Civil Engineering Inspection Services No. 2013-001 (the “RFQ”), attached hereto as **Exhibit “A,”** and incorporated herein; and

WHEREAS, the TRAFFIC ENGINEER’s response to the RFQ (“Response”), attached hereto as **Exhibit “B,”** and incorporated herein, was the response selected by the TOWN Council as the most qualified response for professional engineering services; and

WHEREAS, TOWN has determined that TRAFFIC ENGINEER has the experience, expertise, equipment, and materials to provide such professional engineering services, and is capable of providing the necessary materials and manpower to address the aforementioned engineering issues of the TOWN, subject to the agreement of the Parties on criteria for such services, and the TOWN's agreement to pay for such services and supplies; and

WHEREAS, TRAFFIC ENGINEER has stated that it has staff currently employed and available and who are certified to perform such services; and

WHEREAS, TRAFFIC ENGINEER agrees to commit the necessary personnel to perform the services at the corresponding rates as may be reviewed; and

WHEREAS, TRAFFIC ENGINEER is willing to provide said services to the City pursuant to the terms and conditions set forth herein; and

WHEREAS, the TOWN Council and the TRAFFIC ENGINEER have determined that this Agreement is in the best interest of the health, safety, and welfare of the residents within the TOWN.

NOW, THEREFORE, IN CONSIDERATION of the mutual terms, conditions, promises, covenants, and payments hereafter set forth, TOWN and TRAFFIC ENGINEER agree as follows:

ARTICLE 1 - RECITALS

1.1 The foregoing recitations are true and correct and are hereby incorporated herein by reference. All exhibits to this Agreement are hereby deemed a part hereof.

ARTICLE 2 – PROFESSIONAL TRAFFIC ENGINEERING SERVICES

2.1 The TOWN agrees to engage TRAFFIC ENGINEER to perform the Services as described in **Exhibit “C,”** which is attached hereto and incorporated herein by reference.

2.2 TRAFFIC ENGINEER shall perform the above Services as described in **Exhibit “C”** through its designated representatives, employees, or agents as may be designated by TRAFFIC ENGINEER.

2.3 TRAFFIC ENGINEER may provide additional services not included on **Exhibit “C”** to TOWN upon the execution of a written Amendment to this Agreement, as provided in Section 10.8 of this Agreement.

2.4 In connection with professional services to be rendered pursuant to this Agreement, TRAFFIC ENGINEER further agrees to:

2.4.1 Maintain an adequate staff of qualified personnel at all times to ensure its performance of its obligations pursuant to the terms of this Agreement.

- 2.4.2 Comply within all Federal, State, and Local laws or ordinances applicable to the performance of its obligations pursuant to the terms of this Agreement.
- 2.4.3 Cooperate fully with the TOWN in the scheduling and coordination of all services performed pursuant to the terms of this Agreement.
- 2.4.4 Confer with the TOWN staff at any time during the term of this Agreement in order to address issues of performance.
- 2.5 TRAFFIC ENGINEER hereby represents to TOWN, with full knowledge that TOWN is relying upon these representations when entering into this Agreement with TRAFFIC ENGINEER, that TRAFFIC ENGINEER has the professional expertise, experience and manpower to perform the services to be provided by TRAFFIC ENGINEER pursuant to the terms of this Agreement.
- 2.6 TRAFFIC ENGINEER assumes professional and technical responsibility for performance of its services to be provided hereunder in accordance with recognized professional standards of good engineering practice. If within one year following completion of its services, such services fail to meet the aforesaid standards, and the TOWN promptly advises TRAFFIC ENGINEER thereof in writing, TRAFFIC ENGINEER agrees to re-perform such deficient services without charge to the TOWN.

ARTICLE 3 – CONFLICT OF INTEREST

TRAFFIC ENGINEER agrees not to accept employment during the time this Agreement is in effect from any builder, land developer, utility company or others doing construction work within the corporate limits of the Town of Loxahatchee Groves which might be construed as a conflict of interest with TRAFFIC ENGINEER's work for TOWN. The Town Manager, or his/her authorized representative, shall make the determination, in his or her sole discretion, of what is deemed a conflict.

ARTICLE 4 – TIME FOR PERFORMANCE

TRAFFIC ENGINEER shall perform the services as identified in Section 2.1 as soon as is reasonably practicable.

ARTICLE 5 – PAYMENT

- 5.1 As set forth in **Exhibit "D,"** TRAFFIC ENGINEER shall provide the following services to TOWN at the following prices to include cost for time and expenses.
- 5.2 Upon the commencement of this Agreement, TRAFFIC ENGINEER will provide the TOWN invoices on a monthly basis in a timely manner for work actually completed by TRAFFIC ENGINEER for the previous month.
- 5.3 Invoices submitted by TRAFFIC ENGINEER to TOWN must be submitted on the fifth

- (5th) day of each month for the previous month's work performed.
- 5.4 All invoices must have a Notice to Proceed issued by the TOWN before it will be considered for payment.
 - 5.5 All Notices to Proceed must provide a work authorization number, the scope of work to be completed including sufficient detail reflecting all engineering services or such other authorized services by the TOWN that have been performed, and time of completion. Notwithstanding the foregoing, the TOWN shall have no obligation to engage the services of TRAFFIC ENGINEER for a specified number of times.
 - 5.6 TRAFFIC ENGINEER will submit an invoice for costs for such work. Should the TOWN determine that the documentation for such services is incomplete, it shall request additional information from the TRAFFIC ENGINEER within ten (10) working days of receipt of the original invoice.
 - 5.7 The TOWN shall pay the TRAFFIC ENGINEER within thirty (30) days of receipt of the final written invoice and documentation from the TRAFFIC ENGINEER.
 - 5.8 The TOWN's obligation is limited to its payment obligation and shall have no obligation to any other person or entity.
 - 5.9 Notwithstanding the foregoing, in accordance with section 287.055, Florida Statutes, all of TRAFFIC ENGINEER's services shall meet the following cost limitations: professional services for study activity projects should not exceed two-hundred thousand dollars (\$200,000.00); or professional services for construction projects should not exceed two million dollars (\$2,000,000.00); or professional services for work of a specified nature as outlined in the future continuing contract with the TOWN.
 - 5.10 TOWN makes no warranty to TRAFFIC ENGINEER as to the types, volume, or quantities of service that TRAFFIC ENGINEER will actually be required to perform. TRAFFIC ENGINEER's services shall be based on TOWN activities and are dependent upon changing circumstances and the conduct of business within the TOWN.

ARTICLE 6 – CHANGES TO SCOPE OF WORK AND ADDITIONAL WORK

TOWN or TRAFFIC ENGINEER may request changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement. Such changes or additional services must be in accordance with the provisions of the Code or Ordinances of the TOWN and must be contained in a written amendment, executed by the parties hereto, with the same formality and with equality and dignity prior to any deviation from the terms of this Agreement, including the initiation of any additional or extra work. In no event will the TRAFFIC ENGINEER be compensated for any work which has not been described in a separate written agreement executed by the Parties hereto.

ARTICLE 7 - TERM OF AGREEMENT

- 7.1 This Agreement shall be deemed to have commenced on the Effective Date provided below, and shall continue for three (3) years with an option for the TOWN to exercise at its sole discretion (which does not confer any rights upon TRAFFIC ENGINEER) for two (2) additional three (3) year periods, or until terminated as provided in Sections 7.2 through 7.7, below. The TOWN shall exercise its option by providing TRAFFIC ENGINEER with not less than thirty (30) days written notice prior to the end of the then-current term. The notice period may be waived by the Parties.
- 7.2 Anything to the contrary notwithstanding, minor adjustments to the timetable for completion approved by TOWN in advance, in writing, will not constitute a delay by TRAFFIC ENGINEER for which liquidated damages are due. Furthermore, a delay due to an Act of God, fire, lockout, strike or labor dispute, riot or civil commotion, act of public enemy, or other cause beyond the control of TRAFFIC ENGINEER shall extend this Agreement for a period equal to such delay and during this period such delay shall not constitute a delay by TRAFFIC ENGINEER for which liquidated damages are due.
- 7.3 Notwithstanding Section 7.2, this Agreement may be terminated for cause by either Party upon ninety (90) days' notice upon the other Party's failure to timely perform its responsibilities under this Agreement. Such written notice shall be given by the terminating party to the other party setting forth the breach. If the breaching party corrects the breach within thirty (30) days after written notice of same, to the satisfaction of the terminating party, the Agreement shall remain in full force and effect. If such breach is not corrected within thirty (30) days of receipt of notice of breach, the terminating party may terminate the Agreement.
- 7.4 Termination of this Agreement for cause shall include, but not be limited to: failure of the Parties to suitably perform the services required under this Agreement, and failure of the Parties to continuously perform the services required by the terms and conditions of this Agreement in a manner calculated to meet or accomplish the objectives set forth herein, notwithstanding whether any such breach was previously waived or cured.
- 7.5 The Agreement may be terminated for convenience by the TOWN, as evidenced by the adoption of a resolution by the TOWN. In that event, the TOWN'S sole obligation to TRAFFIC ENGINEER shall be payment for services for work previously authorized and performed. Such payment shall be determined on the basis of the hours or percentage of work performed by TRAFFIC ENGINEER up to the time of termination. Upon such termination, the TOWN may, without penalty or other obligation to TRAFFIC ENGINEER, elect to employ other persons to perform the same or similar services.
- 7.6 Notice of termination shall be provided in accordance with Article 9, "NOTICES," herein except that notice of termination by TOWN Manager which TOWN Manager deems necessary to protect the public health, safety or welfare may be verbal notice which shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement. In the event this Agreement is terminated for convenience by the TOWN

Council, TRAFFIC ENGINEER shall be paid for any services performed to the date the Agreement is terminated; however, upon being notified of TOWN's election to terminate, TRAFFIC ENGINEER shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. TRAFFIC ENGINEER acknowledges and agrees that Ten Dollars (\$10.00) of the compensation to be paid by TOWN, the adequacy of which is hereby acknowledged by TRAFFIC ENGINEER, is given as specific consideration to TRAFFIC ENGINEER for TOWN's right to terminate this Agreement for convenience.

- 7.7 In the event this Agreement is terminated, any compensation payable by TOWN shall be withheld until all documents are provided to TOWN. In no event shall the TOWN be liable to TRAFFIC ENGINEER for any additional compensation, other than that provided herein, or for any consequential or incidental damages.

ARTICLE 8 - INDEMNIFICATION; INSURANCE

- 8.1 Independent Contractor: TRAFFIC ENGINEER is an independent contractor and not an employee, agent, or servant of TOWN or its TOWN Council 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 Workers Compensation Act, and the State of Florida's unemployment insurance law. TRAFFIC ENGINEER further acknowledges that the TOWN's duty under this Agreement is limited to contributing the identified funds to TRAFFIC ENGINEER and that TRAFFIC ENGINEER will use the funds to perform professional traffic engineering services to the TOWN in the manner provided herein. TRAFFIC ENGINEER agrees that it is a separate and independent enterprise from the TOWN, that it has full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between TRAFFIC ENGINEER and the TOWN and the TOWN will not be liable for any obligation incurred by TRAFFIC ENGINEER, including but not limited to unpaid minimum wages and/or overtime premiums. In the event a claim or lawsuit is brought against TOWN, its officers, employees, servants or agents, arising from or relating to the TRAFFIC ENGINEER improvements or any matter that is the responsibility of TRAFFIC ENGINEER under this Agreement, TRAFFIC ENGINEER will indemnify and hold harmless the TOWN in the manner and to the extent set forth in Section 8.2, below.

- 8.2 Hold Harmless and Indemnification: TRAFFIC ENGINEER hereto agrees, to the extent permitted by law, to:

- (A) indemnify, save and hold harmless the TOWN, its officers, employees, and agents (collectively the "Indemnitees"), and to defend said persons from and against any such loss, cost, penalties, fines, damages, claims, expenses (including attorneys' fees) or liabilities, causes of action, and judgments of any type whatsoever arising out of, resulting from, or in connection with (i) the performance or non-performance

of the services contemplated by the Agreement which is or is alleged to be directly or indirectly caused, in whole or in part, by any act, omission, default, or negligence (whether active or passive) of TRAFFIC ENGINEER, regardless of whether it is, or is alleged to be, caused in whole or in part (whether joint, concurrent, or contributing) by any act, omission, default or negligence (whether active or passive) of the Indemnities, or any of them or (ii) the failure of TRAFFIC ENGINEER to comply with any of the provisions of the Agreement or the failure of TRAFFIC ENGINEER to conform to statutes, ordinances, or other regulations or requirements of any governmental authority, federal or state, in connection with the performance of the Agreement. TRAFFIC ENGINEER expressly agrees to indemnify and hold harmless the Indemnitees, or any of them, from and against all liabilities which may be asserted by an employee or former employee of TRAFFIC ENGINEER, or any approved subcontractors, as provided above, for which TRAFFIC ENGINEER's liability to such employee or former employee would otherwise be limited to payments under state Workers' Compensation or similar laws.

TRAFFIC ENGINEER further agrees to indemnify, defend, and hold harmless the Indemnitees from and against (i) any and all Liabilities imposed on account of any violation of law, ordinance, order, rule, regulation, condition, or requirements, in any action related, directly or indirectly, to TRAFFIC ENGINEER's performance under the Agreement, compliance with which is left by the Agreement to TRAFFIC ENGINEER, and (ii) any and all claims, and/or suits for labor and materials furnished by TRAFFIC ENGINEER or utilized in the performance of the Agreement or otherwise.

Where not specifically prohibited by law, TRAFFIC ENGINEER further specifically agrees to indemnify, defend, and hold harmless the Indemnitees from all claims and suits for any liability, including, but not limited to, injury, death, or damage to any person or property whatsoever, caused by, arising from, incident to connected with, or growing out of the performance or non-performance of the Agreement which is, or is alleged to be, caused in part (whether joint, concurrent, or contributing) or in whole by any act, omission, default, or negligence (whether active or passive) of the Indemnities. The foregoing indemnity shall also include liability imposed by any doctrine of strict liability.

- (B) The forgoing indemnity shall survive the termination or expiration of this Agreement. A party shall not be deemed to assume any liability for the negligent or wrongful acts, or omissions of the other party (or parties). Nothing contained herein shall be construed as a waiver by the TOWN of the liability limits established in Section 768.28, Florida Statutes.

8.3 Insurance. Certificates of Insurance reflecting evidence of the required insurance shall be filed with the TOWN Manager prior to the commencement of this Agreement. These Certificates shall contain a provision that coverages afforded under these policies will not be cancelled until at least thirty days (30) prior written notice has been given to the TOWN. Policies shall be issued by companies authorized to do business under the laws

of the State of Florida. Financial Ratings must be not less than “A-VI” in the latest edition of “Best Key Rating Guide,” published by A.M. Best Guide.

Insurance shall be in force until the obligations required to be fulfilled under the terms of the Agreement are satisfied. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, then in that event, the TRAFFIC ENGINEER shall furnish, at least thirty (30) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Agreement and extension thereunder is in effect. TRAFFIC ENGINEER shall not commence nor continue to provide any services pursuant to this Agreement unless all required insurance remains in full force and effect. TRAFFIC ENGINEER shall be liable to TOWN for any lapses in service resulting from a gap in insurance coverage.

8.3.1 REQUIRED INSURANCE

Comprehensive General Liability insurance to cover liability bodily injury, accidental death, and property damages for bodily injury, including accidental death, and for property damage, which may arise from operations under this contract whether such operation by himself or by anyone directly or indirectly employed under TRAFFIC ENGINEER. Coverage must be written on an occurrence basis, with the following limits of liability:

A.	Comprehensive General Liability	
1.	Each Occurrence	\$1,000,000
2.	General Aggregate	1,000,000
B.	Automobile and Truck Liability	
1.	Each Occurrence	\$ 500,000
2.	General Aggregate	500,000
C.	Worker’s Compensation Insurance	
D.	Professional Liability/Errors & Omissions	
1.	Each Occurrence	\$1,000,000
2.	General Aggregate	\$2,000,000

Shall be maintained during the life of this contract to comply with statutory limits for all employees. The following limits must be maintained:

A.	Worker's Compensation	Statutory
B.	Employer’s Liability	\$300,000 each accident \$300,000 Disease-policy limit \$300,000 Disease-each employee

or such other amount that may be required by Florida law, whichever is greater.

Note: Comprehensive General Liability coverage and Automobile and Truck Liability coverage may be met with a combination of coverage including excess and umbrella liability coverage. Comprehensive General Liability Insurance covering bodily injuries and property damage shall also include coverage for: (a) injury to or destruction of wires, pipes, conduits, and similar property located below the surface of the ground, whether public or private; (b) collapse of or structural injury to any building or structure except those on which work under this Agreement is being performed; and (c) contractual liabilities related to bodily injury and property damage, i.e. X - explosion, C - Collapse, U - underground.

Automobile and Truck Liability shall cover bodily injury and property damage for the operation of all motor vehicles and equipment, whether or not owned by TRAFFIC ENGINEER, being operated in connection with the work performed under this Agreement. Product and Completed Operations coverage shall be included in the amounts specified above for Comprehensive General Liability.

8.3.2 TRAFFIC ENGINEER shall name the TOWN as an additional insured on each of the policies required herein and shall hold the TOWN harmless on account of claims or damages to persons, property or premises arising out of the services provided hereunder.

8.3.3 Evidence of Insurance. As evidence of insurance coverage, the TOWN may, in lieu of actual policies, accept official written statements from the insurance company certifying that all the insurance policies specified below are in force for the specified period. TRAFFIC ENGINEER shall submit to TOWN evidence of insurance at the time of execution of this Agreement. Written notice shall be given to the TOWN at least thirty (30) days prior to nonrenewal of such insurance coverage.

ARTICLE 9 - NOTICES

9.1 Any and all notices given or required under this Agreement shall be in writing and may be delivered in person or by United States mail, postage prepaid, first class and certified, return receipt requested, or by hand-delivery with a request for a written receipt of acknowledgement 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 for in this article. For the present, the Parties designated the following:

TO TOWN:

Mayor David Browning
Town of Loxahatchee Groves
14579 Southern Blvd., Suite 2
Loxahatchee Groves, FL 33470

With copies to:

Mark Kutney, Town Manager
Town of Loxahatchee Groves
14579 Southern Blvd., Suite 2
Loxahatchee Groves, FL 33470

And

Michael D. Cirullo, Jr., Town Attorney
Goren, Cherof, Doody & Ezrol, P.A.
3099 East Commercial Boulevard
Suite 200
Fort Lauderdale, FL 33308

TO TRAFFIC ENGINEER:

Robert F. Rennebaum, P.E.
Simmons & White, Inc.
5601 Corporate Way, #200
West Palm Beach, FL 33407

ARTICLE 10 - MISCELLANEOUS PROVISIONS

- 10.1 **ASSIGNMENT:** The Parties to the Agreement shall have no right to assign, transfer, or otherwise encumber this Agreement, without the express consent of the other party.
- 10.2 **WAIVER:** The waiver by any Party to this Agreement of any failure on the part of another Party to perform in accordance with any of the terms or conditions of this Agreement shall not be construed as a waiver of any future or continuing similar or dissimilar failure.
- 10.3 **THIRD PARTY BENEFICIARIES:** Neither TOWN nor TRAFFIC ENGINEER intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based on this Agreement. The Parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.
- 10.4 **SEVERABILITY:** The invalidity of any provision of this Agreement shall in no way affect the validity of any other provision.

- 10.5 **ENTIRE AGREEMENT:** It is understood and agreed that this Agreement incorporates and includes the RFQ, TRAFFIC ENGINEER's Response, all prior negotiations, agreements or understandings applicable to the matters contained herein and the Parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.
- 10.6 **JOINT PREPARATION:** The Parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations here and that the preparation of this Agreement has been a joint effort. The language agreed to expresses their mutual intent and their resulting documents shall not, solely, as a matter of judicial construction, be construed more severely against one of the parties than the other.
- 10.7 **APPLICABLE LAW AND VENUE:** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State Courts of the 15th Judicial Circuit of Palm Beach County, Florida, and the venue site and shall be governed by the laws of the State of Florida. To encourage prompt and equitable resolution of any litigation that may arise hereunder, each Party hereby waives any rights it may have to trial by jury of any such litigation.
- 10.8 **AMENDMENTS:** No modification, amendment, or alteration of the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by both Parties.
- 10.9 **MULTIPLE ORIGINALS:** This Agreement may be fully executed in multiple copies by all Parties, each of which, bearing original signatures, shall have the force and effect of an original document.
- 10.10 **LICENSES.** All drivers must be properly licensed operators, if applicable. TRAFFIC ENGINEER is responsible for updating operator information at any time throughout the duration of this Agreement. Failure to do so may be grounds for breach and subsequent termination of this Agreement. TRAFFIC ENGINEER shall be responsible for providing phone numbers where employees can be reached. The inability of the TOWN to make contact with TRAFFIC ENGINEER or an employee thereof within a reasonable amount of time is cause for the TOWN to terminate this Agreement as described in Section 7 of this Agreement.
- 10.11 **AFFIRMATIVE ACTION/EQUAL OPPORTUNITY EMPLOYER.** Pursuant to the RFQ and its Response, TRAFFIC ENGINEER shall adhere to an affirmative action policy. In the performance of this Agreement, TRAFFIC ENGINEER shall not discriminate against any firm, employee or applicant for employment or any other

firm/individual in providing services because of sex, age, race, color, religion, ancestry or national origin.

- 10.12 **PROTECTION OF TOWN PROPERTY.** At all times during the performance of this Agreement, TRAFFIC ENGINEER shall protect the property of the TOWN and adjacent property owners from all damage whatsoever on account of the work being carried on under this contract.
- 10.13 **CONFLICTS.** TRAFFIC ENGINEER and TOWN hereby agree that the following Contract Documents are fully incorporated herein and made a part of this Agreement, as if written herein word for word: TOWN's RFQ No. 2013-01 including all addendums, and TRAFFIC ENGINEER's Response to the RFQ as Exhibit "B". In the event that there is any conflict between any of the contract documents and the terms of this Agreement, this Agreement shall prevail.
- 10.14 **LEGAL REPRESENTATION.** It is acknowledged that each Party to this Agreement had the opportunity to be represented by counsel in the preparation of this Agreement and, accordingly, the rule that a contract shall be interpreted strictly against the Party preparing same shall not apply due to the joint contribution of both Parties.
- 10.15 **OWNERSHIP OF DOCUMENTS.** Reports, surveys, plans, studies and other data provided or created in connection with this Agreement are and shall remain the property of TOWN whether or not the project for which they are made is completed. TOWN hereby agrees to use TRAFFIC ENGINEER's work product for its intended purposes. In the event of termination of this Agreement, any reports, photographs, surveys and other data and documents prepared by TRAFFIC ENGINEER, whether finished or unfinished shall become the property of TOWN and shall be delivered by TRAFFIC ENGINEER to the TOWN Manager within seven (7) days of termination of this Agreement by either party. Any compensation due to TRAFFIC ENGINEER shall be withheld until all documents are received as provided herein.
- 10.16 **NO CONTINGENT FEES.** TRAFFIC ENGINEER warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the TRAFFIC ENGINEER, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for TRAFFIC ENGINEER, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, the TOWN shall have the right to terminate the Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.
- 10.17 **BINDING AUTHORITY.** Each person signing this Agreement on behalf of either Party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

10.18 **EXHIBITS.** Each Exhibit referred to in this Agreement forms an essential part of this Agreement. The exhibits if not physically attached should be treated as part of this Agreement and are incorporated herein by reference.

10.19 **HEADINGS.** Headings herein are for convenience of reference only and shall not be considered on any interpretation of this Agreement.

10.20 **ATTORNEYS' FEES.** In the event that either Party brings suit for enforcement of this Agreement, the prevailing party shall be entitled to attorneys' fees and court costs in addition to any other remedy afforded by law.

10.21 **AUDIT AND INSPECTION RIGHTS AND RETENTION OF RECORDS.**

10.21.1 **AUDITS.** TOWN shall have the right to audit the books, records and accounts of TRAFFIC ENGINEER that are related to this Agreement. TRAFFIC ENGINEER shall keep such book, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement. Such retention of such records and documents shall be at TRAFFIC ENGINEER's expense. TRAFFIC ENGINEER shall comply with inspection and reproduction obligations of Florida law relating to public records in its possession. 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 the TOWN to be applicable to TRAFFIC ENGINEER's records, TRAFFIC ENGINEER shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by TRAFFIC ENGINEER. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for TOWN'S disallowance and recovery of any payment upon such entry.

10.21.2 **COMPLIANCE WITH FLORIDA'S PUBLIC RECORDS ACT.** (1) Pursuant to section 119.0701, Florida Statutes, TRAFFIC ENGINEER shall (a) keep and maintain public records that ordinarily and necessarily would be required by TOWN in order to perform the service; (b) provide the public with access to such public records on the same terms and conditions that the TOWN 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) TRAFFIC ENGINEER shall meet all requirements for retaining public records and transfer to the TOWN, at no cost, all public records in possession of the TRAFFIC ENGINEER upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt. (2) TRAFFIC ENGINEER shall preserve and maintain all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3)

years after termination of this Agreement, unless TRAFFIC ENGINEER is notified in writing by the TOWN of the need to extend the retention period. (3) All records stored electronically must be provided to the TOWN in a format that is compatible with the information technology systems of the agency.

10.21.3 **GENERALLY.** In addition, TRAFFIC ENGINEER shall respond to the reasonable inquiries of any successor companies and allow and successor companies to receive working papers relating to matters of continuing significance. In addition, TRAFFIC ENGINEER shall provide a complete copy of all working papers to TOWN, prior to final payment, in accordance with this Agreement and the Schedule for TRAFFIC ENGINEER's services.

10.22 **PALM BEACH COUNTY OFFICE OF THE INSPECTOR GENERAL.** TRAFFIC ENGINEER is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this Agreement, and in furtherance thereof may demand and obtain records and testimony from TRAFFIC ENGINEER and, any, if applicable, subcontractors and lower tier subcontractors. TRAFFIC ENGINEER understands and agrees that in addition to all other remedies and consequences provided by law, failure of TRAFFIC ENGINEER or, if applicable, subcontractors and lower tier subcontractors to fully cooperate with the Inspector General when requested will be deemed to be a breach of this Agreement. TRAFFIC ENGINEER shall be responsible for all costs incurred by it or the TOWN as a result of any investigation by the Inspector General which results in an adverse determination caused by TRAFFIC ENGINEER, and if applicable, subcontractors and lower tier subcontractors.

10.23 **DRAFTING.** This Agreement has been negotiated and drafted by all Parties hereto and shall not be more strictly construed against any Party because of such Party's preparation of this Agreement.

REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement between TOWN and TRAFFIC ENGINEER on the respective dates under each signature: TOWN, signing by and through its _____, authorized to execute same by Council action on the ____ day of _____, 2013 and the TRAFFIC ENGINEER, signing by and through its _____, authorized to execute same on the ____ day of _____, 2013.

Executed by **TOWN** this _____ day of _____, 2013

TOWN OF LOXAHATCHEE GROVES,
a Florida Municipal Corporation

ATTEST:

By _____
David Browning
Mayor

Town Clerk

[TOWN SEAL]

APPROVED AS TO FORM:

By _____
Town Attorney

Executed by **TRAFFIC ENGINEER** this _____ day of _____, 2013

SIMMONS & WHITE, INC.

BY: _____

As _____,

ATTEST:

(CORPORATE SEAL)

STATE OF FLORIDA)
) SS
COUNTY OF PALM BEACH)

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared _____ of Simmons & White, Inc., who is personally known to me or has produced _____ as identification, and acknowledged execution of the foregoing Agreement as the proper official of

Simmons & White, Inc. of for the use and purposes mentioned in it and that the instrument is the act and deed of the Corporation.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at in the State and County aforesaid on this _____ day of _____, 2013.

NOTARY PUBLIC

My Commission Expires:

EXHIBIT "A"
THE RFQ

EXHIBIT "B"
TRAFFIC ENGINEER'S RESPONSE

EXHIBIT “C”
TRAFFIC ENGINEER’S SCOPE OF SERVICES

Provide general consultation, traffic engineering design, review and preparation of traffic studies, and other related traffic engineering services for the Town of Loxahatchee Groves. The scope of the aforementioned services provided by TRAFFIC ENGINEER to TOWN may include, but are not limited to, the following:

- 1) Arterial analysis;
- 2) Traffic signal warrant analysis;
- 3) Traffic signal design;
- 4) Traffic calming studies and design;
- 5) Intersection design, sidewalk, turn lanes, street light studies, and design;
- 6) Ingress/egress; number, location and geometry;
- 7) Access layout and geometric design;
- 8) Number and layout of parking stall/aisles;
- 9) Vehicular storage at ingress/egress locations;
- 10) Loading Zones;
- 11) Sight lines/visibility triangles;
- 12) On/off street parking impacts;
- 13) Pedestrian/vehicular conflicts;
- 14) Attendance at any TOWN meetings involving such projects of TRAFFIC ENGINEER;
- 15) Assistance with review of any development petitions and traffic impact studies to ensure compliance with local and state laws;
- 16) Coordination with TOWN to resolve any issues involving interpretation and implementation of any traffic standards, if applicable;
- 17) Providing specialized studies and written reports on traffic issues when warranted;
- 18) Providing input relative to zoning amendments as they involve traffic and transportation planning; and
- 19) Other tasks as needed.

**EXHIBIT “D”
TRAFFIC ENGINEER’S FEE SCHEDULE**

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Fee Schedule

Principal	-	\$160.00
Traffic Principal	-	\$185.00
Expert Testimony	-	\$250.00
Senior Traffic Engineer	-	\$150.00
Senior Technician	-	\$100.00
Clerical	-	\$ 50.00

Plus reimbursement for direct non-salary expenses including, but not limited to, automobile travel at \$.60 per mile, long distance telephone, printing, postage, courier and reproduction.

Payments shall be made upon monthly billing, payable within 21 days from the date of invoice. Any billing dispute or discrepancy shall be set forth in writing and delivered to Simmons & White, Inc. prior to the due date for payment. Any matter not set forth in writing and delivered prior to the due date shall be deemed waived and the invoice shall be deemed correct and due in full. Past due payments shall include interest from the date of invoice at a simple interest rate of 1-1/2 percent per month.

In the event any invoice or any portion thereof remains unpaid for more than forty-five (45) days following the invoice date, the Consultant may initiate legal proceedings to collect the same and recover, in addition to all amounts due and payable, including accrued interest, its reasonable attorney's fees and other expenses related to the proceeding. Such expenses shall include, but not be limited to the cost, determined by the Consultant's normal hourly billing rates, of the time devoted to such proceeding by its employees.

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Simmons & White, Inc.
5601 Corporate Way Suite 200 West Palm Beach Florida 33407
T: 561.478.7848 F: 561.478.3738 www.simmonsandwhite.com
Certificate of Authorization Number 3452

Palm Beach County Traffic Signal Continuing Services

FEE SCHEDULE

Effective August 16, 2013 through August 15, 2014

8 ½" x 11" Copies	-	\$0.25/copy
8 ½" x 14" Copies	-	\$0.30/copy
11" x 17" Copies	-	\$0.75/copy
24" x 36" Copies	-	\$2.00/copy
24" x 36" Mylar	-	\$18.00/each
Postage	-	Cost
Courier/Fed Ex	-	Cost
Chief Engineer	-	\$160.00/Hr
Senior Engineer	-	\$150.00/Hr
Senior Utility Coordinator	-	\$100.00/Hr
Senior Designer	-	\$ 90.00/Hr

These rates do not exceed a 3.0 multiplier.

sa: x:/admin/contracts/pbctrainingsignal/feeschedule.word