

## INVESTMENT ADVISOR AND CONSULTANT AGREEMENT

THIS INVESTMENT ADVISOR AND CONSULTANT AGREEMENT (Agreement) is entered into this day of \_\_\_\_\_, 2023, by and between the CITY OF SUNRISE (City), and BURGESS CHAMBERS AND ASSOCIATES, INC. (Consultant).

### WITNESSETH

WHEREAS, the City has adopted and maintains a Governmental Money Purchase Plan & Trust Plan for all employees who elect to participate (Plan No. 107658), administered by MissionSquare Retirement Corporation (MissionSquare Retirement) in accordance with Section 401(a) of the Internal Revenue Code, established by Resolution No. 01-87 and amended most recently by Resolution No. 17-12-22-A (Employee 401 Plan); and

WHEREAS, the City has adopted and maintains a Governmental Money Purchase Plan & Trust (Plan No. 107108) for certain management and senior management employees, administered by MissionSquare Retirement in accordance with Section 401(a) of the Internal Revenue Code, established by Ordinance No. 715-X-99-B and amended most recently by Ordinance No. 715-X-22-A (Employer 401 Plan); and

WHEREAS, the City has adopted and maintains a Deferred Compensation plan for all employees who elect to participate (Plan No. 303120), in accordance with Section 457(b) of the Internal Revenue Code, established by Resolution No. 89-73 (457 Plan); and

WHEREAS, the City adopted and maintains a Retirement Health Savings Plan for participating employees (Plan No. 800804) administered by MissionSquare Retirement, established by Resolution No. 05-33, and amended most recently by Resolution No. 05-33-16-A (RHS Plan). The RHS Plan was closed to new participants in 2006. Existing participants are able to maintain their existing accounts in the Plan and continue to manage their Plan account investments in accordance with the Plan; and

WHEREAS, the Employer 401 Plan, the Employee 401 Plan, the 457 Plan and the RHS Plan are collectively referred to as the "Plan" or "Plans;" and

WHEREAS, the City approved an Administrative Services Agreement with International City Management Association Retirement Corporation, now known as MissionSquare Retirement, for the Plans via Resolution No. 17-12; and

WHEREAS, the Consultant represents that it is skilled in the area of investment performance, and the Consultant represents that it is free and independent of the influence of any Investment Managers of assets for any of the Plans, and will act as a fiduciary with respect to the Plans; and

WHEREAS, the City desires that the Consultant serve as the City's investment advisor and consultant with respect to the monitoring of the investment performance of certain of the assets of the Plans and monitoring the service guarantees as required by the City's agreement with MissionSquare Retirement, and the Consultant is willing to so serve.

NOW THEREFORE, in consideration of the mutual agreements herein contained, it is covenanted and agreed as follows:

1. Appointment of Consultant. The City appoints the Consultant as an independent consultant with respect to assisting the City in monitoring the investment performance of the Plan assets custodied with MissionSquare Retirement. This Agreement shall be effective when fully executed by the parties for the initial term of three (3) years with the option to renew for three (3) additional 1-year terms. This Agreement may be terminated by either party by providing thirty (30) days' written notice to the other party by hand delivery, overnight delivery or certified mail.
2. Duties of the Consultant. Consultant's services under this Agreement shall include, but are not limited to the items set forth below:
  - a. Assist the City in determining and outlining specific investment objectives and help draft and execute a Statement of Investment Policy to be adhered to by MissionSquare Retirement and periodic review of policy.
  - b. Assist the City in evaluating the investment performance of the investment vehicles offered by MissionSquare Retirement and any other investment vehicle offered to Plan participants.
  - c. Consultant shall provide in report form on a quarterly basis, the annual rates of return for the totality of the Plan assets, as well as each investment vehicle offered to members, calculated according to the American Banking Institute method. The Consultant shall also provide an annual database ranking for the above returns, and comparisons to appropriate indices. All rates of return shall be reported both as gross rate of return and a rate that is net of fees, if applicable.
  - d. The Consultant shall make an oral presentation of the above report, at a time and place designated by the City, on a quarterly basis.
  - e. The Consultant shall assist the City in monitoring compliance by the Investment Managers with Chapters 112 Florida Statutes and other applicable Florida Statutes and the investment objectives and guidelines set forth in the Statement of Investment Policy as adopted by the City.
  - f. Assist the City in determining the appropriate fund line up for Plan participants.
  - g. Evaluate the performance of MissionSquare Retirement as it relates to the service guarantees listed in their agreement.

- h. Keep the City apprised of legislative changes affecting the employee plans and investment education.
- i. Serve in a fiduciary capacity to the City.

3. Fees and Costs.

For services rendered under this Agreement, the City shall pay the Consultant a fee of 3 basis points (.03%) per annum based on the average daily value of the net assets of each Plan, calculated on a pro rata basis, in an amount not to exceed an annual combined total fee of \$39,000 for all Plans. Consultant shall invoice the City for each Plan's prorated amount which is payable quarterly in arrears. The City will authorize approved invoices for payment directly from MissionSquare Retirement, acting as the Recordkeeper of the applicable Plan. No other fees or costs shall be payable. Invoices received from the Consultant pursuant to this Agreement will be reviewed and approved by the City's representative, indicating that Services have been rendered in conformity with the Agreement and then will be sent to the Finance and Administrative Services Department for payment. Following the City representative's approval, invoice payments will be made by the City in accordance with Florida Prompt Payment Act, Florida Statutes Section 218.70. The City shall pay Consultant for work performed in accordance with §218.70, et seq., Florida Statutes, the Local Government Prompt Payment Act, after receipt of Consultant's proper invoice. To be deemed proper, each invoice must comply with all statutory terms and all requirements specified by the City in its contract / agreement and / or purchase order. If a payment request or invoice does not meet the contract / agreement / purchase order requirements, the City will reject the payment request or invoice as specified in accordance with §218.70, et seq., Florida Statutes. The rejection will be written and will specify the deficiency and the action necessary to make the payment request or invoice proper.

4. Qualifications. The Consultant certifies that it is professionally qualified as an independent consultant to serve as an investment advisor and to serve as a consultant and evaluate the performance of professional money managers/investment managers, and that it has at least five years of experience as an Investment Consultant in the public sector. Furthermore, the Consultant is an investment advisor registered with the Securities and Exchange Commission (SEC) under the Investment Advisors Act of 1940.

Independent Status. The Consultant certifies that it is not associated in any manner with MissionSquare Retirement, any of the Plans, or any of the investment vehicles offered through the MissionSquare Retirement platform. Further, the Consultant certifies that it shall not be associated in any manner with any future Recordkeeper or investment vehicles offered on the Recordkeeper's platform which performance the Consultant is engaged to evaluate.

5. Fiduciary Relationship. Consultant will provide the services contracted for in order to assist the City in making prudent investment judgments. In performing services hereunder, Consultant shall act solely in the best interest of the members of the Plans and shall have a reasonable basis for any information provided. However, final decision-making authority and responsibility resides with the City. The Consultant acknowledges that it is a fiduciary of the Plan within the meaning of the Employee Retirement Income Security Act of 1974 "ERISA) and Florida Statutes §112.656.
  
6. Insurance. Consultant agrees to maintain, on a primary, non-contributory basis and at its sole expense, at all times during the life the Agreement the following insurance coverages, limits, including endorsements described herein. The requirements contained herein, as well as City's review or acceptance of insurance maintained by Consultant is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Consultant under any this Agreement. Any coverage maintained by the City shall apply excess of, or contingent upon the absence of, insurance required or maintained by Consultant.
  - a. Consultant agrees to maintain Professional (Errors & Omissions) Liability at a limit of liability not less than \$5,000,000 Per Claim, \$5,000,000 Annual Aggregate, or a \$5,000,000 Combined Single Limit. When a self-insured retention (SIR) or deductible exceeds \$100,000, the City reserves the right, but not the obligation, to review and request a copy of the Consultant's most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, Consultant agrees to maintain a Retroactive Date prior to or equal to the effective date of any resulting contract. In the event the policy is cancelled, non-renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of this Agreement, Consultant agrees to purchase a SERP with a minimum reporting period not less than two (2) years. The requirement to purchase a SERP shall not relieve Consultant of the obligation to provide replacement coverage.
  - b. Consultant agrees to provide City a Certificate of Insurance evidencing that all coverages, limits and endorsements required herein are maintained and in full force and effect, and Certificates of Insurance shall provide a minimum thirty (30) day endeavor to notify, when a manuscript notice endorsement is available by Consultant's insurer. If the Consultant receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Consultant agrees to notify the City by fax or email within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. The Certificate Holder(s) address shall read:

**Original to:**  
City of Sunrise  
Purchasing Department  
Attn: Finance Director  
10770 W. Oakland Park Blvd.  
Blvd. Sunrise, FL 33351  
Fax (954) 572-2278

**Copy to:**  
City of Sunrise  
Risk Management Division  
Attn: Risk Manager  
10770 W. Oakland Park  
Sunrise, FL 33351

[riskmanagement@sunrisefl.gov](mailto:riskmanagement@sunrisefl.gov)  
[financeadminservicesdirector@sunrisefl.gov](mailto:financeadminservicesdirector@sunrisefl.gov)

c. City reserves the right, but not the obligation, to revise any insurance requirement, not limited to limits, coverages and endorsements, or to reject any insurance policies which fail to meet the criteria stated herein. Additionally, City reserves the right, but not the obligation, to review and reject any insurer providing coverage due of its poor financial condition or failure to operating legally.

7. Assignability. This Agreement shall not be assigned without the prior written consent of the City.
8. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto.
9. Modification. This Agreement may be modified or revised only by mutual written amendment.
10. Prior Amendments. This Agreement supersedes all prior agreements with the Consultant, oral or written.
11. City's Responsibilities. The City represents that custodial account statements, asset valuations, and other information relating to the Plan as may be requested by Consultant are accurate and complete in all material aspects. Consultant shall not be required to verify the accuracy of such information and Consultant shall be entitled to rely on such information.
12. Indemnification. To the fullest extent permitted by law, the Consultant agrees to indemnify, defend and hold harmless the City of Sunrise, its officers, agents, volunteers, and employees from and against all claims, damages, losses, and expenses, including but not limited to attorneys' fees, court costs, or other alternative dispute resolution costs arising out of or resulting from the performance of work under this Agreement (1) provided that any such claims, damages, losses or expenses are attributable to the breach of duty to exercise due skill, care and diligence, breach of fiduciary duties of trust and loyalty, breach of contractual duties as set out under this Agreement as well as under the Statement of Investment Policy, or breach of duties arising from the regulatory framework and compliance,

and (2) are caused in whole or in part by the professional acts, errors, or omissions of the Consultant, Consultant's subcontractor(s), or anyone directly or indirectly employed or hired by Consultant or anyone for whose acts Consultant may be liable, REGARDLESS OF WHETHER OR NOT CAUSED IN PART BY THE CITY OF SUNRISE, ITS OFFICERS, AGENTS, VOLUNTEERS, OR EMPLOYEES. The City of Sunrise reserves the right, but not the obligation, to participate in the defense without relieving Consultant of any obligation hereunder. Consultant agrees this indemnity obligation shall survive the completion or termination of the Agreement.

13. General Provisions.

a. Discriminatory Vendor List. Pursuant to Section 287.134, Florida Statutes, an entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity. By execution of this Agreement, Consultant certifies that it has not been placed on the discriminatory vendor list as provided in Section 287.134, Florida Statutes.

b. Public Entity Crimes. Pursuant to Section 287.133, Florida Statutes, a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. By execution of this Agreement, Consultant certifies that it has not been placed on the convicted vendor list as provided in Section 287.133, Florida Statutes.

c. Scrutinized Company.

1. Pursuant to Section 287.135, Florida Statutes, Consultant certifies that it is not on the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes and that it is not engaged in a boycott of Israel.

2. Pursuant to Section 287.135, Florida Statutes, in the event the Agreement is for one million dollars or more, Consultant certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes; and Consultant further certifies that it is not engaged in business operations in Cuba or Syria.

3. Pursuant to Section 287.135, Florida Statutes, City may, at the option of the City Commission, terminate this Agreement if Consultant is found to have submitted a false certification as provided under subsection 287.135(5), Florida Statutes; has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel; has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; or has been engaged in business operations in Cuba or Syria.

d. Public Records. The Consultant shall comply with all applicable requirements contained in the Florida Public Records Law (Chapter 119, Florida Statutes), including but not limited to any applicable provisions in Section 119.0701, Florida Statutes. To the extent that Consultant and the Agreement are subject to the requirements in Section 119.0701, Florida Statutes, Consultant shall:

1. Keep and maintain public records required by the City to perform the services provided hereunder.

2. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law for the duration of the term of the Agreement and following completion of the Agreement if Consultant does not transfer the records to the City.

4. Upon completion of the Agreement, transfer, at no cost, to the City all public records in the possession of Consultant or keep and maintain public records required by the City to perform the service. If Consultant transfers all public records to the City upon completion of the Agreement, Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Consultant keeps and maintains public records upon completion of the Agreement, Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian

of public records, in a format that is compatible with the information technology systems of the City.

If Consultant fails to comply with the requirements in this Public Records Section, the City may enforce these provisions in accordance with the terms of this Agreement. If Consultant fails to provide the public records to the City within a reasonable time, it may be subject to penalties under Section 119.10, Florida Statutes.

**IF CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONSULTANT SHOULD CONTACT THE CITY'S CUSTODIAN OF PUBLIC RECORDS: THE CITY CLERK, FELICIA M. BRAVO, BY TELEPHONE ((954) 746-3333), E-MAIL (CITYCLERK@SUNRISEFL.GOV), OR MAIL (CITY OF SUNRISE, OFFICE OF THE CITY CLERK, 10770 WEST OAKLAND PARK BOULEVARD, SUNRISE, FLORIDA 33351).**

- e. Electronic Recordkeeping. Consultant certifies that its products and services meet all recordkeeping requirements of the State of Florida, including but not limited to those in Chapter 119, Florida Statutes and Rule 1B-26.003(6)(g), Florida Administrative Code.
  
- f. Non-Discrimination. Consultant warrants and represents that all of its employees are treated equally during employment without regard to race, color, national origin, sex, gender identity, sexual orientation, age, disability/handicap, religion, family or income status.
  
- g. Compliance with Laws. Consultant and its services must comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations including, without limitation, American with Disabilities Act, 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and any related federal, state, or local laws, rules, and regulations.
  
- h. Notice. In order for a notice to a party to be effective under this Agreement, notice must be sent via U.S. certified mail, overnight delivery, or hand delivery to the addresses listed below and shall be effective upon mailing if sent by certified mail or overnight delivery and effective upon receipt if hand delivered. The addresses for notice shall remain as set forth herein unless and until changed by providing Notice of such change in accordance with the provisions of this Notice section.



If to Consultant, to: Frank Wan, Senior Vice President  
Burgess Chambers & Associates, Inc.  
315 E. Robinson, Suite 690  
Orlando, FL 32801

If to City, to: City Manager  
City Manager's Office  
City of Sunrise  
10770 West Oakland Park Boulevard  
Sunrise, FL 33351

With a copy to: City Attorney  
City Attorney's Office  
City of Sunrise  
10770 West Oakland Park Boulevard  
Sunrise, FL 33351

i. Governing Law. The Agreement shall be governed by the laws of the State of Florida. Except as set forth in the indemnification section of the Agreement, should the Parties be involved in legal action arising under, or connected to, this Agreement, each party will be responsible for their own attorneys' fees and costs. The venue for any litigation will be Broward County, Florida. Both Parties hereby agree to waive a jury trial, and will proceed to a trial by judge if necessary.

j. E-Verify - Employment Eligibility

1. Consultant warrants and represents that it complies with Section 448.095, Florida Statutes, as may be amended. Consultant (1) has registered with and uses the E-Verify System (E-Verify.gov), to electronically verify the work authorization status of all newly hired employees; and (2) has verified that all of the Consultant's subcontractors performing the duties and obligations of this Agreement are registered with and use the E-Verify System to electronically verify the employment eligibility of all newly hired workers.
2. Consultant shall obtain from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an Unauthorized Alien, as that term is defined in Section 448.095(1)(k), Florida Statutes, as may be amended. Consultant shall maintain a copy of any such affidavit from a subcontractor for, at a minimum, the duration of the subcontract and any extension thereof. This provision shall not supersede any provision of this Agreement which requires a longer retention period.

3. City shall terminate this Agreement if it has a good faith belief that Consultant has knowingly violated Section 448.09(1), Florida Statutes, as may be amended. If City has a good faith belief that Consultant's subcontractor has knowingly violated Section 448.09(1), Florida Statutes, as may be amended, City shall notify Consultant to terminate its contract with the subcontractor and Consultant shall immediately terminate its contract with the subcontractor.
4. If City terminates this Agreement pursuant to the subsection 3 above, Consultant shall be barred from being awarded a future contract by City for a period of one (1) year from the date on which this Agreement was terminated. In the event of such Agreement termination, Consultant shall also be liable for any additional costs incurred by City as a result of the termination.

k. Foreign Gifts and Contracts. Pursuant to Fla. Stat. §286.101(3), where the amount of the grant or contract is \$100,000.00 or more, Consultant shall disclose any current or prior interest of, any contract with, or any grant or gift received from a country of foreign concern with a value of \$50,000 or more that was received or in force during the previous five (5) years. Definitions, disclosure requirements and exceptions are found in Fla. Stat. §268.101. Consultant represents and warrants it has complied with Fla. Stat. §286.101, it has properly disclosed such interests, contracts, grants or gifts to City before execution of this Agreement, and it will remain in compliance with Fla. Stat. §286.101 for the duration of this Agreement. IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their respective authorized representatives on the dates indicated below:

**CITY OF SUNRISE**

**BURGESS CHAMBERS  
AND ASSOCIATES, INC.**

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

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

Print: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_