

Agenda Item # _C - 7_____

**VILLAGE OF ROYAL PALM BEACH
Village Council
Agenda Item Summary**

AGENDA ITEM:

APPROVAL AND AUTHORIZATION FOR THE VILLAGE MANAGER TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT FOR URBAN FORESTRY SERVICES WITH COTLEUR & HEARING FOR VARIOUS PROJECTS IN THE VILLAGE OF ROYAL PALM BEACH.

ISSUE:

On November 24, 2022, a Request for Proposals (“RFP”) for Urban Forestry Services was advertised in the Palm Beach Post. Sealed Proposals were opened on December 8, 2022 and one (1) proposal was received from Cotleur & Hearing.

A three-person selection committee independently evaluated the proposal and ranked them as follows:

1) Cotleur & Hearing

RECOMMENDED ACTION:

Staff recommends a motion to authorize the Village Manager to enter into an agreement with Cotleur & Hearing for Urban Forestry Services to commence on January 2, 2023 through January 1, 2025.

Initiator: P&Z Director	Village Manager Approval	Agenda Date: 12-15-22	Village Council Action
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**Village of Royal Palm Beach
Request for Proposals
Urban Forestry Services**

MODEL AGREEMENT (ATTACHMENT 2)	
Village of Royal Palm Beach	Consultant: Cotleur & Hearing. LLC
Project: Urban Forestry Services	

This Agreement, entered into this 15th day of December 2022, effective January 2, 2023, by and between Cotleur & Hearing, LLC, a Corporation registered in Florida, hereinafter referred to as the “**CONSULTANT**”, and the Village of Royal Palm Beach, Florida, a Municipal Corporation, hereinafter referred to as the “Village.”

WITNESSETH:

Village and **CONSULTANT**, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and value of which is hereby acknowledged by both parties, hereby agree as follows:

1. **PROJECT DESIGNATION.** Village and CONSULTANT, both hereby agree to enter into an agreement for **Urban Forestry Services** within the corporate limits of the Village in accordance with the Village’s request for proposals for Urban Forestry Services and the CONSULTANT’s Proposal with Proposal Form for said services dated December 8, 2022, both of which are attached hereto as composite Exhibit A, and incorporated herein by reference. This agreement will commence on January 2, 2023, and will end on the **January 1, 2025**. The agreement may be extended for two (2) additional terms of one (1) year each at the same prices and conditions of the original contract, upon written agreement of both parties. Any extensions shall be in the form of written addendum to this agreement.
2. **SCOPE OF SERVICES.** CONSULTANT agrees to perform the urban forestry services in accordance with attached Composite Exhibit “A”, including the provision of all labor, materials, equipment and supplies (hereinafter referred to the “Services”).
3. **COMPLIANCE WITH LAWS.** CONSULTANT shall, in performing the Services contemplated by this Agreement, faithfully observe and comply with all federal, state and local laws, ordinances and regulations that are applicable to the Services to be rendered under this Agreement. CONSULTANT shall secure all licenses and permits necessary for initiation and completion of the project and be responsible for the payment of license and permit fees.
4. **STANDARD OF CARE AND AUTHORITY TO PRACTICE.** CONSULTANT warrants that all Services shall be performed to comparable professional standards in the field by skilled and competent personnel. CONSULTANT further represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner.

5. **INDEMNIFICATION.** CONSULTANT agrees, to the fullest extent permitted by law, to protect, defend, indemnify, and hold harmless the VILLAGE, its employees and representatives, from any and all claims, suits, demands, causes of action, and other liabilities including all attorney's fees and court costs, including appeals, for which the VILLAGE, its officers, employees and representatives, can or may be held liable as a result of injury (including, but not limited to, sickness, disease and/or death) to persons including CONSULTANT'S own employees, or damage to property occurring by reason of any negligent or intentional acts or omissions of the CONSULTANT, its employees or agents in the performance of Services under this Agreement.

6. **INSURANCE.** During the performance of the Services under this Agreement, CONSULTANT shall maintain the following insurance policies, and such policies shall be written by an insurance company authorized to do business in Florida:

- A. **General Liability** Insurance with bodily injury limits of not less than \$1,000,000 for each occurrence, and with property damage limits of not less than \$1,000,000 for each occurrence.
- B. **Automobile Liability** Insurance with bodily injury limits of not less than \$1,000,000 for each person and not less than \$1,000,000 for each accident and with property damage limits of not less than \$1,000,000 for each accident.
- C. **Workers' Compensation** Insurance in accordance with statutory requirements of both state and federal laws.

CONSULTANT shall furnish VILLAGE the required certificates of insurance that shall include a provision that policy cancellation, non-renewal or reduction of coverage due to non-payment of premium will not be effective until at least ten (10) days written notice has been made to the VILLAGE, and that policy cancellation, non-renewal or reduction of coverage for any other reason will not be effective until at least thirty (30) days written notice has been made to the VILLAGE. CONSULTANT shall include VILLAGE as an additional insured on the General Liability and Automobile Liability insurance policy required by the Agreement. CONSULTANT shall not commence work under this Agreement until all insurance required as stated herein has been obtained and such insurance has been approved by the VILLAGE.

7. **INDEPENDENT CONTRACTOR.** CONSULTANT and the VILLAGE agree that CONSULTANT is an independent contractor with respect to the Services provided pursuant to this Agreement. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties hereto. Neither CONSULTANT nor any employee of CONSULTANT shall be entitled to any benefits accorded VILLAGE employees by virtue of the Services provided under this Agreement. The VILLAGE shall not be responsible for withholding or otherwise deducting federal income tax or social security or for contributing to the state industrial insurance program, otherwise assuming the duties of an employer with respect to CONSULTANT, or any employee of CONSULTANT.

8. **COMPENSATION.** CONSULTANT shall perform all Services required in accordance with attached Composite Exhibit "A," and shall be compensated in accordance with the rate structure contained therein. CONSULTANT shall prepare and submit separate invoices to the VILLAGE for work requested by and performed on behalf of the Village Community

Development Department, and the Village Planning and Zoning Department. Invoices must be submitted to the Village within thirty (30) days from the billing period. Each individual invoice shall be due and payable within thirty (30) days after receipt by the Village of a correct, fully documented, invoice. All invoices shall be delivered to:

Village of Royal Palm Beach

1050 Royal Palm Beach Blvd.

Royal Palm Beach, Florida 33411

Attention: Community Development Director (FOR WORK DONE ON BEHALF OF THIS DEPARTMENT)

AND/OR

Village of Royal Palm Beach

1050 Royal Palm Beach Blvd.

Royal Palm Beach, Florida 33411

Attention: Planning and Zoning Director (FOR WORK DONE ON BEHALF OF THIS DEPARTMENT)

9. **DEFAULT/TERMINATION.** In the event either party is in default of its obligations under this Agreement, the non-defaulting party shall provide the defaulting party with written notice of such default, and shall provide the defaulting party with thirty (30) days from the date of the written notice to remedy the default. If the defaulting party fails to cure the default within thirty (30) days from the date of the written notice of default, then the Agreement shall be automatically terminated. Additionally, either party may terminate this Agreement for any reason by providing a thirty (30) day written notice to the other party. CONSULTANT shall be paid for services actually rendered to the date of termination unless CONSULTANT is in breach of the Agreement. After receipt of a Termination Notice and except as otherwise directed by the VILLAGE, the CONSULTANT shall:

A. Stop work on the date and to the extent specified; and

B. Transfer all work in process, completed work, and other material related to the terminated work to the VILLAGE.

10. **NOTICE.** Notice as required by this Agreement shall be sufficient when sent by certified mail or hand delivered to the parties at the following addresses:

VILLAGE:	CONSULTANT:
Village of Royal Palm Beach 1050 Royal Palm Beach Boulevard Royal Palm Beach, Florida 33411	Cotleur & Hearing, LLC 1934 Commerce Lane, Suite 1 Jupiter, FL 33458
Attn: Ray Liggins, P.E., ICMA-CM Village Manager	Attn: Donaldson Hearing, Manager

11. AVAILABILITY OF FUNDS. The obligations of the VILLAGE under this Agreement are subject to the availability of funds lawfully appropriated for its purpose by the Council of the Village of Royal Palm Beach.

12. GOVERNING LAW AND VENUE. This Agreement shall be governed by Florida law and the sole venue for any action under this Agreement shall be Palm Beach County, Florida.

13. NON-DISCRIMINATION. CONSULTANT, with regard to the work performed by it under this Agreement, will not discriminate on the grounds of race, color, national origin, ancestry, religion, creed, age, sex or the presence of any physical or sensory handicap in the selection and retention of employees or procurement of materials or supplies.

14. NON-WAIVER. Waiver by the VILLAGE of any provision of this Agreement or any time limitation provided for in this Agreement shall not constitute a waiver of any other provision.

15. SEVERABILITY. The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void.

16. INSPECTOR GENERAL. Pursuant to Article XII of the Palm Beach County Charter, the Office of the Inspector General has jurisdiction to investigate municipal matters, review and audit municipal contracts and other transactions, and make reports and recommendations to municipal governing bodies based on such audits, reviews or investigations. All parties doing business with the VILLAGE shall fully cooperate with the Inspector General in the exercise of the Inspector General's functions, authority and power. The Inspector General has the power to take sworn statements, require the production of records and to audit, monitor, investigate and inspect the activities of the VILLAGE as well as contractors and lobbyists of the VILLAGE in order to detect, deter, prevent and eradicate fraud, waste, mismanagement, misconduct and abuses.

17. PUBLIC RECORDS. In accordance with Sec. 119.0701, *Florida Statutes*, CONSULTANT must keep and maintain this Agreement and any other records associated therewith and that are associated with the performance of the work described in the Proposal or Bid. Upon request from the Village's custodian of public records, CONSULTANT must provide the Village with copies of requested records, or allow such records to be inspected or copied, within a reasonable time in accordance with access and cost requirements of Chapter 119, *Florida Statutes*. A CONSULTANT who fails to provide the public records to the Village, or fails to make them available for inspection or copying, within a reasonable time may be subject to attorney's fees and costs pursuant to Sec. 119.0701, *Florida Statutes*, and other penalties pursuant to Sec. 119.10, *Florida Statutes*. Further, CONSULTANT shall ensure that any exempt or confidential records associated with this Agreement or associated with the performance of the work described in the Proposal or Bid are not disclosed except as authorized by law for the duration of the Agreement term, and following completion of the Agreement if the CONSULTANT does not transfer the records to the Village. Finally, upon completion of the Agreement, CONSULTANT shall transfer, at no cost to the Village, all public

records in possession of the CONSULTANT, or keep and maintain public records required by the Village. If the CONSULTANT transfers all public records to the Village upon completion of the Agreement, the CONSULTANT shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONSULTANT keeps and maintains public records upon completion of the Agreement, the CONSULTANT shall meet all applicable requirements for retaining public records. Records that are stored electronically must be provided to the VILLAGE, upon request from the Village's custodian of public records, in a format that is compatible with the Village's information technology systems.

IF CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, PLEASE CONTACT THE VILLAGE CLERK, RECORDS CUSTODIAN FOR THE VILLAGE, AT (561) 790-5100, OR AT Ddisanto@RoyalPalmBeach.com, OR AT 1050 ROYAL PALM BEACH BLVD., ROYAL PALM BEACH, FLORIDA 33411.

18. SUCCESSIONS AND ASSIGNS. This Agreement shall be binding on CONSULTANT and its partners, successors, executors, administrators, assigns, and legal representatives. CONSULTANT shall not assign this Agreement without the express written approval of the VILLAGE via executed amendment.

19. OWNERSHIP OF DOCUMENTS. Any and all documents, records, disks, original drawings, or other information generated or created by CONSULTANT for the provision of Services under this Agreement shall become the property of the VILLAGE for its use and/or distribution as may be deemed appropriate by the VILLAGE.

20. ENTIRETY OF AGREEMENT AND MODIFICATION. The VILLAGE and CONSULTANT agree that this Agreement, together with the attached exhibits, sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. This Agreement supersedes all prior agreements, contracts, proposals, representations, negotiations, letters or other communications between the VILLAGE and CONSULTANT pertaining to the Services described herein, whether written or oral. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered except by written instrument executed by the parties hereto.

In Witness Whereof, the parties have hereunto set their hands the day and year first above written.

Witnesses to CONSULTANT:

COTLEUR & HEARING, LLC:

Donaldson Hearing, Manager

Witnesses to VILLAGE:

VILLAGE OF ROYAL PALM BEACH:

Ray Liggins, P.E., Village Manager

Attest/Authenticated:

Village Clerk

(Corporate Seal)