

**CONSULTING AGREEMENT BETWEEN THE CITY OF NORTH MIAMI AND  
DESPINOSSE CONSULTING INC.**

**THIS AGREEMENT** entered into by and between the **City of North Miami**, Florida, a municipal corporation of the State of Florida (hereinafter referred to as "City") and **Despinosse Consultant Inc.**, a Florida Corporation located at 12811 West Dixie Highway, North Miami, Florida 33161 (hereinafter referred to as "Consultant").

**WHEREAS**, the City wishes CONSULTANT to provide consulting services related to the City's Chinatown Project; and

**WHEREAS**, CONSULTANT has proposed to provide the City with consulting services related to the Chinatown Project; and

**NOW THEREFORE** in consideration of the mutual covenants promises and representations contained herein the parties hereto agree as follows:

**ARTICLE I**

**SCOPE OF SERVICE**

CONSULTANT shall perform outreach services to residents to explain and inform residents regarding the City's Chinatown project.

- A. All work shall be completed in compliance with all applicable regulations codes and ordinances and in a satisfactory and proper manner as determined by the City. Such services shall be performed except as otherwise stated herein by persons or instrumentalities solely under the domain and control of CONSULTANT.
- B. CONSULTANT shall comply with such other terms and conditions including record keeping and reports for program monitoring and evaluation purposes as may be established by the City for the purposes of carrying out the program in an effective and efficient manner.

**ARTICLE II**

**PERIOD OF AGREEMENT AND EFFECTIVE DATE**

This Agreement shall commence upon April 1, 2017, and shall remain in full force and effect until September 30, 2017.

### **ARTICLE III**

#### **CONSIDERATION AND PAYMENT**

For its performance under this Agreement, CONSULTANT will receive funds from the City in an amount not to exceed Twenty-Five Thousand Five Hundred Dollars (\$25,000).

### **ARTICLE IV**

#### **CANCELLATION OF AGREEMENT**

Except as otherwise provided herein, this Agreement may be cancelled by either party with thirty (30) days advance written notice to the other at its address as herein specified. In the event CONSULTANT cancels the Agreement prior to completion of the Scope of Work, CONSULTANT will reimburse the City in proportion to time remaining on the Project. In the event the City terminates the Agreement no reimbursement will be required of CONSULTANT.

### **ARTICLE V**

#### **DEFAULT AND TERMINATION FOR NON PERFRMANCE**

A default shall consist of any use of Funds for a purpose other than as authorized by this Agreement, noncompliance with any provision in Articles herein, or any material breach of the Agreement.

Upon the occurrence of any such default, the City shall serve due notice to CONSULTANT at which time CONSULTANT shall have a reasonable opportunity to respond and cure. For purposes of this Agreement, a reasonable opportunity to respond and cure shall be ten (10) business days from receipt by CONSULTANT of the City's written notice of such default (the "Cure Period"). If the default is not cured to the satisfaction of the City, the City shall have the right in its sole discretion to take the following actions:

- A. Upon a written request from CONSULTANT setting forth a reasonable basis to support the need for an additional Cure Period the City may grant an additional Cure Period by written acknowledgment thereof or
- B. Terminate this Agreement by written notice thereof
- C. Take such other action including but not limited to temporarily withholding cash payments pending correction of the deficiency by CONSULTANT disallow all or part of the cost of the activity or action not in compliance wholly or partly suspend or terminate the current award for CONSULTANT' program, withhold further awards for the program or take other remedies that may be legally available.

## **ARTICLE VI**

### **ADDITIONAL RIGHTS AND REMEDIES**

Nothing contained herein shall be construed as a limitation on such other rights and remedies available to the parties under law or in equity which may now or in the future be applicable.

## **ARTICLE VII**

### **FISCALNON FUNDING CLAUSE**

This Agreement is subject to funding availability. In the event sufficient budget funds to fund this Agreement become reduced or unavailable the City shall notify CONSULTANT of such occurrence and the City may terminate this Agreement without penalty or expense to the City upon no less than twenty-four (24) hours written notice to the CONSULTANT. The City shall be the final authority as to the availability of funds and how available funds will be allotted. If this Agreement is funded in whole or in part by federal or state dollars which are reduced or become unavailable the City shall notify the CONSULTANT of such occurrence and the City may terminate this Agreement without penalty or expense to the City upon no less than twenty-four (24) hours written notice to CONSULTANT.

## **ARTICLE VIII**

### **ASSIGNMENT**

CONSULTANT shall not assign this Agreement or any part hereof without the prior written consent of the City.

## **ARTICLE IX**

### **COMPLIANCE WITH APPLICABLE LAWS**

CONSULTANT shall comply with all applicable laws orders and codes of the federal, state and local governments as they pertain to this Agreement.

## **ARTICLE X**

### **EQUAL OPPORTUNITY CLAUSE**

CONSULTANT agrees to comply with the requirements of all applicable state federal and local laws rules regulations ordinances and Executive Orders prohibiting and or relating to discrimination. CONSULTANT shall not discriminate on the basis of race, color, religion, sex, national origin, age familial status and handicap.

## **ARTICLE XI**

### **PROJECT PUBLICITY**

CONSULTANT shall recognize the City for its contribution in promotional material and at any events or workshops for which funds from this Agreement are allocated. Any news release

or other type of publicity pertaining to the scope of work performed pursuant to this Agreement must recognize the City as the sponsor.

## **ARTICLE XII**

### **POLITICAL ENDORSEMENT PROHIBITION**

CONSULTANT shall not engage in political activities that promote or oppose specific candidates.

## **ARTICLE XIII**

### **PUBLIC ENTITY CRIMES**

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid proposal or reply on a contract to provide any goods or services to a public entity may not submit a bid proposal or reply on a contract with a public entity the construction or repair of a public building or public work may not submit bids Proposals or replies on leases of real property to a public entity may not be awarded or perform work as a contractor supplier subcontractor or CONSULTANT under a contract with any public entity and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 Florida Statutes for Category Two for a period of thirty- six (36) months following the date of being placed on the convicted vendor list. Additionally, pursuant to City's policy, a conviction of a public entity crime may cause the rejection of a bid offer or proposal. The City may make inquiries regarding alleged convictions of public entity crimes. The unreasonable failure of a bidder, offeror or proposer to promptly supply information in connection with an inquiry may be grounds for rejection of a bid offer, proposal or reply.

## **ARTICLE XIV**

### **MAINTENANCE OF RECORDS**

CONSULTANT shall maintain all records and accounts including property, personnel and financial records, contractual agreements, construction reports, Davis Bacon records, subcontracts, proof of required insurance and any other records related to or resulting from the activities performed under this Agreement to assure a proper accounting and monitoring of all Funds. In the event the City determines that such records are not being adequately maintained by CONSULTANT, the City may cancel this Agreement in accordance with Articles IV and V herein. This Article shall survive the expiration or earlier termination of this Agreement.

With respect to all matters covered by this Agreement records will be made available for examination audit inspection or copying purposes at any time during normal business hours and as often as the City may require. CONSULTANT will permit same to be examined and excerpts or transcriptions made or duplicated from such records and audits made of all contracts, invoices materials, records of personnel and of employment and other data relating to all matters covered by this Agreement.

The City's right of inspection and audit shall obtain likewise with reference to any audits made by any other agency whether local state or federal. CONSULTANT shall retain all records and supporting documentation applicable to this Agreement for six (6) years after receipt of final payment from the City for inspection. If any litigation claim negotiation audit monitoring inspection or other action has been started before the expiration of the required record retention period records must be retained until completion of the action and resolution of all issues which arise from it or the end of the required period whichever is later.

The retention period starts from the date of the execution of this Agreement.

## **ARTICLE XV**

### **EVALUATION**

CONSULTANT agrees that the City shall be responsible for monitoring and evaluating all aspects of the services provided under this Agreement. The City shall have access to and be able to make copies and transcriptions of such records as may be necessary in the determination of the City to accomplish this obligation subject to state and federal confidentiality requirements.

In order to properly monitor and evaluate CONSULTANT' performance under this Agreement the City shall make onsite inspections as often as it deems necessary. Further, CONSULTANT shall submit an activity report with each reimbursement request which details the progress made to date toward the completion of the activities authorized under Exhibit "A".

## **ARTICLE XVII**

### **DRUG FREE WORKPLACE**

CONSULTANT shall assure the City that it will administer in good faith a policy designed to ensure that CONSULTANT is free from the illegal use possession or distribution of drugs of alcohol.

## **ARTICLE XIX**

### **NEGATION OF AGENT OR EMPLOYEE STATUS**

CONSULTANT shall perform this Agreement as an independent agent and nothing contained herein shall in any way be construed to constitute CONSULTANT or any assistant representative agent employee independent contractor partner affiliate holding company subsidiary or subagent of CONSULTANT to be a representative, agent, subagent or employee of the City.

CONSULTANT certifies its understanding that the City is not required to withhold any federal income tax, social security tax, state and local tax to secure worker's compensation insurance or employer's liability insurance of any kind or to take any other action with respect to this insurance or taxes of CONSULTANT.

In no event shall any provision of this Agreement make the City or any political subdivision of the State of Florida liable to any person or entity that contracts with or provides goods or services

to CONSULTANT in connection with the services CONSULTANT has agreed to perform hereunder or otherwise or for any debts or claims of any nature accruing to any person or entity against CONSULTANT. There is no contractual relationship either express or implied between the City or any political subdivision of the State of Florida and any person or entity supplying any work, labor, services, goods or materials to CONSULTANT as a result of the provisions of the services provided by CONSULTANT hereunder or otherwise.

## **ARTICLE XX**

### **LIABILITY**

CONSULTANT shall comply with all applicable laws orders and codes of the federal, state and local governments as they pertain to this Agreement. The parties agree that CONSULTANT is liable for any violation of federal, state or local law by CONSULTANT in relation to this Agreement. CONSULTANT agrees that it shall be liable for any penalties imposed against CONSULTANT or the City by any federal, state or local agency for any actions or inactions by CONSULTANT. Such penalties shall include but not be limited to repayment of any of the funding received pursuant to this Agreement. This obligation shall survive the termination or expiration of this Agreement for a period of not less than five (5) years or any applicable statute of limitation period or equitable limitation doctrine whichever is longer.

## **ARTICLE XXI**

### **INSURANCE**

CONSULTANT shall have insurance for financial protection for bodily and personal injury and property damage arising from the operations. The combined limits for general liability and fleet automobile liability coverage amount to one thousand (1000) per person per claim and two thousand (2000) per occurrence. Nothing herein shall be construed as a waiver of the sovereign immunity of CONSULTANT. The State of Florida and their agents and agencies beyond the waiver provided in Section 768 28 Florida Statutes. CONSULTANT shall maintain in force all policies and coverage for the duration of this Agreement The City shall receive written notice of any changes or cancellation of the required coverage.

## **ARTICLE XXII**

### **ACCESS TO RECORDS**

If applicable, CONSULTANT shall comply with the requirements of Chapter 119 Florida Statutes with respect to any documents papers and records made or received by CONSULTANT in connection with this Agreement.

## **ARTICLE XXIII**

### **SURVIVABILITY AND SEVERABILITY**

Any term, condition, covenant or obligation which requires performance by either party subsequent to termination of this Agreement shall remain enforceable against such party subsequent to such termination. In the event any section sentence clause or provision of this Agreement is held to be invalid illegal or unenforceable by a court having jurisdiction over the

matter the remainder of the Agreement shall not be affected by such determination and shall remain in full force and effect.

#### **ARTICLE XXIV**

#### **SUCCESSORS AND ASSIGNS**

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

#### **ARTICLE XXV**

#### **GOVERNING LAWS**

This Agreement shall be construed under the laws rules and regulations of the State of Florida. Venue shall be in Miami-Dade County, Florida.

#### **ARTICLE XXVI**

#### **AUTHORIZATION**

Each party represents to the other such party has authority under all applicable laws to enter into an agreement containing such covenants and provisions. All of the procedural requirements imposed by law upon each party for the approval and authorization of this Agreement, have been properly completed and that the persons who have executed this Agreement are duly authorized and empowered to do so.

#### **ARTICLE XXVII**

#### **NOTICE AND GENERAL CONDITIONS**

All notices which may be given pursuant to this Agreement shall be in writing and shall be delivered by personal service or by certified mail return receipt requested addressed to the parties at their respective addresses indicated below or as the same may be changed in writing from time to time:

**Notices to the City shall be sent to:**

Larry M. Spring, City Manager  
City of North Miami  
776 NE 126 Street  
North Miami, FL 33161  
Phone: 305-895-9888  
E-mail: [lspring@northmiamifl.gov](mailto:lspring@northmiamifl.gov)

**With copy to:**

Jeff P. H. Cazeau, City Attorney  
City of North Miami  
776 NE 126 Street

North Miami, FL 33161  
Phone: 305-895-9888

E-mail: [jcazeau@northmiamifl.gov](mailto:jcazeau@northmiamifl.gov)

**Notices to CONSULTANT shall be sent to:**

Jacques Despinosse, President  
12811 West Dixie Highway  
North Miami FL 33161  
Phone: 786-487-5529  
E-mail:

**ARTICLE XVIII**

**TERMS**

Capitalized terms contained herein shall have the definition assigned. Capitalized terms contained herein that do not have the definition assigned shall have the meaning assigned in the applicable federal statute or regulation. All article and descriptive headings of paragraphs in this Agreement are inserted for convenience only and shall not affect the construction or interpretation hereof.

**ARTICLE XXIX**

**ESTOPPEL WAIVER**

A waiver of any performance or default by either party shall not be construed to be a continuing waiver of other defaults or non-performance of the same provision or operate as a waiver of any subsequent default or non-performance of any of the terms, covenants and conditions of this Agreement. The payment or acceptance of fees for any period after a default shall not be deemed waiver of any right or acceptance of defective performance.

**ARTICLE XXX**

**MERGER AND MODIFICATIONS**

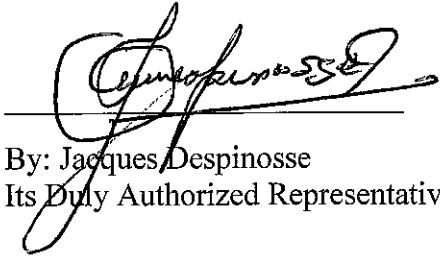
This Agreement together with the Exhibits embodies the entire agreement and understanding between the parties hereto and there are no other agreements and or understandings oral or written with respect to the subject matter hereof that are not merged herein and superseded hereby This Agreement may only be amended or extended by a written instrument executed by the City and CONSULTANT expressly for that purpose.

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AGREED:

Despinosse Consultant Inc.

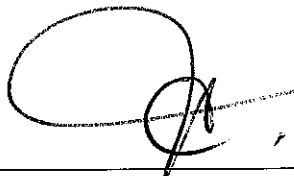


By: Jacques Despinosse  
Its Duty Authorized Representative


City of North Miami

Date:

ATTEST: City of North Miami, a Florida municipal Corporation,

By: 

Michael A. Etienne, Esq.  
City Clerk

By: 

Larry M. Spring  
City Manager

APPROVED AS TO FORM AND

LEGAL SUFFICIENCY:

By: 

Jeff P. H. Cazeau, Esq.  
City Attorney