

RESOLUTION NO.712

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SEWALL'S POINT, FLORIDA, APPROVING THE AGREEMENT FOR CONTINUING PROFESSIONAL CONSULTING SERVICES WITH MARCELA CAMBLOR & ASSOCIATES, INC. FOR TOWN PLANNING AND TRANSPORTATION ENGINEERING SERVICES FOR S.E. OCEAN BOULEVARD BETWEEN THE LYONS AND EVANS CRARY BRIDGES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Sewall's Point, Florida is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, it is necessary for the Town to obtain the services of a town planner and transportation engineer on a continuing basis for the design and development of S.E. Ocean Boulevard between the Lyons and Evans Crary bridges; and

WHEREAS, in accordance with Section 287.055, Florida Statutes, also known as the Consultant's Competitive Negotiation Act (the "CCNA"), the Town issued a Request for Qualifications for said services on July 27, 2010 (the "RFQ"); and

WHEREAS, Marcel Cambor & Associates, Inc. ("Cambor"), responded to the RFQ, is qualified to render said services, and represents it is capable and prepared to provide such services; and

WHEREAS, the Town wishes to enter into an "Agreement for Continuing Professional Consulting Services" with Cambor for such continuing services (the "Agreement"); and

WHEREAS, the Town has determined that entering into the Agreement is in the best interest of the health, safety, and welfare of its respective residents.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SEWALL'S POINT, FLORIDA:

Section 1. The whereas clauses are incorporated herein as true and correct and as the legislative findings of the Town Commission.

Section 2. The Town Manager is authorized to execute the Agreement in a form similar to the form attached hereto and incorporated herein as Exhibit "A."

Section 3. Effective Date. This Resolution shall take effect immediately upon adoption.

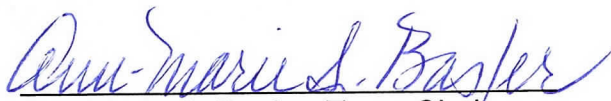
	<u>AYE</u>	<u>NAY</u>
MARK KLINGENSMITH, MAYOR	✓	—
JACQUI THURLOW-LIPPISCH, VICE MAYOR	✓	—
PAUL SCHOPPE, Commissioner	✓	—
TOM BAUSCH, Commissioner	✓	—
PAM BUSHA, Commissioner	✓	—

The Town Manager thereupon declared this Resolution No. 712 approved and adopted by the Town Commission of the Town of Sewall's Point on this 25th day of August, 2010.

TOWN OF SEWALL'S POINT, FLORIDA

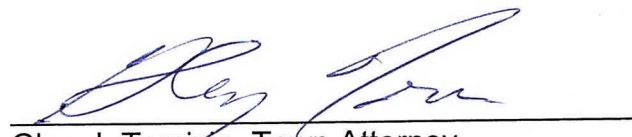

Robert Kellogg, Town Manager

ATTEST:


Ann-Marie S. Basler, Town Clerk

(TOWN SEAL)




Glen J. Torcivia, Town Attorney
Florida Bar No. 343374
Approved as to form and legal sufficiency

AGREEMENT FOR CONTINUING PROFESSIONAL CONSULTING SERVICES

THIS AGREEMENT is made this 30th day of August, 2010, by and between the Town of Sewall's Point, a Florida municipal corporation (hereinafter referred to as the TOWN) and Marcela Cambior & Associates Inc. (hereinafter referred to as CONSULTANT), a Florida corporation, whose principal address is 207 S.W. 5th Street, Stuart, Florida 34994.

WHEREAS, it is necessary for the TOWN to obtain the services of a town planner and transportation engineer on a continuing basis for the design and development of S.E. Ocean Boulevard between the Lyons and Evans Crary bridges; and

WHEREAS, in accordance with Section 287.055, Florida Statutes, also known as the Consultant's Competitive Negotiation Act (the "CCNA"), the Town issued a Request for Qualifications for said services on July 27, 2010 (the "RFQ"); and

WHEREAS, CONSULTANT responded to the RFQ, is qualified to render said services and represents it is capable and prepared to provide such services.

NOW, THEREFORE, in consideration of the promises contained herein, the parties hereto agree as follows:

ARTICLE 1 EFFECTIVE DATE

The effective date of this Agreement shall be the 30th day of August, 2010.

The term of this Agreement shall be for an indefinite period of time, subject to appropriation of funding, except that it may be terminated as provided herein.

ARTICLE 2 SERVICES TO BE PERFORMED BY CONSULTANT

2.1 GENERAL

CONSULTANT shall perform the services as specifically stated in the RFQ's Scope of Work and as stated in the CONSULTANT's Proposal, which is attached hereto and incorporated herein by reference as **Exhibit A**, and as may be specifically designated and authorized by the TOWN (the "Services").

2.2 WORK AUTHORIZATION

The TOWN will issue a work authorization to the CONSULTANT that will set forth a specific scope of services, amount of compensation, a completion date and shall be approved by the Town Manager or designee.

ARTICLE 3 COMPENSATION

3.1 GENERAL

As compensation for providing the continuing services enumerated in the RFQ and the attached Scope of Work, the TOWN shall pay the CONSULTANT an amount not to exceed Ten Thousand Dollars (\$10,000.00). The not-to-exceed amount is based on the negotiated hourly rates set forth in **Exhibit A**. Unless specifically provided in **Exhibit A**, CONSULTANT shall charge the TOWN its direct cost without mark-up for utilization of sub-contractors or for the provision of goods the CONSULTANT obtained from a third party.

3.2 DELAY

The CONSULTANT shall not be entitled to an increase in the agreed to sum or payment from the TOWN for direct, indirect, consequential, impact or other costs, expenses or damages, including, but not limited to, costs of acceleration or inefficiency, arising because of periods of suspension or delay, disruption, interference or hindrance from any circumstances.

ARTICLE 4 INSURANCE

During the performance of the Services under this Agreement, CONSULTANT shall maintain the following insurance policies written by an insurance company authorized to do business in Florida:

4.1 General Liability Insurance with each occurrence limits of not less than Five Hundred Thousand Dollars (\$500,000), personal injury and advertising injury liability of not less than Five Hundred Thousand Dollars (\$500,000), and general aggregate of not less than Five Hundred Thousand Dollars (\$500,000). Coverage shall not contain any endorsement excluding Contractual Liability or Cross Liability unless granted in writing by the TOWN.

4.2 Workers' Compensation Insurance in accordance with statutory requirements and Employer's Liability Insurance with limits of not less than One Hundred Thousand Dollars (\$100,000) for each accident, not less than One Hundred Thousand Dollars (\$100,000) for each disease, and not less than Five Hundred Thousand Dollars (\$500,000) aggregate.

4.3 Professional Liability Insurance with limits of not less than One Million Dollars (\$1,000,000) annual aggregate.

4.4 Hired & Non Hired Vehicles Insurance with limits of not less than One Million Dollars Dollars (\$1,000,000) annual aggregate.

Deductible amounts shall not exceed five percent (5%) of the total amount of required insurance in each category. Should any policy contain any unusual exclusion, said exclusions shall be so indicated on the certificate(s) of insurance.

CONSULTANT shall furnish the TOWN certificates of insurance which shall include a provision that policy cancellation, non-renewal, or reduction of coverage will not be effective until at least thirty (30) days written notice has been made to the TOWN. CONSULTANT

shall include the TOWN as an additional insured on the General 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 TOWN. Compliance with the foregoing requirement shall not relieve the CONSULTANT of its liability and obligations under this Agreement.

The TOWN reserves the right to review, modify, reject or accept any required policies of insurance, including limits, coverages or endorsements herein from time to time throughout the term of this Agreement. The TOWN reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.

ARTICLE 5 STANDARD OF CARE

CONSULTANT shall exercise the same degree of care, skill, and diligence in the performance of the Services as is ordinarily provided by a comparable professional under similar circumstances, and CONSULTANT shall, at no additional cost to the TOWN, re-perform Services which fail to satisfy the foregoing standard of care. CONSULTANT warrants that all Services shall be performed by skilled and competent personnel to the highest professional standards in the field.

ARTICLE 6 INDEMNIFICATION

6.1 GENERAL

Having considered the risks and potential liabilities that may exist during the performance of the Services and in consideration of the promises included herein, the TOWN and CONSULTANT agree to allocate such liabilities in accordance with this Article 6.

6.2 INDEMNIFICATION

CONSULTANT agrees to protect, defend, indemnify, and hold harmless the TOWN, its employees, and representatives from any and all claims, liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees and court costs, including appeals, for which the TOWN, its employees, and representatives can or may be held liable to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of CONSULTANT, its employees, or agents arising out of or connected with this Agreement. CONSULTANT shall not be required to indemnify the TOWN or its agents, employees, or representatives when an occurrence results from the wrongful acts or omissions of the TOWN or its agents, employees, or representatives. Nothing contained herein shall be construed or interpreted as consent by the TOWN to be sued, nor as a waiver of sovereign immunity beyond the waiver or monetary limits provided in Section 768.28, Florida Statutes.

6.3 SURVIVAL

Upon completion of all Services, obligations, and duties provided for in this Agreement or in the event of termination of this Agreement for any reason, the terms and conditions of this Article shall survive.

ARTICLE 7 INDEPENDENT CONTRACTOR

CONSULTANT undertakes performance of the Services as an independent contractor and shall be wholly responsible for the methods of performance. The TOWN shall have no right to supervise the methods used, but the TOWN shall have the right to observe such performance. CONSULTANT shall work closely with the TOWN in performing Services under this Agreement.

ARTICLE 8 COMPLIANCE WITH LAWS

In performance of the services, CONSULTANT will comply with applicable regulatory requirements, including federal, state, special district, and local laws, rules, regulations, orders, codes, criteria, and standards. Proof of required licenses and approvals shall be submitted to the TOWN's representative upon request.

ARTICLE 9 SUBCONSULTING

The TOWN reserves the right to accept the use of a subconsultant or to reject the selection of a particular subconsultant. If a subconsultant fails to perform or make progress as required by this Agreement and it is necessary to replace the subconsultant to complete the work in a timely fashion, CONSULTANT shall promptly do so, subject to acceptance of the new sub consultant by the TOWN. Any rejection shall in no way obligate the TOWN to accept any change in pricing or scheduling, but the TOWN may, in its sole discretion, agree to same.

ARTICLE 10 FEDERAL AND STATE TAXES

The TOWN is exempt from Federal Tax and State Sales and Use Taxes. Upon request, the TOWN will provide an exemption certificate to CONSULTANT. CONSULTANT shall not be exempted from paying sales tax to its suppliers for materials to fulfill contractual obligations with the TOWN, nor shall CONSULTANT be authorized to use the TOWN'S Tax Exemption Number in securing such materials.

ARTICLE 11 AVAILABILITY OF FUNDS

The obligations of the TOWN under this Agreement are subject to the availability of funds lawfully appropriated for its purpose by the Town Commission. The TOWN reserves the right to fiscally fund out at any time without penalty.

ARTICLE 12 THE TOWN'S RESPONSIBILITIES

The TOWN shall be responsible for providing information on hand required by CONSULTANT, including existing reports, studies, planning information, and other required data that are available in the files of the TOWN.

ARTICLE 13 TERMINATION OF AGREEMENT

This Agreement may be terminated by CONSULTANT upon thirty (30) days' prior written notice to the TOWN in the event of substantial failure by the TOWN to perform in accordance with the terms of the Agreement through no fault of CONSULTANT. It may also be terminated by the TOWN, with or without cause, upon thirty (30) days' written notice to CONSULTANT. Unless CONSULTANT is in breach of this Agreement, CONSULTANT shall be paid for Services rendered to the TOWN'S satisfaction through the date of termination. After receipt of a Termination Notice, and except as otherwise directed by the TOWN, CONSULTANT shall:

- A. Stop work on the date and to the extent specified.
- B. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
- C. Transfer all work in process, completed work, and other material related to the terminated work THE TOWN.
- D. Continue and complete all parts of the work that have not been terminated.

CONSULTANT shall be paid for Services actually rendered to the date of termination.

ARTICLE 14 UNCONTROLLABLE FORCES

Neither the TOWN nor CONSULTANT shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the nonperforming party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to, fire, flood, earthquake, severe or unusual weather conditions, epidemic, war, riot, civil disturbance, and sabotage.

Neither party shall, however, be excused from performance if nonperformance is due to forces which are preventable, removable, or remediable, and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the

other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

ARTICLE 15 GOVERNING LAW AND VENUE

The laws of the State of Florida shall govern this Agreement. Any and all legal action necessary to enforce this Agreement will be held in Martin County, and the Agreement will be interpreted according to the laws of the State of Florida.

ARTICLE 16 NON-DISCRIMINATION

CONSULTANT warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, gender, age, or national origin.

ARTICLE 17 WAIVER

A waiver by either the TOWN or CONSULTANT of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

ARTICLE 18 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. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

The provisions of this Article shall not prevent the entire Agreement from being void should a provision, which is of the essence of the Agreement, be determined to be void.

ARTICLE 19 ENTIRETY OF AGREEMENT

The TOWN and CONSULTANT agree that this Agreement 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 TOWN and CONSULTANT pertaining to the Services, 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.

ARTICLE 20 MODIFICATION

This Agreement may be modified only by a written amendment executed by both parties.

ARTICLE 21 SUCCESSORS AND ASSIGNS

The TOWN and CONSULTANT each binds itself and its partners, successors, assigns, and legal representatives to the other party to this Agreement and to its partners, successors, executors, administrators, assigns, and legal representatives. CONSULTANT shall not assign this Agreement without the express written approval of the TOWN via executed amendment.

ARTICLE 22 CONTINGENT FEES

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

ARTICLE 23 TRUTH-IN-NEGOTIATION CERTIFICATE

Execution of this Agreement by CONSULTANT shall act as the execution of a truth-in-negotiation certificate certifying that the wage rates, overhead charges and other costs used to determine the compensation provided for in this Agreement are accurate, complete, and current as of the date of the Agreement and no higher than those charged the CONSULTANT's most favored customer for the same or substantially similar services.

The said rates and costs shall be adjusted to exclude any significant sums should the TOWN determine that the rates and costs were increased due to inaccurate, incomplete, or noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. The TOWN shall exercise its rights under this "Certificate" within one (1) year following payment.

ARTICLE 24 OWNERSHIP OF DOCUMENTS

Any and all documents, records, disks, or other information shall become the property of the TOWN for its use and/or distribution as may be deemed appropriate by the TOWN.

ARTICLE 25 ACCESS AND AUDITS

CONSULTANT shall maintain adequate records to justify all charges and costs incurred in performing the Services for at least three (3) years after completion of this Agreement. The TOWN shall have access to such books, records, and documents as required in this Article for the purpose of inspection or audit during normal working business hours at CONSULTANT'S place of business.

ARTICLE 26 NOTICE

Any notice, demand, communication, or request required or permitted hereunder shall be in writing and delivered in person or sent by certified mail, postage prepaid as follows:

As To THE TOWN

Town of Sewall's Point
One South Sewall's Point Road
Sewall's Point, Florida 34996

As To CONSULTANT

Marcela Camblor, AICP
Marcela Camblor & Associates Inc.
207 S.W. 5th Street
Stuart, Florida 34994

Notices shall be effective when received at the addresses as specified above. Changes in the respective addresses to which such notice is to be directed may be made from time to time by either party by written notice to the other party. Facsimile transmission is acceptable notice effective when received; however, facsimile transmissions received (i.e., printed) after 6:00 p.m. or on weekends or holidays will be deemed received on the next business day. The original of the notice must additionally be mailed as required herein.

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of CONSULTANT and the TOWN.

ARTICLE 27 CONTRACT ADMINISTRATION

Services of CONSULTANT shall be under the general direction of the Town Manager or his designee, who shall act as the TOWN'S representative during the term of the Agreement.

ARTICLE 28 KEY PERSONNEL

CONSULTANT shall notify the TOWN in the event of key personnel changes which might affect this Agreement. Notification shall be made within ten (10) days of said changes. The TOWN has the right to reject proposed changes in key personnel.

ARTICLE 29 CONFIDENTIALITY

No reports, information, computer programs, documentation, and/or data given to or prepared or assembled by CONSULTANT under this Agreement shall be made available to any individual or organization by CONSULTANT without prior written approval of the TOWN.

ARTICLE 30 CONFLICT OF INTEREST

CONSULTANT represents that it has provided a list of all current clients, which is attached hereto and incorporated herein by reference as **Exhibit B** (attached hereto and incorporated herein by this reference), subject to the jurisdiction of the TOWN. CONSULTANT represents that the representation of these existing clients will not either directly or indirectly conflict in any manner with the performance of the Services under this

Agreement. Any actual or potential conflict between existing clients and responsibilities under this Agreement shall be immediately brought to the attention of the TOWN.

During the term of this Agreement, CONSULTANT agrees not to provide Services for any developer or property owner (other than those identified on **Exhibit B**) who has applied for or will be applying for a permit or other official sanction from the TOWN without the written consent of the TOWN. CONSULTANT shall promptly notify the TOWN in writing of all potential or actual conflicts of interest for any prospective business association, interest, or other circumstance which may influence or appear to influence CONSULTANT'S judgment or quality of the Services. The notice shall identify the prospective business association, interest, or circumstance and the nature of work that CONSULTANT wants to undertake and request the TOWN'S response as to whether the association, interest, or circumstance would, in the opinion of the TOWN, constitute a conflict of interest if entered into by CONSULTANT. The TOWN agrees to notify CONSULTANT of its opinion within thirty (30) days of receipt of notification by CONSULTANT. If, in the opinion of the TOWN, the prospective business association, interest, or circumstance would not constitute a conflict of interest by CONSULTANT, the TOWN shall so state in its response, and the association, interest, or circumstance shall not be deemed to be a conflict of interest with respect to the Services.

ARTICLE 31 PUBLIC ENTITY CRIMES

No consultant may be a person or affiliate identified on the Department of General Services "Convicted Vendor" list. This list is defined as consisting of persons and affiliates who are disqualified from the public contracting and purchasing process because they have been found guilty of a public entity crime. The CONSULTANT shall comply with Section 287.133, Florida Statutes, as is amended from time to time.

ARTICLE 32 DISPUTE RESOLUTION

All claims arising out of this Agreement or its breach shall be submitted first to mediation in accordance with the local rules for mediation in Martin County, Florida. The parties shall share the mediator's fee equally. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

ARTICLE 33 TIME

Time is of the essence in all respects under this Agreement.

ARTICLE 34 PREPARATION OF AGREEMENT

This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.


ARTICLE 35 SURVIVAL

Any provision of this Agreement which is of a continuing nature or imposes an obligation which extends beyond the term of this Agreement shall survive its expiration or earlier termination.

IN WITNESS WHEREOF, the TOWN and CONSULTANT have executed this Agreement as of the day and year first above written.

ATTEST:

TOWN OF SEWALL'S POINT, a Florida
Municipal Corporation

BY: 
ANN MARIE BASLER
TOWN CLERK

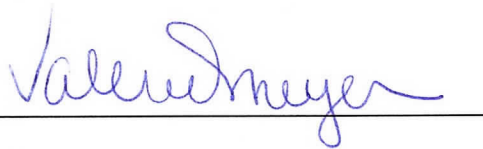
BY: 
ROBERT KELLOGG
TOWN MANAGER

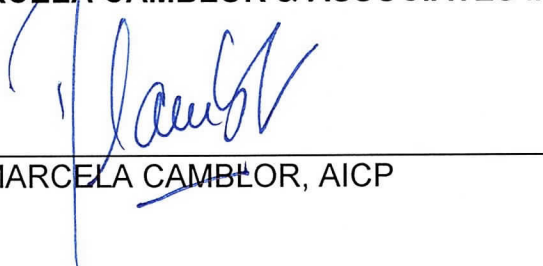
APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

BY: 
GLEN J. TORCIVIA
TOWN ATTORNEY

ATTEST:

CONSULTANT:
MARCELA CAMBLOR & ASSOCIATES INC.

By: 

By: 
MARCELA CAMBLOR, AICP

(Corporate Seal)

EXHIBIT A
PROPOSAL – SCOPE OF WORK

EXHIBIT B
CLIENT LIST



MARCELA CAMBLOR & ASSOCIATES

Town Planning

August 11, 2010

Robert Kellogg
Town Manager, Town of Sewall's Point
One South Sewall's Point Road
Sewall's Point, FL, 34996

Subject: Proposal to provide continuing Town Planning, and Transportation Engineering Services for SE Ocean Blvd (A1A) between the Lyons and Evans Crary bridges in Sewall's Point.

Dear Mr. Kellogg:

Thank you for considering Marcela Camblor & Associates, Inc., and Billy Hattaway, P.E. (hereon "the Consultants") to provide the Town of Sewall's Point (hereon "the Town") with continuing Town Planning and Transportation Engineering Services for SE Ocean Blvd. (A1A) between the Lyons and Evans Crary bridges. We are submitting proposed agreement with corresponding hourly fees to perform such services.

If you have any questions or wish to further refine our suggested scope of services, please contact us at your earliest convenience. However, if this agreement meets with your approval, we will schedule each phase of this project to begin upon its signature by both parties. In that case, we ask that you sign the selected in the space provided and return a signed copy to our office.

PHASE III – CONTINUING SERVICES AGREEMENT

The Consultants shall:

- Assist the Town in the design/development of the corridor on an as-needed basis to ensure that the proposed improvements result in a signature, pedestrian-oriented, and significantly landscaped road that addresses the State’s transportation needs. Such services are intended to provide assistance with tasks not contemplated in Phases I & II of the contract for Town Planning and Transportation Engineering Services between the consultant and the Town.

Payment Fees & Schedule –

- A. Professional services described above shall be billed at the following rates:
 - i. \$125.00/hour for Urban Design/Town Planning;
 - ii. \$215.00/hour for Engineering Services.
 - iii. Professional services will not exceed \$10,000.00 without express (written) approval from the Town Commission or their designee.
 - iv. Miscellaneous phone calls, copies and offices supplies are included in the above rates. Extra outside costs for direct project expenses including printing and reproduction, are billed at 1.1 times actual cost.
 - v. No outside consultants other than those mentioned in the RFQ will be billed under this contract.

SECTION III – CONTRACT ACCEPTANCE

PHASE I

Approved and accepted on this _____ day of _____, 2010

By:.....

Robert Kellogg
Town Manager
Town of Sewall’s Point

By:

Marcela Cambior, AICP
Principal
Marcela Cambior & Associates, Inc.