

Services Agreement

This Services Agreement ("Agreement"), dated _____ 2013, is made by and between the City of Venice (the "Client") and Marlowe & Company, LLC, a government affairs consulting and lobbying firm located at 1667 K Street NW in Washington, D.C. ("Marlowe & Company" or "the Company").

Background

The Client, for the purpose of retaining federal government affairs consulting services, desires to engage Marlowe & Company to perform such services. The Client and Marlowe & Company wish to set forth herein the terms and conditions under which the services shall be rendered by Marlowe & Company (utilizing services offered by its sister company Alden Street Consulting). In consideration of the foregoing and of the mutual agreements set forth below, and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) the parties agree as follows:

Terms

1. Services. The Client hereby engages Marlowe & Company (utilizing Alden Street Consulting) to perform the following services in accordance with the terms and conditions set forth in this Agreement: Assist the City of Venice in efforts to obtain funds appropriated by federal agencies for the Venice Beach Re-nourishment Project, Public Works, Transportation, Water Resource and Wastewater Infrastructure, Economic Development, Emergency Response and Law Enforcement initiatives mutually agreed to by the Client and the Company. In addition, Marlowe & Company agrees to provide the Client with educational grant services offered by Alden Street Consulting. The Client acknowledges and agrees that Marlowe & Company nor its sister company have control over third party decision makers, and, therefore, Marlowe & Company makes no representations, warranties, or guarantees that it can achieve any particular results. Marlowe & Company shall act in good faith with the necessary due diligence in connection with its performance of the services described herein.

2. Term. This Agreement shall be effective as of December 1, 2013 and shall continue for one (1) year, unless this Agreement is earlier terminated in accordance with the terms hereof (the "Initial Term"). The parties may agree to extend the Initial Term of this Agreement upon the same terms and conditions as set forth herein, or upon such other terms and conditions as the parties may agree in writing, until such date as may be mutually agreed in writing (each an "Extension Term"). The Initial Term is referred to herein, together with any Extension Terms, as the "Term." The parties agree that no later than ninety (90) days prior to the expiration of the Initial Term (and any Extension Term, as the case may be) the parties will discuss the terms upon which the Term of the Agreement may be extended. If the parties have not finalized the terms for any new or subsequent Extension Term before the expiration of the any Term, then both parties agree to a month-to-month contract until such terms are finalized. Client agrees that it shall pay any difference in the current fees listed in Paragraph 4 and the new fees set out in the new agreement irrespective if said difference is measured monthly or annually.
3. Termination. After this Agreement has been in effect for sixty (60) days, either party may terminate the Agreement without cause upon thirty (30) days' written notice without liability or continuing obligation other than with respect to any fees and/or expense reimbursement due to Marlowe & Company through the effective date of termination.
4. Fees. Marlowe & Company will bill the Client \$3,333.33 per month for services performed pursuant to this Agreement, such fees not to exceed \$40,000, in the aggregate, during the first twelve (12) months of the Term. These fees are inclusive of all customary out-of-pocket expenses, subject to the limitations described in Paragraph 5, below. Any contingency fee, as defined under Sections 11.047(1), Florida Statutes, is strictly prohibited.
5. Expenses: The fees described in Section 4 above include up to two (2) visits by Marlowe & Company personnel to the Client's offices. Such fees do not include, however, payment (or reimbursement) for expenses incurred by Marlowe & Company, if any, in connection with (i) visits to the Client's offices in excess of the number of visits set forth in the foregoing sentence, or (ii) out-of-town travel undertaken by Marlowe & Company personnel at the written request of the Client. Any reasonable and necessary costs incurred by Marlowe & Company in connection with such additional visits and/or out-of-town travel shall be paid (or reimbursed) by the Client upon presentation of reasonable back-up documentation within thirty (30) days of the additional visit and/or out-of-town travel. Marlowe & Company acknowledges Client's desire that Marlowe & Company use the lowest cost and most effective means to communicate with Client, and that any written request of the Client is deemed sufficient for authorization if received by email, fax, or letter, but not by oral communication, from the City Manager.

6. Accountings and Updates. Marlowe & Company shall maintain contact with a designated representative of the Client by telephone, fax, mail, and/or e-mail to inform said representative of developments regarding the projects involved and respond to said representative's comments and questions in a prompt and appropriate manner. In addition, Marlowe & Company will provide the Client with a monthly update on activities taking place in Washington. All financial accounting shall be sent to the Client's Finance Director.
7. Representations and Warranties. Each party to this Agreement represents and warrants that its execution and delivery of this Agreement has been duly and validly authorized, that all necessary actions have been taken to make this Agreement a legal and valid obligation binding upon it, enforceable in accordance with its terms, and that such party is not subject to any prior obligations or agreements that would restrict or interfere in any way with the full and prompt performance of such party's obligations hereunder.
8. Non-Solicitation. The Client hereby agrees that both during the Term and for a period of one (1) year following the expiration or earlier termination of this Agreement for any reason (the "Covered Period"), the Client shall not, directly or indirectly, either alone or on behalf of any other person or entity, solicit for employment or otherwise engage (whether as an independent contractor or otherwise) any person who was an employee of Marlowe & Company during the Covered Period and with whom the Client had contact or who became known to the Client in connection with Marlowe & Company's performance under the terms of this Agreement. The Client acknowledges that monetary damages would be inadequate to remedy a breach of this Section 8 and, therefore, that, notwithstanding anything to the contrary set forth in Section 14 below, in the event of its breach or threatened breach of this Agreement, in addition to any other available remedy at law or in equity, Marlowe & Company shall be entitled to injunctive relief without the need to post any bond or provide any other security therefore or to prove special damages.
9. Confidentiality.
 - a. Each party agrees that any Confidential Information (as defined below) received by such party belonging to the disclosing party shall be treated by the receiving party in full confidence and shall not be revealed to any third party in any manner whatsoever, directly or indirectly, except as specifically permitted by the terms of this Agreement, unless the receiving party is required to do so by applicable law or regulation or pursuant to a binding order of a court of competent jurisdiction or of a governmental agency that has jurisdiction over the receiving party. Each party agrees that the obligations imposed hereunder will apply to all Confidential Information, except where the receiving party can demonstrate that such information:
 - (1) was known to the receiving party prior to the disclosure and was received in a manner free of any restriction against use or disclosure;
 - (2) was publicly known as of the date of the disclosure;
 - (3) becomes publicly known after the date of disclosure through no fault of the receiving party or any person or entity to whom receiving party has disclosed the information;

- (4) is received from a third party who has no obligation of confidentiality to the disclosing party; or
- (5) is developed independently by the receiving party.

b. "Confidential Information" means and includes, in the broadest applicable fashion, all information (whether in written, oral, or other tangible or intangible form) relating in any way to the disclosing party's current, historical or future business and business activities and operations, including financial condition such as: its assets, liabilities, income, expenses, accounting data, taxes and cash flow; business, technical and scientific concepts, processes and technical data; know-how and other intellectual property obtained or developed by the disclosing party or any consultants, employees or members of the disclosing party; business plans, strategic plans, and operations; as to prospective clients, the proposed or negotiated terms of any contract by which such prospective client would engage the disclosing party's services; as to potential investors in or lenders to the disclosing party, the proposed or negotiated terms of any such investment or loan; potential asset, property, business or stock acquisition or divestment opportunities and plans; prospects, status and provisions of actual and contemplated agreements relating to loans, lines of credit, letters of credit, and guarantees and other credit enhancements; pricing policies; research plans and results; legislative, administrative, litigation and other proceedings, in any forum; insurance policies and claims; employment and consulting agreements, compensation arrangements and benefit plans and programs; the terms and conditions of the disclosing party's client contracts; trade secrets; and other proprietary or confidential information; all with respect to the disclosing party, its affiliates or clients. Each party further acknowledges that any information and materials received by a party from third parties in confidence (or subject to non-disclosure or similar covenants) and disclosed to the other party in the performance of this Agreement shall be deemed to be Confidential Information for purposes of this Agreement.

10. Governing Law. The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of Florida (or United States federal law, to the extent applicable), including any applicable statutes of limitation, without regard to any otherwise applicable principles of conflicts of law or choice of law rules that would result in the application of the substantive or procedural rules or law of any other jurisdiction.
11. Venue. In the event the parties to this Agreement cannot resolve a difference with regard to any matter arising herefrom, either party may file a civil action and/or pursue all available remedies whether at law or equity. Venue for any dispute shall be Sarasota County, Florida.

12. Public Records. Pursuant to applicable Florida law, the Company's records associated with the Agreement may be subject to Florida's public records laws, Florida Statutes 119.01, et seq., as amended from time to time. The Company shall comply with all public records obligations set forth in such laws, including those obligations to keep, maintain, provide access to, and maintain any applicable exemptions to public records, and transfer all such records to the Client at the conclusion of the Agreement, as provided for in Florida Statutes 119.0701 (2013).
13. Indemnification/Hold Harmless. The Company agrees to indemnify and hold the client, its agents, employees and independent contractors, and their respective sureties, insurers, successors, assigns and legal representatives harmless from any liability, claim, cause of action, demand or damages or injury, death or damages of any kind whatsoever to any person or their property as a result of any activities by the Company, its officers, agents, employees and independent contractors, which arise or result from any actual or claimed intentional or wrongful act or omission by the Company, its officers, agents, employees and independent contractors, arising from or as a result of this Agreement. Furthermore, the Company shall pay attorney's fees and costs of the Client for any matter arising under the paragraph, whether or not such action is well-founded and whether or not suit or a regulatory action is actually filed. The Client agrees that the indemnification is limited to not more than actual amount of the Contract with the Company which is not to exceed \$40,000.00. The obligations of the Company under this indemnification and hold harmless paragraph shall survive the termination of the Agreement.
14. Waiver. No waiver by any party hereto or thereto of any one or more breaches or defaults by the other party in the performance of any of the provisions shall operate or be construed as a waiver of any future breaches or defaults, whether of a like or different nature. No failure or delay on the part of any party in exercising any right, power or remedy shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. Neither party shall be required to give notice to enforce strict adherence to all terms hereof.

15. Arbitration. In the event that a dispute, controversy or claim should arise between the parties to this Agreement concerning their rights and obligations pursuant to this Agreement or otherwise arising out of or relating to this Agreement, including the interpretation, performance, breach, termination or invalidity of this Agreement or the arbitrability of any such issue shall be resolved pursuant to the Federal Arbitration Act, 9 U.S.C. Section 1 et seq., before a single neutral arbitrator in the Washington, DC metropolitan area pursuant to and in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in force at the time. Any ruling or award rendered by the arbitrator shall be final and binding upon both Parties and shall be enforceable in any court of competent jurisdiction, or any party may seek confirmation or enforcement of such ruling or award in any such court, as applicable. Subject to the terms of Section 8 above, this Section 14 shall be a complete defense to any suit, action or proceeding instituted before any court or agency with respect to any matter resolvable hereunder. Notwithstanding this provision, a party may seek the assistance of a court of competent jurisdiction to enforce this provision if said party requests arbitration and the other party refuses to arbitrate the dispute, controversy, or claim.
16. Arbitration Cost. Both parties agree to equally divide the cost of the single neutral arbitrator, provided, however, that if one party seeks enforcement or remedies through a court of competent jurisdiction without first using the provisions of this paragraph or if one party refuses arbitration after the other party requests it then said party must pay the full cost of the single neutral arbitrator as well as the court costs of the other party who seeks enforcement of Section 14 in the court of competent jurisdiction.
17. Entire Agreement. This Agreement constitutes the complete understanding between the Client and Marlowe & Company with respect to the subject matter hereof, and no statement, representation, warranty or covenant has been made by either party with respect thereto except as expressly set forth herein. This Agreement shall not be altered, modified or amended except by a written instrument signed by each of the parties hereto.
18. Counterparts. This Agreement may be executed by the parties in separate counterparts (including via facsimile), each of which, when so executed and delivered, shall be an original, but all of which, when taken as a whole, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have caused this Agreement to be executed as of the day and year written above.

For Marlowe & Company:



Name: Howard Marlowe

Title: President

Name: Teresa Jamison

Title: Chief Administrative Officer

Witness

For: City of Venice

Name:

Title:

Name:

Title: