

# **A G R E E M E N T**

Between

**TOWN OF PALM BEACH**

and

**BEACON WiFi Technologies, LLC**

for

This is an Agreement between the TOWN OF PALM BEACH, a municipal corporation of the State of Florida (hereinafter the "TOWN"), through its TOWN Council;

AND

BEACON WiFi Technologies, LLC successors and assigns, (hereinafter "CONTRACTOR"). This agreement is dated \_\_\_\_\_, 20\_\_\_\_.

W I T N E S S E T H, in consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, TOWN and CONTRACTOR, agree as follows:

## **ARTICLE I**

### **SCOPE OF SERVICES**

CONTRACTOR agrees to provide all materials and services necessary to provide a secure wireless internet access network as required in Town of Palm Beach, Bid/RFP No. 2018 -17 attached hereto as Exhibit "A" and by this reference made a part hereof.

## **ARTICLE II**

### **TERM**

The term of this Agreement shall be for one (1) year beginning July 1, 2018 and ending June 30, 2019. At the end of the one (1) year period, this Agreement may be extended for up to four (4) additional twelve (12) month periods upon mutual consent.

### **ARTICLE III**

#### **COMPENSATION AND METHOD OF PAYMENT**

The sole compensation to be paid to the CONTRACTOR by the TOWN for the wifi set up services shall be \$37,735. CONTRACTOR shall secure a 1 GBPS Internet Service from a local provider and provide same day repair service and online and telephone support, rendered hereunder shall be approximately \$849 per month. Payments shall be made by the TOWN on a monthly basis upon receipt of a proper invoice from CONTRACTOR based on each month of completed services. One twelfth of the amount due shall be paid within 30 days of receipt of a proper invoice. Payment for project services shall be based on actual amounts incurred monthly and shall be paid on the same schedule as routine services.

### **ARTICLE IV**

#### **CONTRACTOR RESPONSIBILITIES**

CONTRACTOR shall provide all materials and perform the services required to install and provide a secure wireless internet network for Bid/RFP No. 2018-17. The extent of the services to be rendered and frequency of performance are as stated in these specifications. CONTRACTOR shall provide competent labor as required to perform these services. CONTRACTOR shall respond to correct any deficiencies in performance of the services as identified by the TOWN Contract Coordinator. Deficiencies shall be corrected within forty eight (48) hours unless the TOWN Contract Coordinator allows additional time based on the complexity of the corrective action. All terms and conditions of RFP No. 2018-17 shall be apply during the full term of this contract.

### **ARTICLE V**

#### **MODIFICATION OF CONTRACT TERMS**

The terms of this contract may be modified by mutual consent to increase or decrease the scope of work, adjust prices in subsequent contract periods, or for such other purposes as shall become necessary during the conduct of the contract period. Such amendments shall be accomplished in writing as an addendum to the Contract.

### **ARTICLE VI**

#### **MISCELLANEOUS**

##### **6.1 TERMINATION**

This Agreement may be terminated by either party for cause, or by TOWN for

convenience, upon thirty (30) days written notice from the terminating party to other party. In the event of such termination, CONTRACTOR shall be paid its compensation for services performed to termination date. In the event that CONTRACTOR abandons this Agreement or causes it to be terminated by TOWN, CONTRACTOR shall indemnify TOWN against any loss pertaining to this termination.

For purposes of this Agreement, termination by TOWN for cause includes, but is not limited to, the following:

1. CONTRACTOR'S failure to keep, perform and observe each and every provision of this Agreement and such failure continues for a period of more than seven (7) days after delivery to CONTRACTOR of a written notice of such breach or default; or
2. CONTRACTOR'S abandonment of the work for a period of seven (7) days or more during the course of a year. Such days need not be consecutive.
3. Any material misrepresentation, written or oral, made by the CONTRACTOR to the TOWN;
4. Failure by the CONTRACTOR to timely perform and/or observe any or all of the covenants, rules, regulations, guidelines or terms and conditions of this Agreement; and/or
5. Insolvency, bankruptcy, and/or suggestion of bankruptcy on the part of the CONTRACTOR or the assignment of assets for the benefit of creditors by the CONTRACTOR.

CONTRACTOR recognizes and agrees that in the event of the termination or expiration of this Agreement, it will be necessary to assist the TOWN and/or a selected successor to CONTRACTOR with an orderly transition of work. CONTRACTOR shall be paid in accordance with Article III for all services rendered through the date of termination. All TOWN tools, materials, and supplies provided to CONTRACTOR during the course of the work shall be returned in good condition (except for normal wear and tear) upon termination.

## **6.2 EQUAL OPPORTUNITY EMPLOYMENT**

CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age, national origin, disability and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, national origin or disability. This provision shall include, but not be limited to, the following: employment upgrading, demotion or transfer; recruitment advertising, layoff or

termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships.

### **6.3 ASSIGNMENT**

This Agreement, or any interest herein, shall not be assigned, transferred or otherwise encumbered by CONTRACTOR, under any circumstances, without the prior written consent of TOWN.

### **6.4 INDEMNIFICATION OF TOWN**

To the fullest extent allowed by law the Contractor shall protect, defend, reimburse, indemnify and hold harmless the Town of Palm Beach, and the Town's officers, agents, employees free and harmless from and against any and all claims, losses, penalties, damages, settlements, costs, charges, attorneys or other professional fees, or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, cause or causes of action of every kind and character in connection with, or arising directly or indirectly out of or related to this Contract and the Work performed hereunder. Without limiting the generality of the foregoing, Contractor's Indemnity shall include all claims, damages, losses, or expense arising out of or related to personal injury, death, damages to property, defects in materials or workmanship, actual or alleged infringement of any patent, trademark, copyright, proprietary information, or applications of any thereof, or of any other tangible or intangible personal or property right, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation, or order of any court. Contractor agrees to investigate, respond, adjust and provide a defense for, all and any such claims, demands and actions at Contractor's sole expense and agrees to bear and remain liable for all such other costs and expenses relating thereto, even if such claim is groundless, false or fraudulent. Notwithstanding the foregoing, Contractor's Indemnity shall not extend to liability for damages to persons or property to the extent such damage was caused by any act, omission, or default of the Town, or by the Town's officers, agents and employees.

Contractor acknowledges and agrees that TOWN would not enter into a contract without this indemnification of TOWN by Contractor, and that TOWN'S entering into a contract shall constitute good and sufficient consideration for this indemnification. These provisions shall survive the expiration or earlier termination of the Contract. Nothing in this Contract shall be construed to affect in any way the TOWN'S rights, privileges, and immunities as set forth in Florida Statutes 768.28.

## 6.5 **INSURANCE**

The CONTRACTOR shall provide at its own cost and expense during the life of the contract, the following insurance coverages to the Town of Palm Beach (30) thirty business days prior to the commencement of any work. All service providers including any independent contractors and subcontractors utilized must comply with these requirements. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The insurance shall be evidenced by certificates and/or policies including premiums as determined by the Town of Palm Beach. It shall be an affirmative obligation upon the Service Provider to advise the Town's Risk Manager at fax no. 561-838-5497, e-mail [risk@townofpalmbeach.com](mailto:risk@townofpalmbeach.com), 360 S. County Road, Palm Beach, FL 33480 within 24 hours or the next business day of cancellation, non-renewal or modification of any stipulated insurance and failure to do so shall be construed to be a breach of this Agreement/contract. The Town of Palm Beach reserves the right to require additional coverages and limits based upon the particular service or change in service provided by the Service Provider.

If the CONTRACTOR maintains higher limits than the minimums shown below, the Town requires and shall be entitled to coverage for the higher limits maintained by the service provider.

Comprehensive General Liability Insurance coverage with limits of liability not less than \$1,000,000 Each Occurrence/\$2,000,000 Aggregate. The Certificate of Insurance shall indicate an Occurrence Basis. The Town of Palm Beach shall be endorsed as an additional insured under the General Liability coverage. The Service Provider's General Liability coverage shall be primary and non-contributory.

Professional Liability (Errors & Omissions) - must maintain professional liability or equivalent errors & omissions liability with limit of not less than \$1,000,000 per occurrence. For policies written on a claims made basis, service provider shall maintain a retroactive date prior to or equal to the effective date of this contract. In the event the policy is canceled, non-renewed, switched to an occurrence form or there is a change in retroactive date, service provider must purchase an extended reporting period rider during the life of this contract of not less than 3 years. Coverage is to apply on a primary basis.

Business Auto Liability coverage for any auto (all owned, hired, and non-owned autos) with limits not less than \$1,000,000 each occurrence combined single limit each accident. In the event service provider does not own any autos, the Town will accept proof of Hired and Non-Owned Auto Liability. For personally owned vehicles, the Town requires limits not less than \$300,000 each occurrence combined single limit.

For policies written on a Claims-made basis, service provider shall maintain a

retroactive date prior to or equal to the effective date of this contract. In the event the policy is canceled, non-renewed, switched to an occurrence form or there is a change in retroactive date, or any other event triggering the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of this contract, the service provider shall agree to purchase a SERP with a minimum reporting period of not less than three (3) years. Coverage is to apply on a primary basis.

Workers' Compensation coverage with statutory limits pursuant to Florida State Statute 440 or an exemption letter from the State. Should the scope of work performed by contractor qualify its employee for benefits under federal workers compensation statute (example, U.S. Longshore & Harbor Workers Act or Merchant Marine act), proof of appropriate federal act coverage must be provided. A waiver of subrogation must be provided.

Employers Liability coverage with limits not less than \$100,000 for each accident, \$100,000 disease (each employee) and \$500,000 disease (policy limit).

In the event that claims in excess of the insured amounts provided herein are filed by reason of any operations under the contract, the amount excess of such claims or any portion thereof may be withheld from any payment due or to become due the Service Provider until such time the Service Provider shall furnish such additional security covering such claims as may be determined by the Town of Palm Beach.

Umbrella or Excess Liability is required up to the minimum limit of liability if the limits of liability shown on the Certificate of Insurance under General Liability do not meet the minimum limit of liability as required.

All required insurance policies shall provide a waiver of subrogation and rights of recovery against the Town of Palm Beach, including its agents, officers, past and present employees, elected officials and representatives, the insurance policy in effect shall protect both parties and be primary and non-contributory for any and all losses covered by the above described insurance. Insurers have no recourse against the Town of Palm Beach for payment or assessments in any form on any insurance policy.

## **6.6 PERFORMANCE OF WORK BY CONTRACTOR/SUBCONTRACTORS**

6.6.1 It is expressly agreed that CONTRACTOR is and shall be in the performance of all work, services and activities under this Agreement, an independent contractor and not an employee, agent, or servant of the TOWN. All persons engaged in any work, service or activity performed pursuant to this Agreement shall at all times and in all places be subject to CONTRACTOR'S sole direction, supervision and control. CONTRACTOR shall exercise control over the means and manner in which it and its

employees perform and work, and in all manner in which it and its employees perform the work, and in all CONTRACTOR'S relationship and the relationship of its employees to the TOWN, shall be that of an independent contractor and not as employees or agents of the TOWN.

6.6.2 In the event CONTRACTOR, during the term of this Agreement, requires the services of any subcontractors or other professional associates, in connection with services covered under this Agreement, CONTRACTOR must secure the prior written approval of TOWN'S Purchasing Agent. Any subcontractor authorized to perform under this Agreement shall be required to possess the same insurance coverage as enumerated in Paragraph 6.5 herein.

## **6.7 LAWS AND REGULATIONS**

It is further understood by the parties that CONTRACTOR will, in carrying out the duties and responsibilities under this Agreement, abide by all federal, state and local laws.

## **6.8 CONTRACT COORDINATOR**

The TOWN'S Contractor Coordinator during the performance of services pursuant to this Agreement shall be Beth Zickar, Recreation Director.

## **6.9 NO CONTINGENT FEE**

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

## **6.10 GOVERNING LAW AND VENUE**

This agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County, and the Agreement will be interpreted according to the laws of Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other of further exercise thereof.

#### **6.11 ATTORNEY'S FEES**

In any action brought by either party for the enforcement of the obligations of the other party, the prevailing party shall be entitled to recover reasonable attorney's fees and costs.

#### **6.12 AUTHORITY TO ENGAGE IN BUSINESS**

CONTRACTOR hereby 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. Proof of such licenses and approvals shall be submitted to the TOWN'S representative upon request.

#### **6.13 ALL PRIOR AGREEMENTS SUPERSEDED**

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein; and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document.

#### **6.14 NOTICES**

Whenever either party desires to give notice unto the other, such notice must be in writing, sent by certified United States mail, return receipt requested, addressed to the party for whom it is intended at the place last specified; and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice:

##### **FOR TOWN OF PALM BEACH:**

PURCHASING MANAGER  
TOWN OF PALM BEACH  
951 Old Okeechobee Road, Suit "D"  
West Palm Beach, FL 33401

##### **FOR CONTRACTOR:**

BEACON WiFi Technologies, LLC.  
ATTN: Russ Schmidt  
5 River Road, # 249  
Wilton, CT 06897



**IN WITNESS WHEREOF**, the parties hereto have set their hands and official seals this \_\_\_\_ th day of \_\_\_\_\_, 2018.

(Seal)

**TOWN OF PALM BEACH**  
A Municipal Corporation of the  
State of Florida.

**ATTEST:**

\_\_\_\_\_  
Town Clerk

\_\_\_\_\_  
Kirk Blouin, Town Manager

ENDORSED AS TO FORM  
AND SUFFICIENCY:

\_\_\_\_\_  
John Randolph  
Town Attorney

**CONTRACTOR**

WITNESSES:

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

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

\_\_\_\_\_

\_\_\_\_\_  
Print Name and Title

(Corporate Seal)

SWORN TO and SUBSCRIBED before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Signature: \_\_\_\_\_  
Notary Public - State of Florida

(Notary Seal)

\_\_\_\_\_  
Printed Name

Commission No. \_\_\_\_\_  
Commission Expires: \_\_\_\_\_