

Council Members

Roger Manning-Mayor
John Stanavitch-Seat 1
Kara Crump-Seat 2
Phillip Everett-Seat 3
Katrina Long Robinson-Seat 4



City of Westlake

4001 Seminole Pratt Whitney Rd.
Westlake, Florida 33470
Phone: 561-530-5880
Fax: 561-790-5466

Regular Meeting Monday, September 12, 2016

Meeting Location
Westlake Council Chambers
4005 Seminole Pratt-Whitney Road
Westlake, FL 33470
7:00 PM

PLEASE TAKE NOTICE AND BE ADVISED, that if any interested person desires to appeal any decision made by the City Council with respect to any matter considered at this meeting or hearing, such interested person will need a record of the proceedings and for such purpose may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. The meeting/hearing may be continued to another date and time as may be found necessary during the aforesaid meeting. In accordance with the provisions of the Americans with Disabilities Act (ADA), any person requiring special accommodations at these meetings because of disability or physical impairment should contact the Interim City Manager at (954)753-5841 at least two (2) calendar days prior to the meeting.

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September 9, 2016

City Council
City of Westlake

Dear Mayor and Council:

A regular meeting of the City Council of the City of Westlake will be held Monday, September 12, 2016 at 7:00 p.m. at the Westlake Council Chambers, 4005 Seminole Pratt Whitney Road, Westlake, Florida. Following is the advance agenda for the meeting.

1. Call to Order / Roll Call
2. Pledge of Allegiance
3. Approval of Agenda
4. Audience Comments on Agenda Items (3) Minute Time Limit
5. Selection of Vice Mayor, Resolution 05-2016 (Action Item)
6. Consent Agenda
 - A. Approval of Minutes of the August 22, 2016 Workshop Meeting
 - B. Approval of Minutes of August 22, 2016 Regular Meeting
7. Consideration of Resolution 06-2016, Authorizing the City Manager to Enter into an Agreement with NZ Consultants for Professional Planning and Zoning Services (Action Item)
8. Consideration of Resolution 07-2016, Authorizing the City Manager to Enter into an Agreement with Chen Moore & Associates, Inc. for Engineering Services (Action Item)
9. Interim City Manager's Report
10. Audience Comments on Other Items (3) Minute Time Limit
11. Adjournment

Any additional supporting material for the items listed above, not included in the agenda package, will be distributed at the meeting. Staff will present their reports at the meeting. I look forward to seeing you, but in the meantime if you have any questions, please contact me.

Sincerely,

Kenneth Cassel

Kenneth G. Cassel
Interim City Manager


cc: Pam E. Booker, Esq
Terry Lewis

John Carter
Johnnie Easton

Fifth Order of Business

MEMORANDUM

To: Mayor Roger Manning
City Council Members
Ken Cassel, Interim City Manager

From: Pam E. Booker, Interim City Attorney 

Date: August 24, 2016

Subject: Selection of Vice Mayor

Pursuant to section 8D, of the City Charter, the members of the City Council shall elect from its membership a vice-mayor who shall serve at the pleasure of the City Council. The specific language in the charter is as follows:

“The City council, at its first regular meeting after the fourth Tuesday of each March, shall elect from its membership a vice-mayor who shall serve at the pleasure of the City council and who shall have the same legislative powers and duties as the mayor or any other councilmember. The vice-mayor shall serve as acting mayor during the absence or disability of the mayor. In the absence of the mayor and the vice-mayor, the remaining councilmembers shall select a councilmember to serve as acting mayor.”

This item will require a motion by the council and acceptance by the recommended member to serve as the vice-mayor. The member will serve until the meeting after the fourth Tuesday in March of 2017, which will be on April 10, 2017. At the meeting of April 10, 2017, the city council shall select for the position of vice-mayor again. Should you have any questions, or need any additional information, please do not hesitate to call.

SEPTEMBER 12, 2016

RESOLUTION 05-2016

A RESOLUTION OF OF THE CITY COUNCIL FOR THE CITY OF WESTLAKE, FLORIDA, SELECTING A MEMBER OF THE CITY COUNCIL TO SERVE IN THE POSITION OF VICE-MAYOR UNTIL APRIL 10, 2017, PURSUANT TO THE CITY’S CHARTER PROVISION AS SET FORTH IN SECTION 8D.

WHEREAS, pursuant to section 8D of the City’s charter, the City of Westlake hereby selects a member of the sitting City Council to serve as the Vice-Mayor; and

WHEREAS, the Vice-Mayor shall serve until April 10, 2017, in the position of vice-mayor in the absence of the Mayor; and

WHEREAS, on April 10, 2017, the City Council shall again select a member of the sitting city council to serve in the position of vice-mayor; and

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF WESTLAKE, FLORIDA:

Section 1: The City Council for the City of Westlake, selects _____, of Seat _____ to serve as the Vice-Mayor for the City of Westlake.

Section 2: Councilmember _____, of Seat _____, shall serve as Vice-Mayor until April 10, 2017.

Section 3: That this resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED by City Council for the City of Westlake, on this _____ day of September, 2016.

Roger Manning, Mayor
City of Westlake

Sandra DeMarco, City Clerk

Approved as to Form and Sufficiency
Pam E. Booker, City Attorney

Sixth Order of Business

6A.

**MINUTES OF WORKSHOP MEETING
CITY OF WESTLAKE**

The workshop meeting of the City Council of the City of Westlake was held on Monday, August 22, 2016 at 6:00 p.m. at the Westlake Community Center, 4005 Seminole-Pratt Whitney Road, Westlake, Florida.

Present and constituting a quorum were:

Roger Manning	Mayor
John Stanavitch	City Council Seat 1
Kara Crump	City Council Seat 2
Phillip Everett	City Council Seat 3
Katrina Long-Robinson	City Council Seat 4

Also present were:

Kenneth Cassel	Interim City Manager
Pam E. Booker, Esq.	Interim City Attorney
John Carter	Minto, PBLH, LLC
Tara W. Duh	Lewis, Longman and Walker
Robert Diffenderfer	Lewis, Longman and Walker
Donaldson Hearing	Cotleur & Hearing
Kate DeWitt	Cotleur & Hearing

The following is a summary of the August 22, 2016 City of Westlake Council Workshop Meeting.

FIRST ORDER OF BUSINESS

Call to Order/Roll Call

Mayor Manning called the meeting to order and Mr. Cassel called the roll.

SECOND ORDER OF BUSINESS

Presentation by Minto PBLH, LLC

Mr. Carter addressed the Board and provided an overview of the property owned by Minto and planned phases of development within the City.

- Minto purchased the 4,000 acres of property from Callery-Judge Grove in 2013.
- Legislature created the Seminole Water Control District in 1970 under Chapter 70-854.
- The District's name was changed to Seminole Improvement District in 2000 under Chapter 2000-431 and its powers were enhanced.

- The previous landowner was successful in creating Agricultural Enclave Legislation in 2006. It provided for existing development patterns surrounding the property to be translated to the vacant property.
- The previous landowner was able to get approval from the County for 2,996 homes and 235,000 square feet of commercial property in 2008.
- The previous landowner was able to secure special district conversion from State Legislature in 2012. This allowed for certain special districts within the State to be converted into a municipality.
- In 2014 Minto was able to secure the plan amendments and rezoning, which lead to the conceptual plan being presented.
- The plan provides for 4,546 homes and 2.2 million square feet of non-residential property.

Ms. Duhy discussed post occurrences of the approval and adoption of the conceptual plan by the County.

- What is being presented to the Council is the landscape and approvals the City has inherited.
- The Developer is now going to move forward with the plan.
- The comprehensive plan is a broad conceptual document.
- The Zoning Master Plan adopted is consistent with the conceptual plan, but has greater detail as to the number of units that are going to be in each pod as well as other specifics not contained in a comprehensive plan amendment.
- There are two legal challenges by several entities which ensued: challenges to the comprehensive plan amendment and re-zonings.
- The Administrative Law Judge, Department of Economic Opportunity and the First District Court of Appeal found the development patter is not rural. It is a suburban sprawl pattern, which means it is an area developed without a lot of services requiring a great deal of miles to be traveled in order to get to those services.
- The court found the proposed Minto development is compatible with the surrounding land use and provides needed services from a non-residential standpoint to reduce the existing sprawl pattern.

- There is sufficient transportation infrastructure and other public services to serve this project efficiently.
- The summary judgement has been appealed by the plaintiff. It is in briefing stages; however, she is confident it will be upheld.

Mr. Diffenderfer discussed the following:

- A joint workshop between the Seminole Improvement District and the City will be useful because both entities inhabit the same boundaries. The workshop will serve to discuss the relationship and duties between both entities.
- An interlocal agreement will be drafted and presented to efficiently discharge those duties.
- He reviewed Seminole Improvement District's enhanced powers.
- The Seminole Improvement District has bulk service utility agreements with the County for water and sewer as well as an agreement to purchase reuse water coming off the line coming from Lake Okeechobee. The District will be the utility service provider for the City.

Mr. Hearing reviewed the Traditional Town Development Master Plan.

- The plan defines and takes the 4,500 dwelling units and allocates them into parcels.
- It defines areas and breaks them down by residential, commercial, recreation, civic, private civic, etcetera.
- It identifies major roadways and points of direction.
- Diagrams of proposed community features including monuments and directional signage were presented.
- A series of zoning variances were requested and granted for the first residential parcels.
- City staff will review any revisions to the Traditional Town Development Master Plan under the context of the Unified Land Development Code.
- SFWMD reviewed and issued ERPs. The Army Corps of Engineers reviewed wetlands and other water management permits they had jurisdiction over.

- The development is subject to the County’s regulations relating to transportation on the County roadway network. Some of the improvements the development is obligated to will be handled in the form of proportionate fair share contributions.
- The County asked Minto to complete improvement of Seminole Pratt Whitney Road.
- Town Center Parkway will function similar to Persimmon Boulevard, ultimately connecting to 60th Street and all the way to State Road 7.
- Phase 1A begins with Seminole Pratt Whitney Road. There is a limitation on how many homes can be built until work on Seminole Pratt Whitney Road is completed.
- The first parcel to be developed is Parcel Q, which will have approximately 325 homes. A mile of roadway needs to be built to reach Parcel Q, which is Town Center Parkway.
- The County will build Fire Station #22 within the proposed development. City staff will review the plats.
- Ms. Duhy clarified the applications for the Phase 1 roads and the first pod of development were submitted to the County over a year and a half ago.
- Seminole Pratt Whitney Road is expected to be completed within a year and a half. The developer may go to market to sell homes within a year from now.

THIRD ORDER OF BUSINESS

Public Comments

There being no comments from the public, the next item followed.

FOURTH ORDER OF BUSINESS

Adjournment

There being no further workshop business, the meeting was adjourned.

Kenneth Cassel
Interim City Manager

Roger Manning
Mayor

6B.

**MINUTES OF REGULAR MEETING
CITY OF WESTLAKE**

The regular meeting of the City Council of the City of Westlake was held on Monday, August 22, 2016 at 7:00 p.m. at the Westlake Community Center, 4005 Seminole-Pratt Whitney Road, Westlake, Florida.

Present and constituting a quorum were:

Roger Manning	Mayor
John Stanavitch	City Council Seat 1
Kara Crump	City Council Seat 2
Phillip Everett	City Council Seat 3
Katrina Long-Robinson	City Council Seat 4

Also present were:

Kenneth Cassel	Interim City Manager
Pam E. Booker, Esq.	Interim City Attorney

The following is a summary of the minutes and actions taken during the August 22, 2016 City of Westlake Council Meeting.

FIRST ORDER OF BUSINESS

Call to Order/Roll Call

Mayor Manning called the meeting to order and Mr. Cassel called the roll.

SECOND ORDER OF BUSINESS

Pledge of Allegiance

The Pledge of Allegiance was recited.

THIRD ORDER OF BUSINESS

Approval of Agenda

On MOTION by Councilwoman Crump seconded by Councilman Stanavitch with all in favor the agenda was approved.
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FOURTH ORDER OF BUSINESS

**Audience Comments on Agenda Items (3)
Minute Time Limit**

There being no comments on the agenda items, the next item followed.

FIFTH ORDER OF BUSINESS

**Consideration of Interim Manager's
Recommendation for Engineering and
Planning Services**

Mr. Cassel distributed a memorandum summarizing the ranking of firms for Engineering Services and Planning Services by the evaluation committee. For engineering services, Chen

Moore and Associates was ranked first and Higgins Engineering, Inc. was ranked second. For Planning Services, NZ Consultants was ranked first and Lucido & Associates was ranked second.

On MOTION by Councilman Stanavitch seconded by Councilwoman Crump with all in favor the City Manager was authorized to enter into negotiations for a contract with the two top rated firms and if unable to successfully negotiate a contract with the top ranked firms he is authorized to negotiate with the next ranked firm.

SIXTH ORDER OF BUSINESS Consent Agenda

- A. Approval of Minutes of July 25, 2016 Meeting**
- B. Acceptance of Financials for July 31, 2016**

On MOTION by Councilwoman Crump seconded by Councilwoman Long-Robinson with all in favor the consent agenda was approved.

On MOTION by Councilman Everett seconded by Councilman Stanavitch with all in favor the financials for July 31, 2016 were accepted.

SEVENTH ORDER OF BUSINESS Public Hearing to Adopt Final Ordinances

- A. Ordinance 2016-1, Adopting the City Seal – Second Reading**
Mr. Cassel read Ordinance 2016-1 by title only.

On MOTION by Councilman Stanavitch seconded by Councilwoman Crump with all in favor Ordinance 2016-1 was adopted.

- B. Ordinance 2016-2, Lobbyist Ordinance – Second Reading**
Mr. Cassel read Ordinance 2016-2 by title only.

On MOTION by Councilman Everett seconded by Councilwoman Long-Robinson with all in favor Ordinance 2016-2 was adopted.

EIGHTH ORDER OF BUSINESS Finance

- A. Consideration of Resolution 03-2016, Adopting the Proposed Millage Rate and Setting the Date for Final Public Hearing (Action Item)**

Ms. Booker explained that pursuant to Florida Statutes, 200.066 the City of Westlake, as a newly established City, cannot impose ad-valorem taxes until Fiscal Year 2018. No action is required.

B. Consideration of Resolution 04-2016, Adopting the Tentative Budget for Fiscal Year 2017 (Action Item)

On MOTION by Councilwoman Crump seconded by Councilman Everett with all in favor Resolution 04-2016, adopting the tentative budget for Fiscal Year 2017, was adopted.

C. Consideration of Lease Agreement with Minto for Use of Facilities

Ms. Booker reviewed the proposed lease agreement with Minto, PBLH, LLC for utilization of the Westlake Community Center as well as the administrative offices next door. The lease has a five year term, which can be extended at the end of the term. The rental fee is \$500 per year.

On MOTION by Councilman Stanavitch seconded by Councilwoman Long-Robinson with all in favor the lease agreement with Minto, PBLH, LLC was approved.

NINTH ORDER OF BUSINESS

Interim City Manager’s Report

Mr. Cassel reported the following:

- Two options are being considered for building and zoning services: piggybacking off of another government entity or the formal RFP process.
- The City will need to come up with software for the building department. He is researching what other municipalities use to provide better options for the City.

TENTH ORDER OF BUSINESS

**Audience Comments on Other Items (3)
Minute Time Limit**

Mr. Richard Radcliffe, the Executive Director of the Palm Beach county League of Cities, welcomed the City of Westlake and invited the Council to attend their meetings held on the fourth Wednesday of every month. They meet at different cities each month. The next meeting is August 24, 2016 at the City of Royal Palm Beach Cultural Center and begins at 11:30 a.m. The Board of Directors meeting is held prior to that. He reviewed topics which will be discussed at the next meeting.

ELEVENTH ORDER OF BUSINESS

Adjournment

There being no further business, the meeting adjourned at 7:31 p.m.

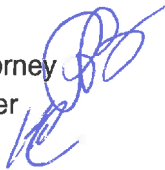
Kenneth Cassel
Interim City Manager

Roger Manning
Mayor

Seventh Order of Business

MEMORANDUM

To: Mayor Roger Manning
City Council Members

From: Pam E. Booker, Interim City Attorney 
Ken Cassel, Interim City Manager

Date: September 7, 2016

Subject: Professional Planning & Zoning Services
with NZ Consultants

The City Council at the last meeting provided direction to the City Manager to negotiate a contract for professional planning and zoning services with the consulting firm of NZ Consultants. The agreement attached hereto is a result of negotiations with the City Manager, the City Attorney and representatives from NZ consultants. NZ consultants will provide professional planning and zoning services similar to those which would be provided by a City's planning and zoning department, including but not limited to drafting of the City's comprehensive plan, drafting of the City's land development regulations, review of applications for development review, assisting with the drafting of ordinances implementing the code and presentations to the City Council as needed. The scope of services is set forth in more detail in Schedule "A" attached to the agreement, for each task. The duration of the agreement is for a three-year term. The agreement provides for either party to terminate the agreement with sixty (60) days notice to the other party. The fee schedule provides for lump sum payment for the drafting and adoption of the comprehensive plan and land development regulations and an hourly rate for administrative and other services which may be provided. The hourly fee schedule is attached as Schedule "B". We recommend approval of the attached agreement for professional planning and zoning services. Should you have any questions or need additional information, please do not hesitate to contact us for more information.

RESOLUTION 06-2016

A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF WESTLAKE, FLORIDA, AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH NZ CONSULTANTS FOR PROFESSIONAL PLANNING AND ZONING SERVICES RELATED TO CREATION OF A COMPREHENSIVE PLAN, CREATION OF LAND DEVELOPMENT REGULATIONS AND ANY OTHER PLANNING AND ZONING SERVICES FOR THE CITY OF WESTLAKE, PROVIDING FOR IMPLEMENTATION AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Westlake is a newly incorporated municipality, as of June 20, 2016, and it is located in Palm Beach County, Florida; and

WHEREAS, pursuant to Florida Statutes, Section 163.3167(4), the City of Westlake has a three-year time frame from the date of incorporation in which to adopt a comprehensive plan; and

WHEREAS, the Palm Beach County’s comprehensive plan shall be deemed controlling until such time as the City of Westlake adopts its’ own comprehensive plan consistent with the provisions as set forth in the Florida Statutes; and

WHEREAS, the City of Westlake desires to create its’ own Comprehensive Plan, to provide for the orderly and balanced future growth and development for the City of Westlake, with policies, goals and objectives, consistent with the laws of the State of Florida; and

WHEREAS, the City of Westlake desires to create its’ own Land Development Regulations applicable to properties within the incorporated boundaries for the City; and

WHEREAS, the City of Westlake solicited requests for qualifications from qualified firms to provide professional planning and zoning services to the City for the creation of a comprehensive plan, creation of land development regulations and to provide other planning and zoning services as requested by the City Manager; and

WHEREAS, based upon a recommendation of the City Manager, the City Manager was authorized to negotiate a contract with NZ consultants as the top selected firm to provide professional planning and zoning services to the City of Westlake.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF WESTLAKE, FLORIDA:

Section 1: **Recitals.** The foregoing recital is confirmed, adopted and incorporated herein and made a part hereof by this reference.

Section 2: **Authorization.** The City Manager is hereby authorized to enter into an Agreement as attached hereto as Exhibit "A", with NZ Consultants for the provision of professional planning and zoning services, including but not limited to creating a comprehensive plan, creating a land development code and other planning and zoning services as requested by the City Manager.

Section 3: **Effective Date.** That this resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED by City Council for the City of Westlake, on this _____ day of September, 2016.

Roger Manning, Mayor
City of Westlake

Sandra DeMarco, City Clerk

Approved as to Form and Sufficiency
Pam E. Booker, Interim City Attorney

**AGREEMENT BETWEEN THE CITY OF WESTLAKE
AND
NZ CONSULTANTS, INC.**

THIS AGREEMENT made and entered into this _____ day of September, 2016 by and between:

The City of Westlake ("CITY"), a municipality, located in Palm Beach County, Florida and whose address is 4005 Seminole Pratt Whitney Road, Loxahatchee, Florida 33470, and NZ Consultants, as professional planners whose address is 1851 W. Indiantown Road, Suite 100, Jupiter, Florida 33458 ("Planner").

RECITALS

WHEREAS, the City was incorporated on June 20, 2016, and whereas the City does not intend to have employees of the City, and the City has selected a firm to provide planning and zoning services to the City as such services would be provided as a part of municipal services; and

WHEREAS, pursuant to the Consultants' Competitive Negotiations Act, Section 287.055, Florida Statutes, the City solicited proposals from qualified firms to provide professional planning services on a continuing basis; and

WHEREAS, Planner submitted a proposal to serve in this capacity; and

WHEREAS, the City Council determined that Planner is qualified to serve as Planner for the City and authorized negotiation of a contract pursuant to Florida Statutes; and

WHEREAS, City intends to employ Planner to provide professional planning services to the City, which may include, but are not limited to, creation of a comprehensive plan, creation of land development regulations, planning functions, zoning functions, landscaping, financial and economic studies, mapping and GIS services and any other services as directed by the City Manager; and

WHEREAS, Planner shall serve as City's professional representative in each service or project to which this Agreement applies and will give consultation and advice to the City during the performance of its services.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained the acts and deeds to be performed by the parties, and the payments by the City to the Planner of the sums of money herein specified, the City and Planner wish to enter into this agreement between them, as follows:

ARTICLE 1. TERM OF AGREEMENT.

This Agreement shall commence upon full execution by all parties hereto and shall be for a term of three (3) years, with the option to renew for an additional two (2) year term upon mutual agreement of the parties.

ARTICLE 2. SCOPE OF SERVICES.

A detailed specification for the scope of services is set forth in the attached composite **Schedule "A"**. A general description of the services to be provided are as follows:

- **CREATION OF COMPREHENSIVE PLAN**

The Planner will draft and create a comprehensive plan consistent with Florida Statutes, Chapter 163, and the requirements of Palm Beach County's regulations, by coordinating with required state and local agencies. The planner shall establish goals, policies and objectives for the City of Westlake. The elements in the comprehensive plan shall include, but not be limited to a future land use element, capital improvement element, transportations element, utility element, public facilities element and a housing element. The plan shall include goals, policies and objectives.

- **CREATION OF WESTLAKE LAND DEVELOPMENT REGULATIONS**

The Planner should be familiar with the Palm Beach County approvals for Minto PBLH, LLC, the Unified Land Development Code for Palm Beach County, and other regulations which will be utilized for project review and reports to the City Council as applications are submitted to the City of Westlake.

- **CREATION OF DOCUMENTS**

The Planner shall create documents for applicants to complete with the various submittals to the City. The Planner shall create a schedule of review dates and turn around time frames for applications. The Planner shall create forms, applications and checklists for review by the Planner on applications submitted for review and approval by the Planner and/or the City of Westlake.

- **CREATION OF FEE SCHEDULE**

The Planner shall create a fee schedule for review and approval by the City for the various applications required for development purposes.

- **REVIEW OF PLANS AND APPLICATIONS SUBMITTED TO CITY**

The Planner shall review and prepare staff reports to the City regarding all applications which are submitted to the City for review, processing and approval. The reports shall include a recommendation to the City Manager and the City Council. Any other items requested by the City Manager or his designee.

- **PUBLIC HEARINGS FOR TRANSMITTAL**

The Planner will present the Comprehensive plan to the local planning agency, the City Council and the Department of Economic Opportunity for the state required review and approval. This phase shall include responses to the objections, recommendations and comments from the state and any public hearings which will be necessary.

ARTICLE 3. COMPENSATION. It is understood and agreed that the payment of compensation for services under this contract shall be as follows:

- A. The Planner will issue an invoice once per month for the work, which has been completed, in the City Manager's sole discretion. If the City Manager determines that the work specified in the invoice has been performed according to the job specifications, the City shall pay the invoice within 30 days.
- B. The Planner's invoice shall show a complete breakdown of the project components, the quantities completed and the amount due, and any other supporting documentation as may be required by the Contract documents for approval.
- C. Hourly Personnel Rates — For services or projects where scope of services is not clearly defined, or recurring services or other projects where the City desires the use of the hourly compensation rates outlined in **Schedule B**. This Agreement provides for the renegotiation of hourly rates outlined in Schedule B on the annual anniversary of this Agreement.

ARTICLE 4. REIMBURSABLE EXPENSES. Reimbursable expenses consist of actual expenditures made by Planner, its employees, or its consultants in the interest of the project for the incidental expenses listed as follows:

- A. Expenses of transportation and living when traveling in connection with District projects, for long distance calls and telegrams, and fees paid for securing approval by agencies. All expenditures shall be made in accordance with Chapter 112, Florida Statutes.
- B. Expenses of reproduction, postage and handling of drawings and specifications.

ARTICLE 5. ACCOUNTING RECORDS. For a period of five (5) years, financial records of Planner pertaining to the services provided hereunder shall be kept on a basis of generally accepted accounting principles and shall be available to the City or its authorized representative for observation or audit at mutually agreeable times.

ARTICLE 6. REUSE OF DOCUMENTS. All documents including drawings and specifications furnished by the Engineer pursuant to this Agreement are the property of the City. The Planner does not represent that the documents may be suitable for reuse by the City or others for any extensions of the work for which they were provided or any other project without consent by the Planner.

ARTICLE 7. INSURANCE. Planner will maintain throughout this AGREEMENT the following insurance:

- (a) Worker's compensation and employer's liability insurance as required by the state where the work is performed.
- (b) Comprehensive automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from use of motor vehicles, including onsite and offsite operations, and owned, non-owned, or hired vehicles, with \$1,000,000 combined single limits.
- (c) Commercial general liability insurance covering claims for injuries to members of the public or damages to property of others arising out of any covered negligent act or omission of PLANNER or of any of its employees, agents or subcontractors, with \$1,000,000 per occurrence and in the aggregate.
- (d) Professional liability insurance of \$1,000,000 per occurrence and in the annual aggregate.
- (e) CITY will be named as an additional insured with respect to PLANNER's liabilities hereunder in insurance coverages identified in items (b) and (c) and PLANNER waives subrogation against CITY as to said policies.

Planner shall provide CITY with a certificate evidencing compliance with the above terms and naming the CITY and its council members, agents and staff as additional insureds. Planner shall provide the CITY with thirty (30) days notice of cancellation. For the duration of the Agreement, Planner shall be insured in the above amounts.

ARTICLE 8. PROHIBITION AGAINST CONTINGENT FEE. The Planner warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Planner, 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 the Planner, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

ARTICLE 9. AUDIT. The Planner agrees that the CITY or any of its duly authorized representatives shall, until the expiration of three years after expenditure of funds under this Agreement, have access to and the right to examine any books, documents, papers, and records of the Planner involving transactions related to the Agreement. The Planner agrees that payment made under the Agreement shall be subject to reduction for amounts charged thereto that are found on the basis of audit examination not to constitute allowable costs. All required records shall be maintained until an audit is completed and all questions arising therefrom are resolved, or five years after completion of all work under the Agreement.

ARTICLE 10. INDEMNIFICATION. The Planner agrees, to the fullest extent permitted by law, to indemnify, defend, and hold the CITY harmless of and from any and all liabilities, claims, causes of action, demands, suits, or losses arising from the negligent acts, errors or omissions of the Planner, Planner's agents or employees, in the performance of professional services under this Agreement. Planner agrees and covenants that nothing herein shall constitute or be construed as a waiver of the CITY's sovereign immunity pursuant to section 768.28, Florida Statutes.

The CITY agrees, to the extent permitted by section 768.28, Florida Statutes, and other applicable law, to indemnify and hold the Planner harmless from any damage, liability or cost to the extent caused by the CITY's own negligent acts, errors or omissions and those of the CITY's agents or employees arising from the obligations and duties of the CITY under this Agreement.

ARTICLE 11. PUBLIC RECORDS. The Planner shall allow access to all documents, papers, letters, or other materials subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Planner in conjunction with this Agreement.

ARTICLE 12. CONTROLLING LAW. Planner and the CITY agree that this Agreement shall be controlled and governed by the laws of the State of Florida. Venue for any legal dispute in a court of law shall be Palm Beach County, Florida.

ARTICLE 13. ASSIGNMENT. Neither the CITY nor the Planner shall assign, sublet, or transfer any rights under or interest in this Agreement without the express written consent of the other. Nothing in this paragraph shall prevent the Planner from employing such independent professional associates and consultants as Planner deems appropriate, pursuant to Article 5 herein.

ARTICLE 14. TERMINATION. The CITY or Planner may terminate this Agreement without cause upon sixty (60) days written notice. At such time as Planner receives notification of the intent of the CITY to terminate the contract, Planner shall not perform any further services unless directed to do so by the City Manager. In the event of any termination without cause, Planner will be paid for services rendered to the date of termination and all reimbursable expenses incurred to date of termination.

The City may terminate this Agreement with cause upon written notice to Planner. In the event of any termination for cause, Planner shall not perform any further services for the CITY after Planner's receipt of notification of termination for cause, but Planner shall be paid for services rendered to the date of termination and all reimbursable expenses incurred to the date of termination.

ARTICLE 15. RECOVERY OF COSTS AND FEES. In the event either party is required to enforce this Agreement by court proceedings or otherwise, then the prevailing party shall be entitled to recover from the other party direct costs incurred, including reasonable attorneys' fees.

ARTICLE 16. WAIVER. OWNER waives all claims against PLANNER, including those for latent defects, that are not brought within five (5) years of substantial completion of the facility designed or final payment to PLANNER, whichever is earlier.

ARTICLE 17. All notices, requests, consents and other communications under this Agreement ("Notices") shall be in writing and shall be delivered, mailed by First Class Mail, postage prepaid, or overnight delivery service, to the parties, as follows:

A. As to the City: Ken Cassel, Manager
4001 Seminole Pratt Whitney Road
Westlake, Florida 33470

With a copy to: Pam E. Booker, Esquire
4001 Seminole Pratt Whitney Road
Westlake, FL 33470

B. As to the Planner: Nilsa Zacarias, AICP
1851 W. Indiantown Road
Suite 100
Jupiter, Florida 33458

Except as otherwise provided in this Agreement, any Notice shall be deemed received only upon actual delivery at the address set forth above. Notices delivered after 5:00 p.m. (at the place of delivery) or on a non-business day, shall be deemed received on the next business day. If any time for giving Notice contained in this Agreement would otherwise expire on a non-business day, the Notice period shall be extended to the next succeeding business day. Saturdays, Sundays, and legal holidays recognized by the United States government shall not be regarded as business days. Counsel for the City and counsel for the Engineer may deliver Notice on behalf of the City and the Engineer. Any party or other person to whom Notices are to be sent or copied may notify the other parties and addressees of any change in name or address to which Notices shall be sent by providing the same on five (5) days written notice to the parties and addresses set forth herein.

ARTICLE 18. ACCEPTANCE. Acceptance of this Agreement is indicated by the signature of the authorized representative of the City and the Planner in the spaces provided below.

ARTICLE 19. COUNTERPARTS. This instrument may be executed in any number of counterparts, each of which, when executed and delivered, shall constitute an original, and such counter parts together shall constitute one and the same instrument. Signature and acknowledgement pages, if any, may be detached from the counterparts and attached to a single copy of this document to physically form one document.

IN WITNESS WHEREOF, the parties hereto have caused these present to be executed the day and year first above written.

Attest: **CITY OF WESTLAKE, FLORIDA**

City Clerk, Sandra DeMarco

By: _____
Roger Manning, Mayor

NZ CONSULTANTS

Witness Nilsa Zacarias, AICP, President



City of Westlake COMPREHENSIVE PLAN

Please see the following tasks to prepare and approve the City of Westlake Comprehensive Plan:

- *Kick of Meeting with City*
- 1 Assist City in creation of LPA and its functions, establish procedures, and fulfill other requirements of Ch. 163.3174, F.S.
- 2 Create a Comprehensive Plan, pursuant to Ch. 163.3177, F.S.
 - a. Due Diligence: Identification of general data & analysis to support plan in general and study all existing documentation and approvals
 - b. Development of principles and a vision for the Comprehensive Plan
 - i. Write Up
 - ii. Data and Analysis
 - c. Definition of Comp Plan format and structure
 - d. Population projections/ Develop Methodology
- 3 Prepare required Comprehensive Plan Elements and Map Series
 - a. Map Series
 - b. Future Land Use Element
 - c. Housing Element
 - d. *Transportation Element ***
 - e. *Infrastructure (Sanitary Sewer, solid waste, drainage, potable water)***
 - f. Conservation Element (Natural Groundwater Aquifer Recharge)
 - g. Recreation and Open Space
 - h. Intergovernmental Element
 - i. Capital Improvements Element
- 4 Coordinate Comp Plan with Land Development Regulations
- 5 Prepare Comp Plan package for the LPA Hearing.
 - a. Prepare public hearing/Legal Ad
- 6 Prepare package for the Transmittal Hearing – Council Hearing
 - a. Prepare public hearing/Legal Ad
- 7 Initiate State Coordinated Review process and Timeframes
 - a. Transmittal to the State
 - b. Receipt by DEO
 - c. State review agencies comments. Includes SFWMD and TCRPC
 - d. Objections, Recommendations and Comments (ORC)
 - e. Adoption hearing/Legal Ad
 - f. Transmittal to the State
 - g. DEO Letter of Completeness
 - h. Notice of Intent to find in compliance

*** There will be coordination and review meetings with the City through the Comprehensive Plan Process**

**** The Transportation and Infrastructure Elements will require coordination and input from City's Engineers.**

		MONTHS											
		1	2	3	4	5	6	7	8	9	10	11	12
	Kick off Meeting												
1	Local Planning Agency (F.S. 163.3174)												
2	Comprehensive Plan Framework (F.S. 163.3177)												
3	Comprehensive Plan Elements & Map Series												
	Map Series												
	Future Land Use												
	Data & Analysis												
	Goals, Objectives and Policies (GOPs)												
	Housing												
	Data & Analysis												
	Goals, Objectives and Policies (GOPs)												
	Transportation												
	Data & Analysis												
	Goals, Objectives and Policies (GOPs)												
	Infrastructure (Sanitary Sewer, Solid Waste, Stormwater, Potable Water)												
	Data & Analysis												
	Goals, Objectives and Policies (GOPs)												
	Conservation (Natural Groundwater Aquifer Recharge)												
	Data & Analysis												
	Goals, Objectives and Policies (GOPs)												
	Recreation and Open Space												
	Data & Analysis												
	Goals, Objectives and Policies (GOPs)												
	Intergovernmental Coordination												
	Data & Analysis												
	Goals, Objectives and Policies (GOPs)												
	Capital Improvement												
	Data & Analysis												
	Goals, Objectives and Policies (GOPs)												
4	Coordination with Land Develop. Regulations												
5	LPA Hearing												
6	Council Hearing												
7	State Coordinated Review Process												
	Transmittal to DEO & Other Agencies												
	State Review Agencies Comments												
	Objections, Recommendations and Comments (ORC)*												
	Adoption Hearing												
	Transmittal to DEO & Other Agencies												
	DEO Letter of Completeness												
	Notice of Intent to find in compliance												

DEO: Department of Economic Opportunities, State Land Planning Agency

* Timeline to Respond to ORC will depend on State Comments

 Draft Submittal



City of Westlake LAND DEVELOPMENT CODE (LDC)

Please see the following tasks to prepare and approve the City's Land Development Code:

1. Background / Document Review
 - a. Review relevant source materials, including applicable portions of County Comprehensive Plan and ULDC, previous zoning approvals and legal rulings applicable to the City of Westlake and in-progress work on the City's Comprehensive Plan.
 - b. Understand the vision for the City of Westlake, the City's preferences for processes and functioning of local government, etc.
2. Code Outline / Structure – create an outline of how the Land Development Code will be organized and what it will include.
3. Write the “process” sections of the Code and an ordinance to adopt them, as follows:
 - a. General Provisions – authority and purpose, relationship to Comprehensive Plan, etc.
 - b. Definitions
 - c. Decision Making Bodies
 - d. Development Approval Processes
 - e. Fees
 - f. Adoption Ordinance, staff reports, attend public hearings, etc.
4. Write the “functional” parts of the Land Development Code that includes substantive regulations
 - a. Zoning District Regulations
 - b. Concurrency Management
 - c. Signs
 - d. Landscaping / Environmental
 - e. Parking
 - f. Platting
 - g. Supplementary Regulations (wireless facilities, home occupations, special events, etc.)
 - h. Official Zoning Map
 - i. **Adoption – Ordinance, staff reports, attend public hearings, legal ads. ***

****Adoption of LDC is contingent to Adoption of the Comprehensive Plan***

City of Westlake - Land Development Code Timeline

NZ Consultants

		Month											
		1	2	3	4	5	6	7	8	9	10	11	12
1	Background / Document Review	█											
2	Code Outline / Structure	█	▲										
3	Process Sections: General Provisions, Definitions, Decision Making Bodies, Development Approval Processes, Fees												
A	General Provisions		█	█									
B	Definitions		█	█									
C	Decision Making Bodies		█	█									
D	Development Approval Processes				█	█							
E	Fees					█	█						
F	Adoption - Ordinance, Staff Reports, etc.						█						
4	Functional Sections												
A	Zoning District Regulations			█	█	█							
B	Concurrency Management					█	█	█					
C	Signs					█	█	█					
D	Landscaping / Environmental			█	█	█							
E	Parking					█	█						
F	Platting			█	█	█							
G	Supplementary Regulations (wireless facilities, home occupations, special events, etc.)					█	█						
H	Official Zoning Map						█						
I	<i>Adoption - Ordinance, Staff Report, Legal Ad *</i>								█				

▲ Draft Submittal & Review Meetings

** Adoption of LDR is contingent to Comprehensive Plan Adoption*



NZ CONSULTANTS (NZC)

SUMMARY PROJECT FEES

- 1. Comprehensive Plan including Public Hearings, Final Adoption & Map Series:**
Total \$143,550

- 2. Land Development Code (LDC) including Public Hearings, Zoning Map and Final Adoption**
Total \$121,800

- 3. Administrative including Application Forms, Fees and other Admin Tasks**
NZC will charge based on professional hourly rate schedule

- 4. Development Processing and Approvals including Site Plan Reviews, Zoning Reviews, Staff Reports; Attendance to Workshops, Public Hearings, Development Review Committee; Meetings with Developers, City Staff, Council; and, other related tasks (legal ads, etc.)**
NZC will charge based on professional hourly rate schedule

- 5. Code of Ordinance**
NZC will charge based on professional hourly rate schedule

NZC PROFESSIONAL HOURLY RATE SCHEDULE

PRINCIPAL PLANNER	\$145
SENIOR PLANNER	\$125
PLANNER	\$100
ASSISTANT PLANNER	\$85
ARCHIT. DESIGN	\$145
GIS	\$125



NZ CONSULTANTS

PROFESSIONAL HOURLY RATE SCHEDULE

PRINCIPAL PLANNER \$145

SENIOR PLANNER \$125

PLANNER \$100

ASSISTANT PLANNER \$85


ARCHIT. DESIGN \$145

GIS \$125

Eighth Order of Business

MEMORANDUM

To: Mayor Roger Manning
City Council Members

From: Pam E. Booker, Interim City Attorney 
Ken Cassel, Interim City Manager

Date: September 7, 2016

Subject: Professional Engineering Contact
Services for Chen Moore & Associates

The City Council at the last meeting provided direction to the City Manager to negotiate a contract for professional engineering services with the engineering firm of Chen Moore & Associates. The agreement attached hereto is a result of negotiations with the City Manager, the City Attorney and representatives from Chen Moore and their counsel. Chen Moore will provide professional engineering services similar to those which would be provided by a City Engineer in a typical municipality, including plan review, permits review, assistance with drafting provisions of the city's code of ordinances and presentations to the City Council as needed. The scope of services is set forth in more detail in article two of the agreement. The duration of the agreement is for a three-year term. The agreement provides for either party to terminate the agreement with sixty (60) days notice to the other party. The fee schedule is attached to the agreement as Schedule "A". We recommend approval of the attached agreement for professional engineering services. Should you have any questions or need additional information, please do not hesitate to contact us for more information.

RESOLUTION 07-2016

**A RESOLUTION OF OF THE CITY COUNCIL FOR THE CITY OF WESTLAKE, FLORIDA,
AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH CHEN MOORE &
ASSOCIATES FOR PROFESSIONAL ENGINEERING SERVICES FOR THE CITY OF WESTLAKE,
PROVIDING FOR IMPLEMENTATION AND PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, the City of Westlake is a newly incorporated municipality in Palm Beach County, Florida as of June 20, 2016, and the City does not intend to have employees; and

WHEREAS, a component of local government functions requires a City Engineer to provide review of applications, review of projects, review of site plans and plats as part of the normal engineering services provided by local governments; and

WHEREAS, the City of Westlake solicited request for qualifications from qualified engineering firms to provide engineering services to the City of Westlake and the engineering firm of Chen Moore & Associates was one of the firms which responded to the request for qualifications; and

WHEREAS, the engineering firm of Chen Moore & Associates was selected to provide those services to the City of Westlake and the City Council gave authorization to the City Manager to enter into an agreement for services with the firm of Chen Moore; and

WHEREAS, the City Council desires to formalize the agreement for professional engineering services pursuant to the terms and conditions of the Agreement provide herein.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF WESTLAKE, FLORIDA:

Section 1: **Recitals.** The foregoing recital is confirmed, adopted and incorporated herein and made a part hereof by this reference.

Section 2: **Authorization:** The City Manager is hereby authorized to enter into an Agreement as attached hereto as Exhibit "A", with Chen Moore & Associates for the provision of professional engineering services, including but not limited to acting as City Engineer, review of site plan applications, preparation of reports and any other services as requested by the City Manager.

Section 3: **Effective Date:** That this resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED by City Council for the City of Westlake, Florida on this _____ day of September, 2016.

Roger Manning, Mayor
City of Westlake

Sandra DeMarco, City Clerk

Approved as to Form and Sufficiency
Pam E. Booker, Interim City Attorney

**AGREEMENT BETWEEN THE CITY OF WESTLAKE
AND
CHEN MOORE & ASSOCIATES, INC.**

THIS AGREEMENT made and entered into this _____ day of September, 2016 by and between:

The City of Westlake ("CITY"), a municipality, located in Palm Beach County, Florida and whose address is 4005 Seminole Pratt Whitney Road, Loxahatchee, Florida 33470, and Chen Moore & Associates, consultants and engineers whose address is 500 Australian Avenue South, Suite 530, West Palm Beach, Florida 33401 ("Engineer").

RECITALS

WHEREAS, the City was incorporated on June 20, 2016, and whereas the City does not intend to have employees of the City, and the City has selected a firm to provide engineering services to the City as such services would be provided as a part of municipal services; and

WHEREAS, pursuant to the Consultants' Competitive Negotiations Act, Section 287.055, Florida Statutes, the City solicited proposals from qualified firms to provide professional engineering services on a continuing basis; and

WHEREAS, Engineer submitted a proposal to serve in this capacity; and

WHEREAS, the City Council determined that Engineer is qualified to serve as Engineer for the District and authorized negotiation of a contract pursuant to Florida Statutes; and

WHEREAS, City intends to employ Engineer to provide professional engineering services to the City, which may include, but are not limited to, engineering, planning, landscaping, construction administration, permitting, and financial and economic studies; and

WHEREAS, Engineer shall serve as City's professional representative in each service or project to which this Agreement applies and will give consultation and advice to the City during the performance of its services.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained the acts and deeds to be performed by the parties, and the payments by the City to the Engineer of the sums of money herein specified, the City and Engineer wish to enter into this agreement between them, as follows:

ARTICLE 1. TERM OF AGREEMENT.

This Agreement shall commence upon full execution by all parties hereto and shall be for a three (3) year term, with the option to renew for an additional three (3) year term.

ARTICLE 2. SCOPE OF SERVICES.

Engineer will provide general engineering services as set forth in RFQ 2016-01 and as set forth below:

1. ENGINEER hereby agree to perform and provide city engineer services to CITY and to act as the City Engineer, including oversight and administration of Engineering services, local planning agency and coordinating programs/operations and activities for Engineering services. ENGINEER acknowledges and agrees that this includes coordination and technical support as required with other City departments, management, public agencies, consulting engineers and citizens.
2. Preparation of any agenda memorandums, any necessary reports, plan amendments or engineering documents requested by the City Manager and attendance at meetings with management and meetings of the City Council.
3. Meet with officials of Federal, State and County agencies and other cities on CITY business when requested by CITY, through the City Manager.
4. Assist in the site plan application and review process including the local planning agency reviews for engineering design and overall quality control/quality assurance, such as but not limited to review and approval of water, sewer, paving and drainage plans for compliance with City Engineering Standards.
5. Review and approve plats, plat exemptions and plat waivers.
6. Sign and seal documents as required by law, i.e. engineering design drawings, plats, permit applications, etc.
7. Additionally, the CITY may require investigation, studies and the design and/or management of engineering and construction projects. The ENGINEER shall provide these services on a task order basis outside the typical City Engineer duties.
8. All special projects assigned to ENGINEER shall be approved by the City Manager prior to the commencement of any special project. In addition, ENGINEER shall not commence any special project until a written work authorization has been issued or a Purchase Order received. Any assigned special project shall be performed within the time frame established by the CITY and ENGINEER in each work authorization. Minor adjustments to the

timetable from completion approved by CITY in advance, in writing, will not constitute non-performance by ENGINEER per this Agreement.

9. Inspect engineering improvements right of way and connecting to the any City systems.
10. Complete final inspection issues on construction projects.

ARTICLE 3. COMPENSATION. It is understood and agreed that the payment of compensation for services under this contract shall be as follows:

- A. **Approved Budget:** The total cost for any designated project shall not exceed an approved budgeted amount. For all work, ENGINEER shall be compensated pursuant to the hourly rates from the Agreement with the City, as set forth in the attached **Schedule A**. Reimbursable expenses will be compensated per the itemized cost from the Agreement with the City.
- B. **Hourly Personnel Rates:** For services or projects where scope of services is not clearly defined, or recurring services or other projects where the City desires the use of the hourly compensation rates outlined in Schedule A. This Agreement provides for the renegotiation of hourly rates outlined in Schedule A on the annual anniversary of this Agreement.
- C. **Work Authorizations:** In no event shall ENGINEER be compensated for any work which has not been authorized in writing by CITY.

ARTICLE 4. REIMBURSABLE EXPENSES. Reimbursable expenses consist of actual expenditures made by Engineer, its employees, or its consultants in the interest of the project for the incidental expenses listed as follows:

- A. Expenses of transportation and living when traveling in connection with District projects and fees paid for securing approval of authorities having jurisdiction over the Project. All expenditures shall be made in accordance with Chapter 112, Florida Statutes.
- B. Expenses of reproduction, postage and handling of drawings and specifications.

ARTICLE 5. ACCOUNTING RECORDS. For a period of five (5) years, financial records of Engineer pertaining to the services provided hereunder shall be kept on a basis of generally accepted accounting principles and shall be available to the City or its authorized representative for observation or audit at mutually agreeable times.

ARTICLE 6. REUSE OF DOCUMENTS. All documents including drawings and specifications furnished by the Engineer pursuant to this Agreement are the property of the City. The Engineer does not represent that the documents may be suitable for reuse by the City or others for any extensions of the work for which they were provided or any other project without

consent by the Engineer. Any reuse without specific written consent by the Engineer will be at the City's sole risk and without liability or legal exposure to the Engineer.

ARTICLE 7. INSURANCE. Engineer will maintain throughout this AGREEMENT the following insurance:

- (a) Worker's compensation and employer's liability insurance as required by the state where the work is performed.
- (b) Comprehensive automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from use of motor vehicles, including onsite and offsite operations, and owned, non-owned, or hired vehicles, with \$1,000,000 combined single limits.
- (c) Commercial general liability insurance covering claims for injuries to members of the public or damages to property of others arising out of any covered negligent act or omission of ENGINEER or of any of its employees, agents or subcontractors, with \$1,000,000 per occurrence and in the aggregate.
- (d) Professional liability insurance of \$1,000,000 per occurrence and in the annual aggregate.
- (e) CITY will be named as an additional insured with respect to ENGINEER's liabilities hereunder in insurance coverages identified in items (b) and (c) and ENGINEER waives subrogation against CITY as to said policies.

Engineer shall provide CITY with a certificate evidencing compliance with the above terms and naming the CITY and its council members, agents and staff as additional insureds. Engineer shall provide the CITY with thirty (30) days notice of cancellation. For the duration of the Agreement, Engineer shall be insured in the above amounts.

ARTICLE 8. CONTINGENT FEE. The 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 the Engineer, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

ARTICLE 9. AUDIT. The Engineer agrees that the CITY or any of its duly authorized representatives shall, until the expiration of three years after expenditure of funds under this Agreement, have access to and the right to examine any books, documents, papers, and records of the Engineer involving transactions related to the Agreement. The engineer agrees that payment made under the Agreement shall be subject to reduction for amounts charged thereto that are found on the basis of audit examination not to constitute allowable costs. All required records shall be

maintained until an audit is completed and all questions arising therefrom are resolved, or five years after completion of all work under the Agreement.

ARTICLE 10. INDEMNIFICATION. The Engineer agrees, to the fullest extent permitted by law, to indemnify, defend, and hold the CITY harmless of and from any and all liabilities, claims, causes of action, demands, suits, or losses arising from the negligent acts, errors or omissions of the Engineer, Engineer's agents or employees, in the performance of professional services under this Agreement. Engineer agrees and covenants that nothing herein shall constitute or be construed as a waiver of the CITY's sovereign immunity pursuant to section 768.28, Florida Statutes.

The CITY agrees, to the extent permitted by section 768.28, Florida Statutes, and other applicable law, to indemnify and hold the Engineer harmless from any damage, liability or cost to the extent caused by the CITY's own negligent acts, errors or omissions and those of the CITY's agents or employees arising from the obligations and duties of the CITY under this Agreement.

ARTICLE 11. PUBLIC RECORDS. The Engineer shall allow access to all documents, papers, letters, or other materials subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Engineer in conjunction with this Agreement. In addition to allowing access to public records, the Engineer shall provide the following with respect to public records:

(a) Keep and maintain public records required by City to perform the services under this Agreement.

(b) Upon request from City, provide City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time 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 confidential and exempt from public record requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion of this Agreement if the records are not transferred to City.

(d) Upon completion of this Agreement, transfer to City, at no cost, all public records in possession of Engineer upon termination of this Agreement or keep and maintain public records required by City to perform the services. If Engineer transfers the records to City, Engineer shall destroy any duplicate public records that are exempt or confidential and exempt. If Engineer keeps and maintains public records upon completion of this Agreement, Engineer shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to City upon request in a format that is compatible with the information technology systems of City. The failure of Engineer to comply with the provisions set forth in this section shall constitute a material breach of this Agreement entitling City to exercise any remedy provided in this Agreement or under applicable law.

A request for public records regarding this Agreement must be made directly to City, who will be responsible for responding to any such public records requests. Engineer will expeditiously provide any requested records to City to enable City to respond to the public records request.

ARTICLE 12. CONTROLLING LAW. Engineer and the CITY agree that this Agreement shall be controlled and governed by the laws of the State of Florida. Venue for any legal dispute in a court of law shall be Palm Beach County, Florida.

ARTICLE 13. ASSIGNMENT. Neither the CITY nor the Engineer shall assign, sublet, or transfer any rights under or interest in this Agreement without the express written consent of the other. Nothing in this paragraph shall prevent the Engineer from employing such independent professional associates and consultants as Engineer deems appropriate, pursuant to Article 5 herein.

ARTICLE 14. TERMINATION. The CITY or Engineer may terminate this Agreement without cause upon sixty (60) days written notice. At such time as Engineer receives notification of the intent of the CITY to terminate the contract, Engineer shall not perform any further services unless directed to do so by the City Manager. In the event of any termination without cause, Engineer will be paid for services rendered to the date of termination and all reimbursable expenses incurred to date of termination.

The City may terminate this Agreement with cause upon written notice to Engineer. Engineer shall have thirty (30) days to cure any default for cause. In the event of any termination for cause where the Engineer does not cure within the 30 day time frame, Engineer shall not perform any further services for the CITY after Engineer's receipt of notification of termination for cause, but Engineer shall be paid for services rendered to the date of termination and all reimbursable expenses incurred to the date of termination.

ARTICLE 15. RECOVERY OF COSTS AND FEES. In the event either party is required to enforce this Agreement by court proceedings or otherwise, then the prevailing party shall be entitled to recover from the other party direct costs incurred, including reasonable attorneys' fees.

ARTICLE 16. WAIVER. OWNER waives all claims against ENGINEER, including those for latent defects, that are not brought' within five (5) years of substantial completion of the facility designed or final payment to ENGINEER, whichever is earlier.

ARTICLE 17. NOTICES. All notices, requests, consents and other communications under this Agreement ("Notices") shall be in writing and shall be delivered, mailed by First Class Mail, postage prepaid, or overnight delivery service, to the parties, as follows:

A. As to the City: Ken Cassel, Manager
4001 Seminole Pratt Whitney Road
Westlake, Florida 33470

With a copy to: Pam E. Booker, Esquire

4001 Seminole Pratt Whitney Road
Westlake, FL 33470

B. As to the Engineer: Chen Moore & Associates
500 Australian Avenue South,
Suite 530
West Palm Beach, Florida 33401

Except as otherwise provided in this Agreement, any Notice shall be deemed received only upon actual delivery at the address set forth above. Notices delivered after 5:00 p.m. (at the place of delivery) or on a non-business day, shall be deemed received on the next business day. If any time for giving Notice contained in this Agreement would otherwise expire on a non-business day, the Notice period shall be extended to the next succeeding business day. Saturdays, Sundays, and legal holidays recognized by the United States government shall not be regarded as business days. Counsel for the City and counsel for the Engineer may deliver Notice on behalf of the City and the Engineer. Any party or other person to whom Notices are to be sent or copied may notify the other parties and addressees of any change in name or address to which Notices shall be sent by providing the same on five (5) days written notice to the parties and addresses set forth herein.

ARTICLE 18. ACCEPTANCE. Acceptance of this Agreement is indicated by the signature of the authorized representative of the City and the Engineer in the spaces provided below.

ARTICLE 19. COUNTERPARTS. This instrument may be executed in any number of counterparts, each of which, when executed and delivered, shall constitute an original, and such counterparts together shall constitute one and the same instrument. Signature and acknowledgement pages, if any, may be detached from the counterparts and attached to a single copy of this document to physically form one document.

IN WITNESS WHEREOF, the parties hereto have caused these present to be executed the day and year first above written.

Attest: **CITY OF WESTLAKE, FLORIDA**

City Clerk, Sandra DeMarco

By: _____
Roger Manning, Mayor

CHEN MOORE & ASSOCIATES, INC.

Witness _____ By: _____
Peter Moore, President & CEO