

**RESOLUTION NO. 23-161**

**A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH DEAL CONSULTING, INC., RELATING TO PROPERTY APPRAISAL SERVICES GENERALLY, AND APPROVING A TASK ORDER RELATING TO FRONT BEACH ROAD SEGMENT 4.3 SPECIFICALLY IN THE AMOUNT OF \$35,600.**

**BE IT RESOLVED** that:

1. The appropriate officers of the City are authorized to execute and deliver on behalf of the City that certain Professional Services Agreement with Deal Consulting, Inc. relating to Property Appraisal Services, in substantially the form **attached** as Exhibit A and presented to the Council today, with such changes, insertions or omissions as may be approved by the City Manager and whose execution shall be conclusive evidence of such approval.
2. The appropriate officers of the City are authorized to accept and deliver on behalf of the City that certain Task Order 1 for appraisal services for the Front Beach Road Segment 4.3 Project, in the amount of Thirty-Five Thousand, Six Hundred Dollars and No Cents (\$35,600), in substantially the form **attached** as Exhibit B and presented to the Council today, with such changes, insertions or omissions as may be approved by the City Manager and whose execution shall be conclusive evidence of such approval.

**THIS RESOLUTION** shall be effective immediately upon passage.

**PASSED** in regular session this 27<sup>th</sup> day of April, 2023.

**CITY OF PANAMA CITY BEACH**

By: \_\_\_\_\_

  
Mark Sheldon, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Lynne Fasone, City Clerk

# DEAL CONSULTING, P.A.

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April 17, 2023

Mr. Courtney Drummond  
Interim CRA Manager  
City of Panama City Beach  
17007 Panama City Beach Parkway  
Panama City Beach, Florida 32413

Re: Front Beach Road – Defilippis and Malki Properties  
Appraisal Bid/Scope

Dear Mr. Drummond:

I appreciate the opportunity to work with you on this matter. The following pages contain the provisions of this agreement. If you need anything else, please let me know.

### **INTENDED USERS**

City of Panama City Beach (Referred to Herein as “The Client”)

Primary Contractor: Keystone Field Services, Inc.

Subcontractor: Deal Consulting, PA

Note: No other users are intended by the appraiser. The appraiser shall consider the intended users when determining the level of detail to be provided in the appraisal report.

### **INTENDED USE**

This appraisal is intended to assist the client in determining the market value of the properties for a potential purchase.

Note: No other use is intended by the appraiser. The intended use as stated shall be used by the appraiser in determining the appropriate scope of work for the assignment. The appraiser is not liable for any use, other than the intended use.

### **PROPERTY IDENTIFICATION**

1. Nick Defilippis – 34355-000-000 – This is a 0.545-acre property improved with a 12,075-square-foot, commercial improvement. This is a whole acquisition. I will use the sales comparison approach as vacant and improved and the income approach as improved. **Absent a legal instruction to the contrary by May 31, 2023, I will appraise the property as vacant under the extraordinary assumption that MRTA eliminates the deed restrictions related to the prohibition of residential development.**
2. David Malki – 34356-000-000 & 34357-000-000 – This is a 0.259-acre property improved with a 1,608-square-foot commercial improvement and a 2,684-square-foot restaurant. There is also an outdoor advertising sign on the property. This is a whole acquisition. I will use the sales comparison approach as vacant and improved and the income approach as improved to value the land and buildings. Based on state case law (State of Florida Department of Transportation v. Heathrow Land and Development Corp., etal, 579 So 2d 183 (FLA) 5th DCA 1991 and State of Florida Department of Transportation v. Heathrow Land and Development Corp., etal, 93-602 FLA 5th DCA 1993), the value of the outdoor advertising sign and bonus rent accruing to the land are based on the highest indication of value by the applicable approaches.

All are in Bay County.

### **PROPERTY TYPE**

With the provisions mentioned above, each property will be appraised as though vacant and as improved.

**INTEREST VALUED**

The rights being appraised are those associated with a fee simple estate. Fee Simple Estate is defined in the Appraisal Institute’s *The Appraisal of Real Estate, 14<sup>th</sup> Edition*, Page 5 as:

*Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by governmental powers of taxation, eminent domain, police power, and escheat.*

**TYPE OF VALUE**

The following definition of market value is taken from **Florida State Road Department v. Stack, 231 So.2d 859 Fla., 1<sup>st</sup> DCA 1969** as cited in the Florida Department of Transportation’s Supplemental Standards of Appraisal.

*“Value” as used in eminent domain statute, ordinarily means amount which would be paid for property on assessing date to willing seller not compelled to sell, by willing purchaser, not compelled to purchase, taking into consideration all uses to which property is adapted and might reasonably be applied.*

The market value opinion in this report is in terms of cash or terms equivalent to cash. The intended user’s attention should be directed to the fact that the market value estimated in this report is relevant as of the date of value. The market value estimated is also contingent on a reasonable exposure time in a competitive market. The reasonable exposure time will be estimated and defined in the following section of this report. It should be noted that any change in the date of value or exposure time identified in this report could significantly change the estimate of market value.

**DATE OF VALUE**

Current

**ADDITIONAL PROPERTY TO BE VALUED**

None

**HYPOTHETICAL CONDITIONS, EXTRAORDINARY ASSUMPTIONS**

It is my understanding that no title work will be provided to the appraiser. Therefore, I will employ an extraordinary assumption that there are title issues that could affect market value.

Regarding the Defilippis property: Absent a legal instruction to the contrary by May 31, 2023, I will appraise the property as vacant under the extraordinary assumption that MRTA eliminates the deed restrictions related to the prohibition of residential development.

It is my understanding that no right of way maps will be provided to the appraiser. Therefore, I will employ an extraordinary assumption that the dimensions and sizes derived from the Bay County GIS are correct.

**APPLICABLE REQUIREMENTS OTHER THAN THE UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE (USPAP)**

- The Code of Professional Ethics of the Appraisal Institute
- The Uniform Standards of Professional Appraisal Practice of the Appraisal Institute
- Chapter 475, Part II, Florida Statutes
- FDOT Supplemental Standards

**ANTICIPATED SCOPE OF WORK**

**Site Visit:**

If possible, I will inspect the interior of each improvement. If this is not possible, I will use an extraordinary assumption regarding the condition and layout of the interior of the buildings and perform an exterior inspection only.

**APPRAISAL REPORT**

**Report Option:**

This is an assignment involving two appraisal reports in accordance with the Uniform Standards of Professional Appraisal Practice (consistent with the former “summary appraisal report” in Standards Rule 2-2(b) of (USPAP). As such, each report presents sufficient information to enable the client and other intended users, as identified, to understand it properly. Supporting documentation is contained in my work file and will be made available at the client’s request.

I will deliver one appraisal report per property. Both Malki properties (34356-000-000 & 34357-000-000) will be appraised in one report.

**Format**

Narrative

**CONTACT FOR PROPERTY ACCESS, IF APPLICABLE**

TBD

**PROPOSED IMPROVEMENTS**

N/A

**PROPERTIES UNDER CONTRACT FOR SALE**

N/A

**ADDITIONAL DOCUMENTATION**

N/A

**DELIVERY DATE**

I will deliver the reports by June 30, 2023 assuming I receive the notice to proceed on or before May 1, 2023, and assuming I receive any legal instructions by May 31, 2023. If I receive the legal instruction after May 31<sup>st</sup>, I will deliver the appraisals within 45 days of the date of the instruction.

**DELIVERY METHOD**

Signed PDF

**NUMBER OF COPIES**

ONE PER PROPERTY

**PAYMENT TO APPRAISER**

Defilippis Property (34355-000-000)	\$13,000
Malki Property (34356-000-000 & 34357-000-000)	<u>\$22,600</u>
Total	\$35,600

Invoice will be submitted to the client following the reviewer’s approval of each report.

**WHEN APPRAISER’S OBLIGATIONS ARE COMPLETE**

The appraiser’s obligations pursuant to this agreement are complete when the appraisal reports in the form specified in this agreement are delivered to the client pursuant to this agreement. The appraiser agrees to be responsive to the client’s legitimate inquiries regarding the contents of the report after delivery.

**CONFIDENTIALITY**

The appraiser shall not provide a copy of the written appraisal reports, nor disclose the results of the appraisals, to any party other than the client unless the client authorizes, except as stipulated in the Confidentiality Section of the Ethics Rule of the Uniform Standards of Professional Appraisal Practice (USPAP).

**USE OF EMPLOYEES OR INDEPENDENT CONTRACTORS**

The appraiser may use employees or independent contractors to complete the assignment at the appraiser’s discretion, unless otherwise agreed by the parties. Notwithstanding, the appraiser shall sign the written appraisal report and take full responsibility for the services provided as a result of this agreement.

**SERVICES NOT PROVIDED**

The fees set forth in this agreement apply to the appraisal services rendered by the appraiser as set forth in this agreement. Unless otherwise specified herein, the appraiser's services for which the fees in this agreement apply shall not include meetings with persons other than the client nor the client's agents or professional advisors; the appraiser's deposition(s) nor testimony before judicial, arbitration or administrative tribunals; nor any preparation associated with such depositions or testimony. Any additional services performed by the appraiser not set forth in this agreement will be performed on terms and conditions set forth in an amendment to this agreement or in a separate agreement.

**TESTIMONY AT COURT OR OTHER PROCEEDINGS**

Unless otherwise stated in this agreement, the client agrees that the appraiser's assignment pursuant to this agreement shall not include the appraiser's participation in or preparation for, whether voluntarily or pursuant to subpoena, any oral or written discovery; sworn testimony in a judicial, arbitration or administrative proceeding; or attendance at any judicial, arbitration or administrative proceeding relating to this assignment.

**CHANGES TO AGREEMENT**

Any changes to the assignment as outlined in this agreement shall necessitate a new agreement. The identity of the client, intended users, or intended use; the date of value; type of value; or property appraised cannot be changed without a new agreement.

**CANCELLATION**

The client may not cancel this agreement at any time after the notice to proceed without full payment of fee.

**GOVERNING LAW AND JURISDICTION**

This agreement shall be governed by the law of the state in which the appraiser's office is located as specified in this agreement, exclusive of that state's choice of law rules. The parties agree that any legal proceeding brought by either party in order to interpret or enforce this agreement, or to enforce an arbitration award entered pursuant to this agreement, shall be brought in a state or federal court having jurisdiction over the location of the appraiser's office as specified in this agreement. The parties hereby waive any objections to the personal jurisdiction of said court.

**APPRAISER INDEPENDENCE**

The appraiser cannot agree to provide a value opinion that is contingent on a predetermined amount. The appraiser cannot guarantee the outcome of the assignment in advance. The appraiser cannot ensure that the opinion of value developed as a result of this assignment will serve to facilitate any specific objective of the client or others or advance any particular cause. The appraiser's opinion of value will be developed competently and with independence, impartiality, and objectivity.

**NOTICES**

Any notice or request required or permitted to be given to any party shall be given in writing and shall be delivered to the receiving party by: a) registered or certified mail, postage prepaid; (b)

overnight courier, such as Federal Express, United Parcel Service or equivalent; or (c) hand delivery. The address for delivery of any notice shall be the address for the party as specified in this agreement, or at such other address as party may designate by written notice to the other party in conformance with this paragraph. Unless otherwise specified herein, notice shall be effective on the date it is postmarked or given to a third party for delivery to the receiving party, whether or not the receiving party signs for or accepts delivery of such notice.

#### **NO THIRD-PARTY BENEFICIARIES**

Nothing in this agreement shall create a contractual relationship between the appraiser or the client and any third party, or any cause of action in favor of any third party. This agreement shall not be construed to render any person or entity a third-party beneficiary of this agreement, including, but not limited to, any third parties identified herein.

#### **ASSIGNMENT**

Neither party may assign this agreement to a third party without the express written consent of the other party, which the non-assigning party may withhold at its sole discretion. In the event this agreement is assigned by mutual consent of the parties, it shall become binding on the assigning party's permitted assigns.

#### **SEVERABILITY**

In the event any provision of this agreement shall be determined to be void or unenforceable by any court of competent jurisdiction, then such determination shall not affect any other provision of this agreement and all such other provisions shall remain in full force and effect.

#### **CLIENT'S REPRESENTATIONS AND WARRANTIES**

The client represents and warrants to the appraiser that (1) the client has all right, power and authority to enter into this agreement; (2) the client's duties and obligations under this agreement do not conflict with any other duties or obligations assumed by the client under any agreement between the client and any other party; and (3) the client has not engaged the appraiser, nor will the client use the appraiser's appraisal report, for any purposes that violate any federal, state or local law, regulation or ordinance or common law.

#### **EXTENT OF AGREEMENT**


This agreement represents the entire and integrated agreement between the client and the appraiser and supersedes all prior negotiations, representations or agreements, either written or oral. This agreement may be amended only by a written instrument signed by both the client and the appraiser.



**EXPIRATION OF AGREEMENT**

This agreement is valid only if approved by the client on or before May 1, 2023.

By Appraiser:



Shannon Ross Deal, MAI  
State-Certified General R.E. Appraiser RZ2529

April 17, 2023

Date

By Client:

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
Date

By Client (If Applicable):

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
Date

## Summary

Defilippis Property (34355-000-000)	\$13,000
Malki Property (34356-000-000 & 34357-000-000)	<u>\$22,600</u>
Total	\$35,600

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
CITY OF PANAMA CITY BEACH  
AND DEAL CONSULTING, PA  
RELATING TO  
PROPERTY APPRAISAL SERVICES**

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between **CITY OF PANAMA CITY BEACH, FLORIDA**, a municipal corporation (“City”) and **DEAL CONSULTING, PA** (“Appraiser”).

**PREMISES**

**WHEREAS**, City desires to have Appraiser assist City with professional Appraisal services, including right of way planning consultation, the preparation of appraisal reports for negotiations, preparation of appraisal testimony for Order of Taking hearing(s); presentation of testimony at trial; update of appraisals for trial; appraisal consultation during litigation; pre-trial/pre-hearing consultation and any post-trial hearings and other related services with respect to City’s acquisition of land to effect public improvements which will support and enhance various capital improvement projects; and

**WHEREAS**, City desires to employ Appraiser for those purposes upon the terms and conditions in this Agreement, and Appraiser is desirous of obtaining such employment and has represented that it has extensive experience in and is qualified and competent to perform such services upon said terms and conditions;

**NOW, THEREFORE**, in consideration of the following covenants, it is agreed:

**1. SCOPE OF PROFESSIONAL SERVICES:**

- A. City retains Appraiser to diligently, competently and timely perform such professional Appraisal and related services as City may require, as said services may be authorized by City in individual tasks requested from time to time by City. Upon any such request from City, Appraiser will provide in writing a proposed fee. The proposed fee may be a: (i) stipulated sum; (ii) stipulated sum plus one or more specified allowances which may be authorized by City Manager or his designee; (iii) fee based on actual time expended; or (iv) any other compensation format that may be authorized by City. The proposed fee shall be based upon the hourly rates and unit parcel costs specified in the attached Exhibit A. Unless otherwise expressly set forth separately in the applicable fee proposal, the proposed fee shall be

assumed to include all compensation which City will owe Appraiser for the subject services, including all reimbursable expenses.

B. If accepted by City, the Appraiser's proposal, as that proposal may have been modified by the parties, shall be incorporated into a task order, substantially in the form set forth as Exhibit B (each a "Task Order"). Each Task Order shall be numbered and upon its execution by both City and Appraiser, shall be deemed to be incorporated into this Agreement. If a term in this Agreement conflicts with a term in a Task Order, the term in the Task Order shall control to the extent of such conflict, but only for that Task Order.

C. Notwithstanding anything herein to the contrary, City is not required under this Agreement to authorize Appraiser to perform any services and nothing herein shall be construed as entitling Appraiser to any work under this Agreement, except and to the extent such work is specifically authorized hereafter by City in a properly executed Task Order.

D. Appraiser represents to City that it has expertise in the type of professional services that will be required and all appraisals will conform to the Uniform Standards of Professional Appraisal Practice (USPAP) adopted by the Appraisal Standards Board of the Appraisal Foundation. City's consent or approval of any services provided by Appraiser in no manner or way will relieve Appraiser of its obligations and duties hereunder. Additionally, City's consent or approval of any services of Appraiser shall not constitute a waiver of any rights City may have pursuant to this Agreement or by law. Notwithstanding any consents or approvals by City, Appraiser remains responsible for all defects, errors, omissions or inconsistencies in its services performed pursuant to this Agreement.

## **2. COMPENSATION AND PAYMENT:**

A. The hourly rates and other factual unit costs to be used for determining compensation are set forth in Exhibit A, which is attached hereto and incorporated herein, and are to remain fixed, subject to adjustment only by the express prior written approval of City. Appraiser's total compensation for the services authorized by any particular Task Order shall be set forth exclusively in that Task Order.

B. In addition to its fee, if expressly authorized in the applicable Task Order, Appraiser shall be reimbursed for its reasonable out-of-pocket expenses upon its submission of appropriate supporting and backup documentation reasonably acceptable to City. Appraiser shall invoice City at actual costs for such authorized out-of-pocket costs including any subconsultant's compensation. Records of costs incurred under the terms of this Agreement, as well as all of Appraiser's other project related documents and records, shall be maintained by Appraiser and made available to City during the period of

this Agreement, and for three (3) years after the final payment is made or such longer period of time as may be required by law. Copies of these documents and records shall be furnished to City without cost, and City or its agents shall be entitled to review, copy and audit all such documents and records during normal business hours. Appraiser shall include a corresponding right of access, review, copying and audit by City to all project documents and records in all of Appraiser's subconsultant agreements.

C. City reserves the right to direct changes to the services required of Appraiser under this Agreement or any particular Task Order. Appraiser will be compensated for any such changes directed or authorized by City as set forth in Section 6.

D. At the end of each month during which a Task Order shall be outstanding, Appraiser shall submit a separate invoice for services rendered during that month with respect to that Task Order as follows:

- 1) Where a stipulated sum is specified, City shall pay Appraiser in monthly installments based upon the percentage of satisfactory completion. In support of payment, Appraiser shall submit monthly a request for payment describing the work done, percentage of completion and amount requested to be paid, all by reference to line items in the scope of services where available.
- 2) Where fees are computed on a time-incurred basis, the City shall pay Appraiser monthly in arrears upon receipt of an itemized statement certified by Appraiser in form and detail reasonably acceptable to City.
- 3) If authorized under the applicable Task Order, reimbursable expenses reasonably incurred shall be included in the Appraiser's monthly statement of services with such supporting documentation as may be reasonably required by Owner to substantiate the reimbursable expenses.
- 4) Notwithstanding anything in the Agreement or any Task Order to the contrary, City reserves the right to withhold payment to Appraiser in part or in full to the extent reasonably necessary to protect City's interests.
- 5) Appraiser shall be required to provide such supporting documentation for its invoice as may be required by City.

3. **SCHEDULE:** The time schedule for Appraiser's performance of the required services under any particular Task Order, shall be set forth in that Task Order.

**4. CITY'S RESPONSIBILITY:** As reasonably requested by Appraiser, City shall furnish Appraiser with such existing data, surveys, legal descriptions, plans, profiles, and other information available and useful in connection with the subject Task Order that is within City's possession and can be located, which shall be returned to City upon the completion of the services to be performed by Appraiser, unless such data, surveys, legal descriptions, plans, profiles, and other data are necessary for daily operations; then such forms of information shall be promptly duplicated by Appraiser and the originals returned to City. Unless otherwise noted, the Appraiser shall be entitled to rely upon the accuracy and completeness of any information supplied by the City.

**5. CITY'S DESIGNATED REPRESENTATIVE:** It is understood and agreed that City designates the Program Manager or his designated representative or its legal counsel to represent City in all technical matters pertaining to and arising from the work and performance of this Agreement. Provided however, neither the Program Manager nor his designated representative shall have the authority to authorize any verbal or written orders or instructions that would have the effect, or be interpreted to have the effect, of adjusting, modifying or changing in any way whatsoever 1) the time to complete any of Appraiser's required services, 2) the amount of compensation City is obligated or committed to pay Appraiser, or 3) the scope or quality of services to be provided and performed by Appraiser. The Program Manager and/or his designated representative and/or legal counsel shall have, but not be limited to, the following responsibilities:

A. Examination of all reports, sketches, drawings, cost estimates, proposals and other documents presented by Appraiser, and rendering in writing decisions pertaining thereto within a reasonable time so as not to materially delay the work of Appraiser.

B. Transmission of instructions, receipt of information, interpretation, and definition of City policies and decisions with respect to design, materials, and other matters pertinent to the work covered by this Agreement.

C. Give prompt written notice to Appraiser whenever the Program Manager or his designated representative or legal counsel observes or otherwise becomes aware of any defects or changes necessary in the project.

**6. ADDITIONAL SERVICES/CHANGES IN SCOPE:**

A. As referenced in Section 2.C of this Agreement, City has retained the right to make changes to the scope of work authorized by any Task Order. Accordingly, from time to time, at City's option and in City's sole discretion, Appraiser may be directed or authorized to perform additional services ("Additional Services") City deems necessary or convenient with respect to any particular Task Order that has been issued. Provided however, City will not be responsible for the costs of any Additional Services commenced

by Appraiser without City's express prior written approval or direction. If Appraiser reasonably believes that any services required by City (including any changes directed by City) constitutes Additional Services, then Appraiser shall provide prompt written notice to City of any such circumstance before commencing such services. In the event City disagrees with Appraiser's notice of Additional Services and City directs Appraiser to proceed with such services, Appraiser must submit a written claim to City within seven (7) calendar days of City's directive to proceed. Failure to obtain either City's prior written approval for Additional Services or failure to submit a written claim within said seven (7) day period after being directed by City to proceed with services that Appraiser believes constitutes Additional Services, waives Appraiser's claim that it performed Additional Services and instead such services will be deemed to be part of the original services otherwise required of Appraiser under the applicable Task Order. The compensation for Additional Services will be an amount mutually agreed upon or if the parties fail to reach agreement on the compensation, then Appraiser's compensation will be based upon the rates established in the attached Exhibit A and the actual time and out-of-pocket costs incurred by Appraiser to provide such Additional Services as reasonably determined by City.

B. Appraiser hereby waives all claims for consequential and indirect damages against City arising out of or relating to this Agreement.

## **7. TERMINATION:**

A. Either party hereto shall have the right and option to terminate this Agreement as set forth in this section. City shall have the right to terminate this Agreement and any Task Order in effect, in whole or in part, without cause upon seven (7) calendar days written notice to Appraiser. Appraiser shall have the right to terminate this Agreement in its entirety without cause upon ninety (90) calendar days written notice to City with respect to future services and work not already authorized under any particular Task Order; provided however, any services to be performed by Appraiser under a previously issued Task Order shall proceed to completion unless otherwise expressly terminated by City. Nothing in this Section shall be construed to allow Appraiser to terminate any Task Order previously issued and in effect prior to Appraiser's notice of termination for convenience. In the event of a termination for convenience by City, Appraiser's sole and exclusive recovery against City shall be limited to that portion of Appraiser's compensation earned through the date of termination, together with any retainage withheld and any costs reasonably incurred by Appraiser that are directly attributable to the termination. In the event of such termination for convenience by Appraiser, Appraiser's sole and exclusive recovery against City shall be limited to that portion of Appraiser's compensation earned through the date of termination for work performed plus any withheld retainage. In no event shall Appraiser be entitled to any other or further recovery against City, including, but not limited to, anticipated fees or profit on work not performed.

B. Appraiser shall be considered in default of this Agreement and such default shall be considered cause for City to terminate this Agreement in whole or in part upon written notice to Appraiser if Appraiser fails to diligently, competently and timely perform any of the work, fails to cooperate with others associated with the work, or otherwise fails to perform or observe any material covenant, representation or warranty contained in this Agreement. If City determines that Appraiser is in default, Appraiser shall have seven (7) calendar days following receipt by Appraiser of said written notice to remedy and cure the default. If such default is not remedied or cured by Appraiser within those seven (7) calendar days, then City may terminate this Agreement in whole or in part. In the event of such termination by City, Appraiser's sole and exclusive recovery against City shall be limited to that portion of Appraiser's compensation earned through the date of termination, plus any withheld retainage; provided, however, no such amounts shall be due and payable until such time as City determines its damages as a result of such default by Appraiser. City has the right to off set all damages it suffers as a result of Appraiser default from any and all amounts it may owe Appraiser under this Agreement and any Task Order. Further, in the event such damages exceed the amount owed Appraiser, Appraiser shall pay City such excess within ten (10) days of Appraiser's receipt of written demand from City for such excess amount.

C. City shall be considered in default of this Agreement and such default shall be considered cause for Appraiser to terminate any particular Task Order upon written notice to City if City fails to perform or observe any material covenant required of it with respect to such Task Order. In no event does Appraiser have the authority to terminate any Task Order for which the subject default does not apply. If Appraiser so notifies City in writing that City is in default, City shall have thirty (30) calendar days following receipt by City of said written notice to remedy and cure the default. If such default is not remedied or cured by City within those thirty (30) calendar days, then Appraiser may terminate the subject Task Order. In the event of such termination by Appraiser, and subject to the terms of this Agreement, Appraiser shall be entitled only to the same rights and recovery provided to it as a result of a termination for convenience by City per Section 7.A above.

D. If, after notice of termination of this Agreement or any Task Order or any portion of either by City as provided for in Section 7.B above, it is determined for any reason that City wrongfully terminated this Agreement or any Task Order or any portion of either or otherwise was not entitled to terminate for cause, then the notice of termination given pursuant to Section 7.B above shall be deemed to be the notice of termination for convenience by City provided for in paragraph 7.A above and Appraiser's remedies against City shall be the same as and limited to those afforded Appraiser under Section 7.A above.



E. Upon any termination and at no additional cost to City, Appraiser shall deliver to City all papers, records, documents, drawings, calculations, models, and other materials in Appraiser's possession or under its control arising out of or relating to this Agreement as directed by City. The delivery of all such items to City being a condition precedent to any further payment obligations of City under this Agreement. Appraiser may make a copy of any or all such items for its file, at its own cost and expense.

**8. TERM:** Unless terminated sooner pursuant to the provisions of the "TERMINATION" clauses contained in Section 7 of this Agreement, and subject to the availability of appropriated funds, this Agreement shall take effect immediately upon its execution by the parties, and shall continue thereafter for a term of 5 years or the completion of all outstanding Task Orders, whichever is later; provided, however, the term of this Agreement shall be amendable and renewable by City, at its sole discretion, for continuation of the term related services on an as-needed basis.

**9. INDEMNIFICATION:**

A. To the maximum extent permitted by law, Appraiser shall defend, indemnify and hold harmless City, its officers and employees, of any and all claims, actions, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness or intentionally wrongful conduct of Appraiser or any person employed or utilized by Appraiser in the performance of services hereunder. The provisions of this Section 9 shall survive termination of this Agreement. This indemnification obligation shall not be construed to negate, abridge or reduce any other rights or remedies which otherwise may be available to an indemnified party described in this paragraph.

B. The duty to defend under this Section 9 is independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of Appraiser, City or any indemnified party. The duty to defend arises immediately upon presentation of a claim by any party and written notice of such claim being provided to Appraiser. Appraiser's obligation to indemnify and defend under this Section 9 will survive the expiration or earlier termination of this Agreement until it is determined by final judgment that an action against City or an indemnified party for the matter indemnified hereunder is fully and finally barred by the applicable statute of limitations. Notwithstanding the foregoing and to the extent Appraiser actually defends City and City is ultimately found responsible for such claims, City shall reimburse Appraiser its defense costs, including attorneys' and expert fees, incurred by Appraiser in providing a defense to City and its employees, but only to the extent of the City's culpability.

## 10. INSURANCE:

A. Appraiser shall procure and maintain during the life of this Agreement insurance of the following types:

1) Worker's Compensation: For all of its employees engaged in work on a project under this Agreement. In case any employee engaged in hazardous work on a project is not protected under the Worker's Compensation Statute, Appraiser shall provide Employer's Liability Insurance for the protection of such of its employees not otherwise protected under such provisions.

Coverage A - Worker's Compensation - Statutory  
Coverage B - Employer's Liability - \$1,000,000.00

- 2) Personal Injury/Property Damage Liability:  
3) Liability insurance including, but not limited to:
- a) Independent Contractor's Liability;
  - b) Contractual Liability;

The minimum primary limits shall be no less than \$1,000,000/\$2,000,000 Personal Injury Liability, and no less than \$1,000,000 Property Damage Liability, or \$2,000,000 Combined Single Limit Liability, or higher limits if required by any Excess Liability Insurer. City shall be named as additional insureds pursuant to an additional insured endorsement on ISO Form 20 10 10 01 (or superseding form) providing comprehensive general liability coverage for completed operations in addition to on-going operations.

3) Automobile Liability: Automobile Liability insurance including all owned, hired, and non-owned automobiles. The minimum primary limits shall be no less than \$1,000,000 Bodily Injury Liability, and no less than \$1,000,000 Property Damage Liability, or no less than \$1,000,000 Combined Single Limit Liability, or higher limits if required by the Excess Liability Insurer. City shall be named as additional insureds.

4) Umbrella Liability Insurance or Excess Liability Insurance: To the extent Appraiser carries umbrella or excess liability insurance, the City shall be named additional insureds on any such policy. Coverage shall be excess of the employer's liability, commercial general liability and automobile liability coverages required herein and shall include all coverages on a "following form" basis. Coverage shall drop down as primary on the exhaustion of any aggregate limit.

B. Certificates of Insurance: Prior to commencement of work on any Task Order, Appraiser shall furnish to City original, current certificates of all insurance required by this agreement, providing thirty (30) days prior written notice of any change in limits or

scope of coverage, cancellation, or non-renewal. Such certificates shall contain the following wording: "SHOULD ANY OF THE ABOVE-DESCRIBED POLICIES BE AMENDED IN LIMITS OR SCOPE OF COVERAGE OR CANCELED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL DELIVER THIRTY (30) DAYS PRIOR NOTICE TO THE CERTIFICATE HOLDER NAMED HEREIN." All insurance required by this agreement shall be taken out with insurers licensed to do business in Florida having an A.M. Best's rating of A-, or otherwise approved in advance in writing by City. If the insurance policies expire during the term of this Agreement, a renewal certificate shall be filed with City thirty (30) days prior to the renewal date.]

**11. NEGOTIATION DATA:** Appraiser hereby certifies, covenants, and warrants that hourly rates and other factual unit costs supporting the compensation provided in Exhibit A are accurate, complete, and current as of the date of negotiation.

**12. OWNERSHIP OF DOCUMENTS:**

A. It is understood and agreed that all documents, including detailed reports, plans and all other data in whatever form (text, graphic, digital or other electronic), prepared or obtained by Appraiser in connection with its services hereunder ("Project Documents") shall always be the property of City and shall be delivered to City promptly, at Appraiser's sole expense and without lien, upon City's request or termination of this Agreement by lapse of time or otherwise. Appraiser hereby assigns to City all rights, including all copyrights, to the Project Documents. Appraiser acknowledges and agrees that all Project Documents shall be deemed to be works made for hire, and all right, title, and interest in and to the Project Documents shall be vested in City, and Appraiser will take all actions necessary to secure for City all such right, title, and interest. Appraiser warrants that all materials comprising the Project Documents are original with the Project and have not been copied or derived from any other material without the express consent of the owner, proprietor, and copyright holder of that other material, and are not subject to any other claim of copyright by any other person. Appraiser shall obtain any and all licenses necessary for the production and preparation of the Project Documents including, without limitation, licenses for the use of any material subject to copyright by other parties. Appraiser shall assign to City any and all rights, including any copyrights, in the Project Documents that Appraiser may possess, now or in the future, and Appraiser will claim no rights adverse to City in the Project Documents. As the Project Documents are completed, Appraiser shall assign its copyright interest in such documents to City by executing and delivering to City the Assignment of Copyright, the form of which is attached as Exhibit C. Appraiser shall execute any additional documents required by City to further evidence this assignment. Appraiser, at its own expense, may retain copies of the Project Documents for its files and internal use. Appraiser shall not be liable for any use by City of the Project Documents to the extent they are modified without written approval of Appraiser.

B. City shall not use Appraiser's formal report on any other project unless City notifies Appraiser of its intended use, and obtains the Appraiser's written consent to such use.

C. Appraiser warrants to City that it has full right and authority to grant to City all rights in the Project Documents as provided for in this Section 12. Further, Appraiser hereby consents to City's use (including any use by any replacement Appraiser retained by City) of the Project Documents to complete a project following any termination of Appraiser hereunder or to perform any additions to or renovations of a Project.

D. When transferring data in electronic media format, Appraiser makes no representation as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by Appraiser at the beginning of the Agreement. Because the data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. The original hard copy of the documents containing the professional Appraiser's seal shall take precedence over the electronic documents.

### **13. WORK COMMENCEMENT/PROGRESS/DELAYS:**

A. The services to be rendered by Appraiser as to any particular Task Order shall commence upon execution of that Task Order and Appraiser's receipt of written notice to proceed with such services from City Manager or his designee.

B. Appraiser agrees to abide by the schedule for performance of the contracted services as set forth in the applicable Task Order. City will be entitled at all times to be advised in writing at its request as to the status of the work being done by Appraiser, and of the details thereof. City may require specification of liquidated delay damages in a Task Order. Failure to specify liquidated delay damages in a Task Order shall not relieve Appraiser of liability for delays or other damages as provided by law.

C. Notwithstanding anything in this Agreement or any Task Order to the contrary, no interruption, interference, suspension or delay in the commencement or progress of Appraiser's services from any cause whatsoever, including those for which City may be responsible in whole or in part, shall relieve Appraiser of its duty to perform or give rise to any right to damages or additional compensation from City. Appraiser expressly acknowledges and agrees that it shall receive no damages for delay. In the

event there are delays on the part of City or any applicable regulatory agencies as to the approval of any of the plans, permits and drafts of special provisions submitted by Appraiser or any other delays not due to the fault or neglect of Appraiser, which delay the applicable schedule completion date, Appraiser's sole remedy, if any, against City shall be an equitable extension of time for such delays. Provided, however, if the delay is solely due to City's fault of neglect and the services to be provided hereunder have been delayed for a total of ninety days, Appraiser's compensation shall be adjusted only to reflect the actual incremental increase in out-of-pocket costs experienced by Appraiser, if any, as a result of such delays. This paragraph shall expressly apply to claims for early completion, as well as claims based on late completion.

D. Appraiser shall maintain an adequate and competent staff of professionals and may associate with other qualified firms for the purpose of rendering services hereunder. Appraiser agrees that its staff, subconsultants, and subcontractors who will perform any services for the project are subject to City's reasonable approval and must be identified in each Task Order. None of the staff, subconsultants, and subcontractors identified in a Task Order shall be removed or replaced by Appraiser without City's prior written approval (such approval not to be unreasonably withheld), and if so removed shall be immediately replaced with a person or firm reasonably acceptable to City. Appraiser is liable for all acts and omissions of its staff, subconsultants, and subcontractors.

#### **14. STANDARDS OF CONDUCT:**

A. Appraiser warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Appraiser 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 Appraiser any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award of this Agreement.

B. Appraiser covenants that neither it nor any of its employees presently has any interest and shall not acquire any interest, direct or indirect, financial or otherwise, that would conflict in any manner or degree with performance of services hereunder.

C. Standards of Conduct-Conflict of Interest-Appraiser agrees that it and its employees shall be bound by the Standards of Conduct provided in Section 112.313, Florida Statutes, as it relates to work performed under this Agreement, which standards will by reference be made a part of this Agreement as though set forth in full. Appraiser agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

**15. COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS:** In the performance of its services hereunder, Appraiser and all of its work product shall comply

with all Federal, State, and Local laws, rules regulations and ordinances applicable to the work or payment for work thereof. Appraiser shall not discriminate on the grounds of race, color, religion, sex, or national origin in its performance of work under this Agreement.

**16. ASSIGNABILITY:** Appraiser shall not assign any interest in this Agreement, and shall not transfer any interest in the same, whether by assignment or novation, without the prior written approval of City.

**17. INDEPENDENT CONTRACTOR:** Appraiser is and shall remain an independent contractor and not an employee of City.

**18. CONTROLLING LAW AND VENUE:** All questions pertaining to the validity and interpretation of this Agreement shall be determined in accordance with the laws of Florida applicable to contracts made and to be performed within this state. Exclusive jurisdiction and venue to interpret or resolve any dispute under this Agreement shall lie in the State Circuit Court, Fourteenth Judicial Circuit, in and for Bay County, Florida.

**19. ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between the parties with respect to the subject matters. All prior agreements, representations, statements, negotiations, and undertakings are hereby superseded. Any alterations or variations of the terms of this Agreement shall not be valid unless made in writing and signed by the parties. If any term or provision of this Agreement shall be found by a court of competent jurisdiction to be illegal or unenforceable, then, notwithstanding, the remainder of the Agreement shall remain in full force and effect.

**20. ATTORNEY'S FEES:** If either party is required to institute or defend against the other party any legal proceedings in connection with this Agreement, the prevailing party shall be entitled to its costs thereof, together with reasonable attorney's and paralegals' fees.

**21. NO WAIVER:** No waiver of any provision of this Agreement shall be effective unless made in writing, signed by the party against whom it is charged. No waiver of any provision of this Agreement shall constitute a waiver of any other provision of this Agreement, nor of the same provision in the future. Neither the failure nor any delay by any party in exercising any right or power under this Agreement, nor any course of dealing between or among the parties, will operate as a waiver of such right or power, and no single or partial exercise of any such right or power will preclude any other or further exercise of such right or power or the exercise of any other right or power.

**22. COOPERATION:** Appraiser acknowledges that the City's projects are generally a multidisciplinary effort which require cooperation and collaboration with numerous consultants, engineers, construction managers, contractors, and counsel assisting and

advising City, as well as coordination with utilities, other governmental agencies and all directions from City Manager and City Engineer. Accordingly, Appraiser agrees to cooperate with all such other parties to advance the best interests of City and the project.

**23. MEDIATION:** City and Appraiser agree to attempt to resolve any dispute between them related to the interpretation or performance of this Agreement by mediation in Bay County, Florida, with a mutually acceptable, certified Florida Mediator to serve at joint expense. If the parties are unable to agree upon a mediator, either party shall request the appointment of a mediator by the Chief Judge of the Circuit Court, Fourteenth Judicial Circuit in and for Bay County, Florida. Mediation contemplated by this paragraph is intended to be an informal and non-adversarial process with the objective of helping the parties reach a mutually acceptable and voluntary agreement. The decision-making shall rest solely with the parties. The mediator shall assist the parties in identifying issues, fostering joint problem solving, and exploring settlement alternatives. Any settlement will require approval of City's governing board. If the parties are unable to reach a mediated settlement within ninety (90) days of the mediator's appointment, either party may terminate the settlement discussions by written notice to the other and initiate litigation. Mediation is a condition precedent to filing any lawsuit or commencing other legal action. Any litigation commenced in violation of this section shall be stayed pending mediation as agreed. This Section 23 shall survive termination of this Agreement.

**IN WITNESS WHEREOF**, the parties have hereto caused the execution of these documents as of the year and date first above written.

**CITY OF PANAMA CITY BEACH,  
FLORIDA**, a municipal corporation

By: \_\_\_\_\_  
Drew Whitman, City Manager

ATTEST:

\_\_\_\_\_  
Lynne Fasone, City Clerk

**DEAL CONSULTING, PA**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
WITNESS  
PRINT NAME:

\_\_\_\_\_  
WITNESS  
PRINT NAME:

**EXHIBIT A**

**HOURLY RATE AND UNIT COST SCHEDULE**

**PARCEL APPRAISAL:**

RESTRICTED USE	\$	/PARCEL
SUMMARY	\$	/PARCEL
SELF CONTAINED	\$	/PARCEL

Parcel appraisal costs will vary to be costed with specific task order.

**Litigation and Expert Witness Consultation:**

PRINCIPAL APPRAISER	\$	/HR
ASSOCIATE APPRAISER	\$	/HR

**Right of Way Planning and Consultation:**

PRINCIPAL APPRAISER	\$	/HR
ASSOCIATE APPRAISER	\$	/HR



**EXHIBIT B**

**COMBINED TASK ORDER AND  
NOTICE TO PROCEED**

TASK ORDER NO. \_\_\_\_\_

DATE \_\_\_\_\_,  
2023

Reference is made to that certain PROFESSIONAL SERVICES AGREEMENT BETWEEN CITY OF PANAMA CITY BEACH AND **DEAL CONSULTING, PA** RELATING TO PROFESSIONAL APPRAISAL SERVICES dated \_\_\_\_\_, 2023, (the "Agreement"), the terms, conditions and definitions of which are incorporated herein as if set forth in full. Neither party is in breach of the Agreement.

1. Pursuant to the Agreement, Appraiser agrees to perform the specific professional appraisal tasks set forth upon incorporated Attachment A, Scope of Services, to assist the City's acquisition of land to effect improvements to certain transportation corridors within the City.

2. Appraiser's compensation shall be paid in monthly installments as specified in the Agreement. Appraiser's total compensation for the services to be provided under this Task Order shall be determined as follows:

**Subtotal**

[

**Restricted Use Appraisals:**

\_\_\_\_\_ \$/parcel \_\_\_\_\_ x \_\_\_\_\_ parcel(s) = \_\_\_\_\_

**Summary Appraisals:**

\_\_\_\_\_ \$/parcel \_\_\_\_\_ x \_\_\_\_\_ parcel(s) = \_\_\_\_\_

**Self Contained Appraisals:**

\_\_\_\_\_ \$/parcel \_\_\_\_\_ x \_\_\_\_\_ parcel(s) = \_\_\_\_\_

]

**Reimbursable Expenses:**

If reimbursable expenses are to be paid hereunder, such expenses must be specifically AUTHORIZED AND IDENTIFIED in this section. Should no reimbursable expenses be particularly set forth in this section, the parties agree that reimbursable expenses shall not exceed \$ \_\_\_\_\_.

Appraiser's total compensation, including reimbursable expenses, if any, will be established in a stipulated sum not to exceed \$ \_\_\_\_\_.

3. Work shall begin on \_\_\_\_\_, 202\_\_\_\_, and shall be substantially completed by \_\_\_\_\_, 202\_\_\_\_. There are no additional rights and obligations related to this Task Order other than as specified in the Agreement.

4. Attached hereto as Attachment B is a listing of Appraiser's staff who have been assigned to the project as well as the subconsultants and subcontractors who will be used by Appraiser on the project, if any. No changes to assigned personnel, sub-consultants or subcontracts may be made by Appraiser without City's prior written consent.

Upon execution of this Task Order by both Appraiser and City, Appraiser is directed to proceed.

IN WITNESS WHEREOF the parties have caused these presents to be executed in their names on the date shown.

Witness:

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

CITY OF PANAMA CITY BEACH, FL

By: \_\_\_\_\_  
City Manager  
Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

**COMBINED TASK ORDER AND  
NOTICE TO PROCEED**

TASK ORDER NO. 1

DATE \_\_\_\_\_, 2023

Reference is made to that certain PROFESSIONAL SERVICES AGREEMENT BETWEEN CITY OF PANAMA CITY BEACH AND **DEAL CONSULTING, PA** RELATING TO PROFESSIONAL APPRAISAL SERVICES dated \_\_\_\_\_, 2023, (the "Agreement"), the terms, conditions, and definitions of which are incorporated herein as if set forth in full. Neither party is in breach of the Agreement.

1. Pursuant to the Agreement, Appraiser agrees to perform the specific professional appraisal tasks set forth upon incorporated Attachment A, Scope of Services, to assist the City's acquisition of land to effect improvements to certain transportation corridors within the City.

2. Appraiser's compensation shall be paid in monthly installments as specified in the Agreement. Appraiser's total compensation for the services to be provided under this Task Order shall be determined as follows:

Summary Appraisal Parcel 34355-000-000	<b>Subtotal</b>
Summary Appraisal Parcels 34356-000-000 & 34357-000-000	<b>\$13,000</b>
	<b><u>\$22,600</u></b>
	<b>\$35,600</b>

**Reimbursable Expenses:**

If reimbursable expenses are to be paid hereunder, such expenses must be specifically AUTHORIZED AND IDENTIFIED in this section. Should no reimbursable expenses be particularly set forth in this section, the parties agree that reimbursable expenses shall not exceed \$\_\_\_\_\_.

Appraiser's total compensation, including reimbursable expenses, if any, will be established in a stipulated sum not to exceed \$\_\_\_\_\_.

3. Work shall begin on \_\_\_\_\_, 2023, and shall be substantially completed by \_\_\_\_\_, 2023. There are no additional rights and obligations related to this Task Order other than as specified in the Agreement.

4. Attached hereto as Attachment B is a listing of Appraiser's staff who have been assigned to the project as well as the subconsultants and subcontractors who will be used by Appraiser on the project, if any. No changes to assigned personnel, subconsultants or subcontracts may be made by Appraiser without City's prior written consent.

Upon execution of this Task Order by both Appraiser and City, Appraiser is directed to proceed.

IN WITNESS WHEREOF the parties have caused these presents to be executed in their names on the date shown.

Witness:

DEAL CONSULTING, PA

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

CITY OF PANAMA CITY BEACH, FL

By: \_\_\_\_\_  
Drew Whitman, City Manager  
Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Lynne Fasone, City Clerk