

**AGREEMENT FOR  
NEW RIVER CROSSING CONSULTING SERVICES**

THIS AGREEMENT for Consulting Services for the New River Crossing Project, made this day of \_\_\_\_, 2023, is by and between the City of Fort Lauderdale, a Florida municipality (“City”), whose address is 100 North Andrews Avenue, Fort Lauderdale, Florida 33301-1016, and BDO USA, P.C., a Virginia Corporation authorized to conduct business in the State of Florida as, BDO USA, P.C., Corp. (“Consultant” or “Contractor”) with an address at: 330 North Wabash Avenue, Suite 3200, Chicago, IL 60611 E-mail: [uyaqub@bdo.com](mailto:uyaqub@bdo.com), (collectively, “Parties”).

NOW THEREFORE, for and in consideration of the mutual promises and covenants set forth herein and other good and valuable consideration, Consultant agrees to provide to the City, New River Crossing Consulting Services (the “Work”), and the City and the Consultant further covenant and agree as follows:

**WITNESSETH:**

**I. DOCUMENTS**

All Contract Documents may also be collectively referred to as the “Documents.” In the event of any conflict between or among the Documents or any ambiguity or missing specifications or instruction, the following priority is established:

- A. First, this Agreement dated \_\_\_\_\_, 2023 and any attachments.
- B. Second, Exhibit A.
- C. Third, Exhibit B.

**II. SCOPE**

The Consultant shall perform the Work under the general direction of the City as set forth in the Contract Documents.

Unless otherwise specified herein, the Consultant shall perform all Work identified in this Agreement. The Parties agree that the scope of services (Exhibit “A”), attached hereto and incorporation herein, is a description of Consultant’s obligations and responsibilities, and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, and tasks which are such an inseparable part of the work described that exclusion would render performance by Consultant impractical, illogical, or unconscionable. The City Manager is authorized to approve, as needed, any scope of service as set forth in Exhibit A, provided such service does not exceed the hourly rates set forth in Exhibit B and the amount of compensation authorized and approved by the City Commission pursuant to this agreement.

Consultant acknowledges and agrees that the City’s Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement. Any change orders to the Scope of Services or amendments to the Contract Documents must be authorized by the City Manager, or his

designee, and approved by the City Commission whenever required in compliance with the Charter and Code of Ordinances for the City of Fort Lauderdale.

By signing this Agreement, the Consultant represents that it has thoroughly reviewed the documents incorporated into this Agreement by reference and that it accepts the description of the Work and the conditions under which the Work is to be performed.

### **III. TERM OF AGREEMENT**

The initial term of this Agreement shall commence on December 19, 2023, and shall end on December 31, 2024. The City reserves the right to extend this Agreement for each additional one-year period, provided all terms, conditions and specifications contained herein remain the same, and the extension is mutually agreed to in writing and signed by both Parties. In the event the term of this Agreement extends beyond the end of any fiscal year of City, to wit, September 30<sup>th</sup>, the continuation of this Agreement beyond the end of the City's fiscal year shall be subject to and conditioned upon both the appropriation and the availability of funds.

### **IV. COMPENSATION**

The Consultant agrees to provide the services and/or materials as specified in the Contract Documents as compensation for the performance of services under this Agreement, at the cost specified in Exhibit B, attached hereto and incorporated herein, up to and not to exceed a total of Three Hundred Twenty-Five Thousand Dollars and 00/100 cents (\$325,000.00). It is acknowledged and agreed by Consultant that this amount is the maximum payable unless increased and approved by the City, in writing, and constitutes a limitation upon City's obligation to compensate Consultant for Consultant's services related to this Agreement. This maximum amount, however, does not constitute a limitation of any sort upon Consultant's obligation to perform all items of work required by or which can be reasonably inferred from the Scope of Services. Except as otherwise provided in the solicitation, no amount shall be paid to Consultant to reimburse Consultant's expenses.

### **V. METHOD OF BILLING AND PAYMENT**

Consultant may submit proper invoices for compensation no more often than monthly, but only after the services for which the invoices are submitted have been completed. An original invoice plus one copy are due within fifteen (15) days of the end of the month except the final invoice which must be received no later than sixty (60) days after this Agreement expires. Invoices shall designate the nature of the services performed and/or the goods provided.

City shall pay Consultant within forty-five (45) days of receipt of Consultant's proper invoice, as provided in the Florida Local Government Prompt Payment Act, as may be amended from time to time.

To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by

the City's Contract Administrator. Payment may be withheld for failure of Consultant to comply with a term, condition, or requirement of this Agreement.

Notwithstanding any provision of this Agreement to the contrary, City may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work that has not been remedied or resolved in a manner satisfactory to the City's Contract Administrator or failure to comply with this Agreement. The amount withheld shall not be subject to payment of interest by City.

## **VI. GENERAL CONDITIONS**

### **A. Indemnification**

Consultant shall protect and defend at Consultant's expense, counsel being subject to the City's approval, and indemnify and hold harmless the City and the City's officers, employees, volunteers, and agents from and against any and all losses, penalties, fines, damages, settlements, judgments, claims, costs, charges, expenses, or liabilities, including any award of attorney fees and any award of costs, in connection with or arising directly or indirectly out of any act or omission by the Consultant or by any officer, employee, agent, invitee, subcontractor, or sublicensee of the Consultant. The provisions and obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the City Manager, any sums due Consultant under this Agreement may be retained by City until all of City's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by City.

### **B. Intellectual Property**

Consultant shall protect and defend at Consultant's expense, counsel being subject to the City's approval, and indemnify and hold harmless the City from and against any and all losses, penalties, fines, damages, settlements, judgments, claims, costs, charges, royalties, expenses, or liabilities, including any award of attorney fees and any award of costs, in connection with or arising directly or indirectly out of any infringement or allegation of infringement of any patent, copyright, or other intellectual property right in connection with the Consultant's or the City's use of any copyrighted, patented or un-patented invention, process, article, material, or device that is manufactured, provided, or used pursuant to this Agreement. If the Consultant uses any design, device, or materials covered by letters, patent or copyright, it is mutually agreed and understood without exception that the bid prices shall include all royalties or costs arising from the use of such design, device, or materials in any way involved in the Work.

### **C. Termination for Cause**

The City may terminate this Agreement for cause if the Consultant has not corrected the breach within ten (10) days after written notice from the City identifying the breach. The City Manager may also terminate this Agreement upon such notice as the City Manager deems appropriate under the circumstances in the event the City

Manager determines that termination is necessary to protect the public health or safety. The Parties agree that if the City erroneously, improperly, or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.

This Agreement may be terminated for cause for reasons including, but not limited to, Consultant's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to perform the work to the City's satisfaction; or failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement.

#### **D. Termination for Convenience**

The City reserves the right, in its best interest as determined by the City, to cancel this Agreement for convenience by giving written notice to the Consultant at least thirty (30) days prior to the effective date of such cancellation. In the event this Agreement is terminated for convenience, Consultant shall be paid for any services performed to the City's satisfaction pursuant to the Agreement through the termination date specified in the written notice of termination. Consultant acknowledges and agrees that it has received good, valuable, and sufficient consideration from City, the receipt and adequacy of which are hereby acknowledged by Consultant, for City's right to terminate this Agreement for convenience.

#### **E. Cancellation for Unappropriated Funds**

The City reserves the right, in its best interest as determined by the City, to cancel this Agreement for unappropriated funds or unavailability of funds by giving written notice to the Consultant at least thirty (30) days prior to the effective date of such cancellation. The obligation of the City for payment to a Consultant is limited to the availability of funds appropriated in a current fiscal period, and continuation of the Agreement into a subsequent fiscal period is subject to appropriation of funds, unless otherwise provided by law.

#### **F. Insurance**

As a condition precedent to the effectiveness of this Agreement, during the term of this Agreement and during any renewal or extension term of this Agreement, Consultant, at its sole expense, shall provide insurance of such types and with such terms and limits as noted below. Providing proof of and maintaining adequate insurance coverage are material obligations of Consultant. Consultant shall provide the City a certificate of insurance evidencing such coverage. Consultant's insurance coverage shall be primary insurance for all applicable policies, in respect to the City's interests. The limits of coverage under each policy maintained by Consultant shall not be interpreted as limiting Consultant's liability and obligations under this Agreement. All insurance policies shall be through insurers authorized or eligible to

write policies in the State of Florida and possess an A.M. Best rating of A-, VII or better, subject to approval by the City's Risk Manager.

The coverages, limits, and/or endorsements required herein protect the interests of the City, and these coverages, limits, and/or endorsements shall in no way be relied upon by Consultant for assessing the extent or determining appropriate types and limits of coverage to protect Consultant against any loss exposures, whether as a result of this Agreement or otherwise. The requirements contained herein, as well as the City's review or acknowledgement, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Consultant under this Agreement.

The following insurance policies and coverages are required:

Professional Liability

Coverage must be afforded for Wrongful Acts in an amount not less than \$10,000,000 each claim and \$10,000,000 aggregate.

Consultant must keep the professional liability insurance in force: (a) until the first anniversary of expiration or early termination of this Agreement, (b) for an additional one (1) year following expiration or early termination of this Agreement, and (c) subject to market availability, for three (3) years following expiration or early termination of this Agreement, with reasonable agreement from the City's Risk Management Division. (d) The obligations set forth in (a)-(c) herein shall survive expiration or early termination of this Agreement.

Commercial General Liability

Coverage must be afforded under a Commercial General Liability policy with limits not less than:

- \$1,000,000 each occurrence and \$2,000,000 aggregate for Bodily Injury, Property Damage, and Personal and Advertising Injury
- \$1,000,000 each occurrence and \$2,000,000 aggregate for Products and Completed Operations

Policy must include coverage for contractual liability and independent contractors.

The City, a Florida municipality, its officials, employees, and volunteers are to be endorsed as an additional insured with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liability arising out of activities performed by or on behalf of Consultant. The coverage shall contain no special limitation on the scope of protection afforded to the City, its officials, employees, and volunteers.

#### Business Automobile Liability

Proof of coverage must be provided for all Owned, Hired, Scheduled, and Non-Owned vehicles for Bodily Injury and Property Damage in an amount not less than the State of Florida required minimums unless a different amount is required by City Ordinance(s).

If Consultant does not own vehicles, Consultant shall maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

#### Workers' Compensation and Employer's Liability

Coverage must be afforded per Chapter 440, Florida Statutes (2023). Any person or entity performing work for or on behalf of the City must provide Workers' Compensation insurance. Exceptions and exemptions will be allowed by the City's Risk Manager, if they are in accordance with Florida Statute.

Consultant waives, and Consultant shall ensure that Consultant's insurance carrier waives, all subrogation rights against the City, its officials, employees, and volunteers for all losses or damages. The City requires the policy to be endorsed with WC 00 03 13 Waiver of our Right to Recover from Others or equivalent.

Consultant must be in compliance with all applicable State and federal workers' compensation laws, including the U.S. Longshore and Harbor Workers' Compensation Act and the Jones Act, if applicable.

#### Insurance Certificate Requirements

- a. Consultant shall provide the City with valid Certificates of Insurance (binders are unacceptable) no later than ten (10) days prior to the start of work contemplated in this Agreement.
- b. Consultant shall provide to the City a Certificate of Insurance having a thirty (30) day notice of cancellation; ten (10) days' notice if cancellation is for nonpayment of premium.
- c. In the event that the insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of Consultant to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested, and addressed to the certificate holder.
- d. In the event the Agreement term or any surviving obligation of Consultant following expiration or early termination of the Agreement goes beyond the expiration date of the insurance policy, Consultant shall provide the City with an updated Certificate of Insurance no later than ten (10) days prior to the expiration of the insurance currently in effect. The City reserves the right to suspend the Agreement until this requirement is met.
- e. The Certificate of Insurance shall indicate whether coverage is provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the Certificate of Insurance must show a retroactive date, which shall be the effective date of the initial contract or prior.

- f. The City shall be covered as an Additional Insured on all liability policies referenced above, with the exception of Professional Liability and Workers' Compensation.
- g. The City shall be granted a Waiver of Subrogation on Consultant's Workers' Compensation insurance policy.
- h. The title of the Agreement, Bid/Contract number, event dates, or other identifying reference must be listed on the Certificate of Insurance.

The Certificate Holder should read as follows:

City of Fort Lauderdale  
100 N. Andrews Avenue  
Fort Lauderdale, FL 33301

Consultant has the sole responsibility for all insurance premiums and shall be fully and solely responsible for any costs or expenses as a result of a coverage deductible, co-insurance penalty, or self-insured retention; including any loss not covered because of the application of such deductible, co-insurance penalty, self-insured retention, or coverage exclusion or limitation. Any costs for adding the City as an Additional Insured shall be at Consultant's expense.

If Consultant's primary insurance policy/policies do not meet the minimum requirements as set forth in this Agreement, Consultant may provide evidence of an Umbrella/Excess insurance policy to comply with this requirement.

Consultant's insurance coverage shall be primary insurance in respect to the City's interests, a Florida municipality, its officials, employees, and volunteers. Any insurance or self-insurance maintained by the City shall be non-contributory.

Any exclusion or provision in any insurance policy maintained by Consultant that excludes coverage required in this Agreement shall be deemed unacceptable and shall be considered breach of contract.

All required insurance policies must be maintained until the contract work has been accepted by the City, or until this Agreement is terminated, whichever is later. Any lapse in coverage may be considered breach of contract. In addition, Consultant must provide to the City confirmation of coverage renewal via an updated certificate of insurance should any policies expire prior to the expiration of this Agreement. The City reserves the right to review, at any time, coverage forms and limits of Consultant's insurance policies.

Consultant shall provide notice of any and all claims, accidents, and any other occurrences associated with this Agreement to Consultant's insurance company or companies and the City's Risk Management office as soon as practical.

It is Consultant's responsibility to ensure that any and all of Consultant's independent contractors and subcontractors comply with these insurance requirements. All coverages for independent contractors and subcontractors shall be

subject to all of the applicable requirements stated herein. Any and all deficiencies are the responsibility of Consultant. The City reserves the right to adjust insurance limits from time to time at its discretion with notice to Consultant.

#### **G. Environmental, Health and Safety**

Consultant shall place the highest priority on health and safety and shall maintain a safe working environment during performance of the Work. Consultant shall comply, and shall secure compliance by its employees, agents, and subcontractors or subconsultants, with all applicable environmental, health, safety and security laws and regulations, and performance conditions in this Agreement. Compliance with such requirements shall represent the minimum standard required of Consultant. Consultant shall be responsible for examining all requirements and determine whether additional or more stringent environmental, health, safety and security provisions are required for the Work. Consultant agrees to utilize protective devices as required by applicable laws, regulations, and any industry or Consultant's health and safety plans and regulations, and to pay the costs and expenses thereof, and warrants that all such persons shall be fit and qualified to carry out the Work.

#### **H. Standard of Care**

Consultant represents that it is qualified to perform the Work, that Consultant and subcontractors or subconsultants possess current, valid state and/or local licenses to perform the Work, and that their services shall be performed in a manner consistent with that level of care and skill ordinarily exercised by other qualified Consultants under similar circumstances.

#### **I. Rights in Documents and Work**

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of City; and Consultant disclaims any copyright in such materials. In the event of and upon termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by Consultant, whether finished or unfinished, shall become the property of City and shall be delivered by Consultant to the City's Contract Administrator within seven (7) days of termination of this Agreement by either Party. Any compensation due to Consultant shall be withheld until Consultant delivers all documents to the City as provided herein.

#### **J. Audit Right and Retention of Records**

City shall have the right to audit the books, records, and accounts of Consultant and Consultant's subconsultants that are related to this Agreement. Consultant shall keep, and Consultant shall cause Consultant's subcontractors to keep, such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement. All books, records, and accounts of Consultant and Consultant's subcontractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so,



Consultant or Consultant's subconsultant, as applicable, shall make same available at no cost to City in written form.

Consultant and Consultant's subconsultants shall preserve and make available, at reasonable times for examination and audit by City in Broward County, Florida, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida public records law, Chapter 119, Florida Statutes (2023), as may be amended or revised, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained by the Consultant until resolution of the audit findings. If the Florida public records law is determined by City to be applicable to Consultant and Consultant's subconsultants' records, Consultant and Consultant's subconsultants shall comply with all requirements thereof; however, Consultant and Consultant's subconsultants shall violate no confidentiality or non-disclosure requirement of either federal or state law. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for City's disallowance and recovery of any payment upon such entry.

Consultant shall, by written contract, require Consultant's subconsultants to agree to the requirements and obligations of this Section.

The Consultant shall maintain during the term of the Agreement all books of account, reports and records in accordance with generally accepted accounting practices and standards for records directly related to this Agreement.

#### **K. Public Entity Crime Act**

Consultant represents that the execution of this Agreement will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes (2023), as may be amended or revised, which essentially provides that a person or affiliate who is a contractor, consultant, or other provider and who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to City, may not submit a bid on a contract with City for the construction or repair of a public building or public work, may not submit bids on leases of real property to City, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under an Agreement with City, and may not transact any business with City in excess of the threshold amount provided in Section 287.017, Florida Statutes (2023), as may be amended or revised, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this Section shall result in termination of this Agreement and recovery of all monies paid by City pursuant to this Agreement and may result in debarment from City's competitive procurement activities.

**L. Independent Contractor**

Consultant is an independent contractor under this Agreement. Services provided by Consultant pursuant to this Agreement shall be subject to the supervision of the Consultant. In providing such services, neither Consultant nor Consultant's agents shall act as officers, employees, or agents of City. No partnership, joint venture, or other joint relationship is created hereby. City does not extend to Contractor or Contractor's agents any authority of any kind to bind City in any respect whatsoever.

**M. Inspection and Non-Waiver**

Consultant shall permit the representatives of City to periodically request a summary of Consultant's progress on the Work.

The failure of the City to insist upon strict performance of any other terms of this Agreement or to exercise any rights conferred by this Agreement shall not be construed by Consultant as a waiver of the City's right to assert or rely on any such terms or rights on any future occasion or as a waiver of any other terms or rights.

**N. Assignment and Performance**

Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other Party. In addition, Consultant shall not subcontract any portion of the Work required by this Agreement, except as provided in the Schedule of Subcontractor or Subconsultant Participation. City may terminate this Agreement, effective immediately, if there is any assignment, or attempted assignment, transfer, or encumbrance, by Consultant of this Agreement or any right or interest herein without City's prior written consent.

Consultant represents that each person who will render services pursuant to this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and that each such person is reasonably experienced and skilled in the area(s) for which he or she will render his or her services.

Consultant shall perform Consultant's duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of Consultant's performance and all interim and final product(s) provided to or on behalf of City shall be comparable to the best local and national standards.

In the event Consultant engages any subconsultant in the performance of this Agreement, Consultant shall ensure that all of Consultant's subconsultants perform in accordance with the terms and conditions of this Agreement. Consultant shall be fully responsible for all of Consultant's subconsultants' performance, and liable for any of Consultant's subconsultants' non-performance and all of Consultant's subcontractors' acts and omissions. Consultant shall defend at Consultant's expense, counsel being subject to City's approval or disapproval, and indemnify and hold City and City's officers, employees, and agents harmless from and against any claim, lawsuit, third party action, fine, penalty, settlement, or judgment, including

any award of attorney fees and any award of costs, by or in favor of any of Consultant's subcontractors for payment for work performed for City by any of such subcontractors, and from and against any claim, lawsuit, third party action, fine, penalty, settlement, or judgment, including any award of attorney fees and any award of costs, occasioned by or arising out of any act or omission by any of Consultant's subcontractors or by any of Consultant's subcontractors' officers, agents, or employees. Consultant's use of subcontractors in connection with this Agreement shall be subject to City's prior written approval, which approval City may revoke at any time.

**O. Conflicts**

Neither Consultant nor any of Consultant's employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Consultant's loyal and conscientious exercise of judgment and care related to Consultant's performance under this Agreement.

Consultant further agrees that none of Consultant's officers or employees shall, during the term of this Agreement, serve as an expert witness against City in any legal or administrative proceeding in which he, she, or Consultant is not a Party, unless compelled by court process. Further, Consultant agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of City in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this Section shall not preclude Consultant or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding.

In the event Consultant is permitted pursuant to this Agreement to utilize subcontractors to perform any services required by this Agreement, Consultant agrees to require such subcontractors, by written contract, to comply with the provisions of this Section to the same extent as Consultant.

**P. Schedule and Delays**

Time is of the essence in this Agreement. By signing, Consultant affirms that it believes the schedule to be reasonable; provided, however, the Parties acknowledge that the schedule might be modified as the City directs.

**Q. Materiality and Waiver of Breach**

City and Consultant agree that each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the Parties in exchange for *quid pro quo*, that each is substantial and important to the formation of this Agreement and that each is, therefore, a material term hereof.

City's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

**R. Compliance With Laws**

Consultant shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing Consultant's duties, responsibilities, and obligations pursuant to this Agreement.

**S. Severance**

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, the provisions not having been found by a court of competent jurisdiction to be invalid or unenforceable shall continue to be effective.

**T. Limitation of Liability**

The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds the sum of \$1,000. Consultant hereby expresses its willingness to enter into this Agreement with Consultant's recovery from the City for any damage action for breach of contract or for any action or claim arising from this Agreement to be limited to a maximum amount of \$1,000 less the amount of all funds actually paid by the City to Consultant pursuant to this Agreement.

Accordingly, and notwithstanding any other term or condition of this Agreement, Consultant hereby agrees that the City shall not be liable to Consultant for damages in an amount in excess of \$1,000 which amount shall be reduced by the amount actually paid by the City to Consultant pursuant to this Agreement, for any action for breach of contract or for any action or claim arising out of this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon City's liability as set forth in Section 768.28, Florida Statutes (2023), as may be amended or revised.

To the extent permitted by law, the City hereby agrees that Consultant and its principals, shareholders, employees, contractors and agents (collectively, "Consultant Group") shall not be liable to the City for any claims, causes of action, money damages, liabilities, or expenses (including attorneys' fees) of any kind relating to the Work or this Agreement, whether arising in contract, statute, tort (including without limitation, negligence) or otherwise (collectively, the "Claims") in the aggregate in excess of the sum of Ten Million Dollars (\$10,000,000), except to the extent that any such Claim is determined to have resulted from the intentional misconduct or fraudulent acts of any member of the Consultant Group.

#### **U. Jurisdiction, Venue, Waiver of Jury Trial**

The Agreement shall be interpreted and construed in accordance with, and governed by, the laws of the State of Florida. The Parties agree that the exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claims arising from, related to, or in connection with this Agreement must be litigated in federal court, the Parties agree that the exclusive venue for any such lawsuit shall be in the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, THE PARTIES HEREBY EXPRESSLY WAIVE ANY AND ALL RIGHTS EITHER PARTY MIGHT HAVE TO A TRIAL BY JURY OF ANY ISSUES RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

#### **V. Amendments**

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the City's Mayor and/or City Manager, as determined by the Charter and Ordinances of the City of Fort Lauderdale, Florida, and Consultant, or others delegated authority to or otherwise authorized to execute same on their behalf.

#### **W. Prior Agreements**

This document represents the final and complete understanding of the Parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The Parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

#### **X. Payable Interest**

Except as required and provided for by the Florida Local Government Prompt Payment Act, City shall not be liable for interest for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Consultant waives, rejects, disclaims and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim based on or related to this Agreement.

#### **Y. Representation of Authority**

Each individual executing this Agreement on behalf of a Party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such Party and does so with full legal authority.

#### **Z. Uncontrollable Circumstances (“Force Majeure”)**

The City and Consultant will be excused from the performance of their respective obligations under this Agreement when and to the extent that their performance is delayed or prevented by any circumstances beyond their control including, fire, flood, explosion, strikes or other labor disputes, act of God or public emergency, pandemics, war, riot, civil commotion, malicious damage, act or omission of any governmental authority, delay or failure or shortage of any type of transportation, equipment, or service from a public utility needed for their performance, provided that:

1. The non-performing Party gives the other Party prompt written notice describing the particulars of the Force Majeure including, but not limited to, the nature of the occurrence and its expected duration, and continues to furnish timely reports with respect thereto during the period of the Force Majeure;
2. The excuse of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
3. No obligations of either Party that arose before the Force Majeure causing the excuse of performance are excused as a result of the Force Majeure; and
4. The non-performing Party uses its best efforts to remedy its inability to perform. Notwithstanding the above, performance shall not be excused under this Section for a period in excess of two (2) months, provided that in extenuating circumstances, the City may excuse performance for a longer term. Economic hardship of the Consultant will not constitute Force Majeure. The term of the Agreement shall be extended by a period equal to that during which either Party's performance is suspended under this Section.

#### **AA. Scrutinized Companies**

The Consultant certifies that it is not on the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2023), as may be amended or revised, and that it is not engaged in a boycott of Israel. The City may terminate this Agreement at the City's option if the Consultant is found to have submitted a false certification as provided under subsection (5) of Section 287.135, Florida Statutes (2023), as may be amended or revised, or been placed on the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2023), as may be amended or revised, or is engaged in a

boycott of Israel.

**BB. Public Records**

**IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES (2023), TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY CLERK'S OFFICE, ONE EAST BROWARD BLVD., SUITE 444, FORT LAUDERDALE, FLORIDA 33301, PHONE: 954-828-5002, EMAIL: [PRRCONTRACT@FORTLAUDERDALE.GOV](mailto:PRRCONTRACT@FORTLAUDERDALE.GOV).**

Consultant shall comply with public records laws, and Consultant shall:

1. Keep and maintain public records required by the City to perform the service.
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 (2023), as may be amended or revised, 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 Agreement term and following completion of the Agreement if the 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 possession of the Consultant or keep and maintain public records required by the City to perform the service. If the Consultant transfers all public records to the City 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. 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.

**CC. Non-Discrimination**

The Consultant shall not discriminate against its employees based on the employee's race, color, religion, gender, gender identity, gender expression, marital status, sexual orientation, national origin, age, disability, or any other protected classification as defined by applicable law.

1. The Consultant certifies and represents that the Consultant offers the same health benefits to the domestic partners of its employees as are offered its employees' spouses or offers its employees the cash equivalent of such health benefits because it is unable to provide health benefits to its employees' domestic partners, and that the Consultant will comply with Section 2-187, Code of Ordinances of the City of Fort Lauderdale, Florida as may be amended or revised, ("Section 2-187"), during the entire term of this Agreement.
2. The failure of the Consultant to comply with Section 2-187 shall be deemed to be a material breach of this Agreement, entitling the City to pursue any remedy stated below or any remedy provided under applicable law.
3. The City may terminate this Agreement if the Consultant fails to comply with Section 2-187.
4. The City may retain all monies due or to become due until the Consultant complies with Section 2-187.
5. The Consultant may be subject to debarment or suspension proceedings. Such proceedings will be consistent with the procedures in Section 2-183 of the Code of Ordinances of the City of Fort Lauderdale, Florida.

**DD. E-Verify**

As a condition precedent to the effectiveness of this Agreement, pursuant to Section 448.095, Florida Statutes (2023), as may be amended or revised, the Consultant and its subcontractors shall register with and use the E-Verify system to electronically verify the employment eligibility of newly hired employees.

1. The Consultant shall require each of its subconsultants, if any, to provide the Consultant with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The Consultant shall maintain a copy of the subcontractor's affidavit for the duration of this Agreement and in accordance with the public records requirements of this Agreement.
2. The City, the Consultant, or any subcontractor who has a good faith belief that a person or entity with which it is contracting has knowingly violated Section 448.09(1), Florida Statutes (2023), as may be amended or revised, shall terminate the Agreement with the person or entity.
3. The City, upon good faith belief that a subcontractor knowingly violated the provisions of Section 448.095(2), Florida Statutes (2023), as may be amended or revised, but that the Consultant otherwise complied with Section 448.095(2), Florida Statutes (2023), as may be amended or revised, shall promptly notify Consultant and order the Consultant to immediately terminate the contract with the subcontractor or subconsultant, and the Consultant shall comply with such order.



4. An Agreement terminated under Sections 448.095(2)(c)1. or 2., Florida Statutes (2023), as may be amended or revised, is not a breach of contract and may not be considered as such. If the City terminates this Agreement under Section 448.095(2)(c), Florida Statutes (2023), as may be amended or revised, the Consultant may not be awarded a public contract for at least one year after the date on which the Agreement was terminated. The Consultant is liable for any additional costs incurred by the City as a result of termination of this Agreement.

5. Consultant shall include in each of its subcontracts, if any, the requirements set forth in this Section, including this subparagraph, requiring any and all subcontractors, as defined in Section 448.095(1)(e), Florida Statutes (2023), as may be amended or revised, to include all of the requirements of this Section in their subcontracts. Consultant shall be responsible for compliance by any and all subcontractors, as defined in Section 448.095(1)(e), Florida Statutes (2023), as may be amended or revised, with the requirements of Section 448.095, Florida Statutes (2023), as may be amended or revised.

**EE. Foreign Countries of Concern**

As a condition precedent to the effectiveness of this Agreement, the Consultant shall provide the City with an affidavit signed by an officer or representative of the Consultant under penalty of perjury attesting that the Consultant does not meet any of the criteria in paragraphs (2)(a)-(c) of Section 287.138, Florida Statutes (2023), as may be amended or revised.

**FF. Notice**

Whenever it is provided herein that notice of default, demand, request or other communication shall or may be given to, or served upon, either of the parties by the other, or either of the parties shall desire to give or serve upon the other any notice of default, demand, request or other communication with respect hereto or with respect to any matter set forth in this Agreement, each such notice of default, demand, request or other communication shall be in writing and any law or statute to the contrary notwithstanding shall not be effective for any purpose unless the same shall be given by hand delivery, or by a nationally recognized overnight courier, or by mailing the same by registered or certified mail, postage prepaid, return receipt requested, addressed to the party at the address set forth below, or at such other address or addresses and to such other person or firm as each party may from time to time designate by notice as herein provided.

As to City:                      City of Fort Lauderdale  
   Attention: City Manager  
   100 North Andrews Avenue  
   Fort Lauderdale, Florida 33301  
   Email: gchavarria@fortlauderdale.gov

With copy to: City of Fort Lauderdale  
Attention: City Attorney's Office  
1 East Broward Blvd., Suite 1605  
Fort Lauderdale, Florida 33301  
Email: tansbro@fortlauderdale.gov

As to Consultant: BDO USA, P.C. Corp  
330 North Wabash Avenue,  
Suite 3200, Chicago, IL  
60611  
Email: uyaqub@bdo.com

IN WITNESS WHEREOF, the City and the Consultant execute this Agreement as follows:

**CITY**

ATTEST:

CITY OF FORT LAUDERDALE, a  
Florida municipality

\_\_\_\_\_  
David R. Solomon, City Clerk

By: \_\_\_\_\_  
Dean J. Trantalis  
Mayor

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

By: \_\_\_\_\_  
Greg Chavarria  
City Manager

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

Approved as to form and correctness:  
Thomas J. Ansbro, City Attorney

By: \_\_\_\_\_  
Kimberly Cunningham Mosley  
Assistant City Attorney

**CONSULTANT**

WITNESSES:

BDO USA, P.C., a Virginia Corporation  
authorized to conduct business in the  
State of Florida as BDO USA, P.C.,  
CORP.

\_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Wayne Berson, CEO

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

(CORPORATE SEAL)

STATE OF \_\_\_\_\_:  
COUNTY OF \_\_\_\_\_:

The foregoing instrument was acknowledged before me by means of ☐ physical presence  
or ☐ online notarization, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by Wayne Berson as CEO  
for BDO USA, P.C., a Virginia Corporation authorized to conduct business in the State of  
Florida as BDO USA, P.C., CORP.

(SEAL)

\_\_\_\_\_  
Notary Public, State of Florida  
(Signature of Notary Public)

\_\_\_\_\_  
(Print, Type, or Stamp Commissioned Name  
of Notary Public)

Personally Known \_\_\_\_ OR Produced Identification \_\_\_\_\_  
Type of Identification Produced \_\_\_\_\_

## **EXHIBIT A**

### **Scope of Work**

**Purpose:** The purpose of this engagement is for BDO USA (“Consultant” or “Contractor”) to support the City of Fort Lauderdale (“City”) on New River Crossing (the “Project”), or any other project or assessments. In relation to the Project, the City intends to evaluate an alternate viable tunnel option. In addition, the Notice for Funding Opportunity (NOFO) for the first funding opportunity is expected in the first quarter of 2024 and the City plans to submit an application for funding. Consultant will support the City in preparing the funding applications and meeting the minimum requirements of the applications.

**Description of Services:** The initial scope includes the development of cost estimates and route alignment, identification of total project cost including a very high level land acquisition costs (if applicable), ancillary project development costs, performing the studies required to facilitate federal application requirements or project development, coordination with federal agencies, development of a broad project structure, and coordination with the City's administration in preparation of the funding application for the Intercity Passenger Rail Grant Program or any other NOFO or any other requirement of the City, as and when required.

The scope of work assumes the level of work associated with prior funding application requirements. As the NOFO information has not been published, the funding applications may require additional information that may require additional project impact studies such as environmental, financial, economic, emission, distributional effects for equity, benefit cost analysis, traffic, property valuations, etc. and/or to conduct additional technical studies such a geometrical configuration, construction planning, geotechnical assessment, etc. This scope is limited to very high-level assessments and does not include detailed studies but can be included within this scope, subject to funding increase, as and when approved by the City.

The Consulting Services shall include one or more of the following:

1. Develop a detailed analysis on the alternate Project option.
2. Perform a desk top geotechnical assessment using publicly available data and data from USGS, FDOT, FHWA, and other sources.
3. Geometrical configuration including size and type of tunnel, location of portals, depth of tunnel, configuration and depth of the station, horizontal and vertical alignment, ventilation, and fire life safety requirements.
4. Construction planning including impact on railroad operation, traffic, cross streets, staging areas, construction planning.
5. Construction cost estimating - Level 4 cost estimate with sufficient engineering and construction contingencies.

6. Operation and maintenance cost of the tunnel only - does not cover the RR operation and maintenance cost.
7. Virtual Design and Construction (VDC) using 3-D BIM models and developing illustrations and visualization of the tunnel, portals, and station.
8. Rendering for LPO. Production of representative BIM 3D model of portals, tunnels, and an underground station for use in public or funding outreach. Produce architectural renderings of the Tunnel Portal, Typical Tunnel Configuration and Underground station - it is estimated that 5 renderings will be provided. Animation can also be provided.
9. Identify all technical, commercial, and economic risk factors on the Project alignment. Identify Station alignment for the Locally Preferred Option (LPO), property related matters and interact with MPO and County (if required) to determine the impact of the recent cut & cover proposal aligning with the tunnel configuration.
10. Right-of-Way (ROW): Identify ROW challenges, land acquisition costs and options and provide risk mitigation strategies. This may include a detailed property valuation assessment (if required).
11. Hold Stakeholder meetings including Maritime Industry, Brightline, FECR, Adjacent Landowners, Florida DOT, US Coast Guard and others which are impacted by the Project and incorporate their specific requirements to mitigate any risks related to the tunnel alternative.
12. Develop total project funding need and prepare an initial financial model. Incorporate the funding options and procurement structures on high level basis to assess the true funding needs of the project.
13. Layout value creation opportunities for the City and the County by selecting the LPO.
14. Evaluate state and local funding opportunities and identify innovative mechanisms to value capture funding sources for the project. Work with the City to coordinate with the stakeholders.
15. Initiate coordination with the US Department of Transportation, attend meetings and evaluate funding options which would be most eligible for the Project. Update USDOT on the Project needs.
16. Perform additional studies to assist in decision making and support funding applications:
  - ☐ Develop a high-level Economic Impact Analysis (primarily focused on income generation and employment impact on the community) which would include Community Benefit Plan, typically required for funding applications.
  - ☐ Develop a high level Emissions Impact study (focused on environmental impact) for LPO. This is required for building case for funding needs.

- ☐ Develop a high-level Financial Impact Study (focused on revenue impacts of the project) for LPO. This is required for building case for funding needs.
  - ☐ Develop Distributional Effects Assessment (focused on equity impacts on the society) of the Project. This is required as an add on for funding applications to layout the overall societal benefits from a project compared to the costs of implementation.
  - ☐ Develop a Benefit Cost Analysis for the LPO, as and if required for funding applications.
  - ☐ Perform a comparative analysis of bridge vs tunnel. Provide a gap analysis but also address the economic impact related to each option.
  - ☐ Undertake any studies required for alignment with DOT strategic objectives to meet the funding requirements, in relation to corridor planning, development and implementation.
  - ☐ Develop a detailed analysis Report on the LPO for the New River Crossing. This would include an overarching view of the entire scope capturing project from all aspects including technical, overall project cost including lifecycle cost, comparative analysis with alternate option, views and requirements of the stakeholders and how it impacts the overall project, economic and social impacts, ROW analysis and land acquisition costs, funding and financing options for the project, value-creation and resultantly, laying out the best procurements options to mitigate project risks and expedite implementation.
17. Provide support for any and all project development and implementation needs including but not limited to structuring, procurement, economic, commercial, financial and technical studies, funding and financing, etc.
18. Assist the City in preparing applications including grant writing and developing any studies required for meeting each of the Notice of Funding Opportunities (NOFO) requirements. This will include:
- ☐ Manage and coordinate with the internal proposal lead and other relevant staff to support a smooth integration of project narrative.
  - ☐ Coordinate relevant registrations, representations, certifications, and required standard forms.
  - ☐ Provide forms and templates as needed (e.g., technical narrative, budget model, budget narrative, etc.).
  - ☐ Review and provide strategic guidance regarding the technical approach and plan.
  - ☐ Develop and finalize an indicative project cost and budget narrative (including cost share strategy) that is compliant with the cost principles and in accordance with the terms and conditions of the funding opportunity announcement.
  - ☐ Design, implement, and negotiate an indirect cost allocation structure.
  - ☐ Coordinate and manage the concept paper, proposal timeline, and assignments to achieve a complete and punctual submission.
19. Overall Project Management of the engagement including any travel & incidentals.

**Compensation:** The Consultant agrees to provide the services and/or materials at the hourly rate specified in Exhibit B, up to and not to exceed a total of Three Hundred Twenty-Five Thousand Dollars and 00/100 cents (\$325,000.00), unless increased in writing upon the approval, first, by the City Commission of the City of Fort Lauderdale.



**EXHIBIT B**  
**HOURLY BILLING RATES**

<b>Hourly Rate</b>	
Category A: Partner/ Practice Leader/ Principal	\$450
Category B: Managing Director/ Director/ Senior Project Manager	\$400
Category C: Project Manager/Supervisor Engineer/ Planner/ Senior Manager/ Manager	\$300
Category D: Associate/ Engineer/ Technician	\$225
Category E: Analyst/ Jr. Engineer/ Jr Planner/ Technician	\$175

\*Subject to inflationary adjustment after 1st year anniversary. All proposed adjustments must be approved in writing, first, by the City Commission of the City of Fort Lauderdale.