

AGREEMENT

between

CITY OF FORT LAUDERDALE

and

WSP USA ENVIRONMENT & INFRASTRUCTURE INC.

for

**Construction Engineering and Inspection Services for the NE 25th
and NE 19th Avenue 24-inch Force Main Replacements and the NE 38th
Street 42-Inch Force Main Replacement Projects (P12383 and P12384)**

RFQ No. 113

AGREEMENT

THIS IS AN AGREEMENT made and entered into this ____ day of _____, 2023, by and between:

CITY OF FORT LAUDERDALE, a Florida municipality (hereinafter referred to as "CITY")

and

WSP USA ENVIRONMENT & INFRASTRUCTURE INC., a Nevada Corporation authorized to transact business in the State of Florida (hereinafter referred to as "CONSULTANT" or collectively, "Parties")

WHEREAS, the City Commission of the City of Fort Lauderdale, Florida at its meeting of **December 19, 2023**, authorized by motion the execution of this Agreement between CONSULTANT and CITY for the performance of Construction Engineering and Inspection (CEI) Services for the NE 25th and NE 19th Avenue 24-inch Force Main Replacements and the NE 38th Street 42-inch Force Main Replacement Projects (the "Agreement"); and

WHEREAS, the CONSULTANT is willing and able to render professional services for the compensation and on the terms hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual covenants, agreements, terms, and conditions contained herein, the Parties hereto, do agree as follows:

ARTICLE 1 DEFINITIONS AND IDENTIFICATIONS

For the purposes of this Agreement and the various covenants, conditions, terms and provisions which follow, the DEFINITIONS and IDENTIFICATIONS set forth below are assumed to be true and correct and are therefore agreed upon by the Parties.

- 1.1 AGREEMENT: Means this document between the CITY and CONSULTANT dated _____, 2023, and any duly authorized and executed Amendments to Agreement.
- 1.2 BASIC SERVICES: Services performed by CONSULTANT for authorized scope of work described in this Agreement and listed in Exhibit "A," Scope of Services.
- 1.3 ADDITIONAL SERVICES: Services performed by the CONSULTANT authorized by Task Order and supplemental to the basic services described in this Agreement and listed in Exhibit A, Scope of Services.
- 1.4 CHANGE ORDER: A written order, executed by both Parties, to the CONSULTANT and approved by the CITY, authorizing a revision of this Agreement between the CITY and CONSULTANT that is directly related to the original scope of work or an adjustment in the original contract price or the contract time directly related to the original scope of work, executed on or after

the effective date of this Agreement.

- 1.5 CITY: The City of Fort Lauderdale, a Florida municipality.
- 1.6 CITY MANAGER: The City Manager of the City of Fort Lauderdale, Florida.
- 1.7 COMMISSION: The City Commission of the City of Fort Lauderdale, Florida, which is the governing body of the CITY government.
- 1.8 CONSTRUCTION DOCUMENTS: Those working drawings and specifications and other writings setting forth in detail and prescribing the work to be done, the materials, workmanship and other requirements for construction of the entire Projects, including any bidding information.
- 1.9 CONSULTANT: **WSP USA ENVIRONMENT & INFRASTRUCTURE INC.**, the CONSULTANT selected to perform professional services pursuant to this Agreement.
- 1.10 CONTRACT ADMINISTRATOR: The Director of the Public Works Department for the City of Fort Lauderdale, or his or her designee. In the administration of this Agreement, as contrasted with matters of policy, all Parties may rely upon instructions or determinations made by the Contract Administrator, made within the scope of his/her authority.
- 1.11 CONSULTANT: One or more individuals, firms, corporations or other entities identified as such by a written agreement with CITY ("Contract for Construction") to perform the construction services required to complete the Projects.
- 1.12 DEPARTMENT DIRECTOR: The Director of the Public Works Department for the City of Fort Lauderdale.
- 1.13 ERROR: A mistake in design, plans and/or specifications that incorporates into those documents an element that is incorrect and is deficient from the standard of care that a professional engineer in similar circumstances, working on a similar project and location would have exercised. Also includes mistakes in design, plans, specifications and/or shop drawings review that lead to materials and/or equipment being ordered and/or delivered where additional costs are incurred.
- 1.14 NOTICE TO PROCEED: A written Notice to Proceed issued by the Contract Administrator.
- 1.15 OMISSION: A scope of work missed by CONSULTANT that is necessary for the Project, including a quantity miscalculation, which was later discovered and added by Change Order and which is deficient from the standard of care that a professional engineer in similar circumstances, working on a similar project and location would have exercised. Also includes design that was wrong, but was corrected after award to the Consultant, but before the construction process was materially affected.
- 1.16 PLANS AND SPECIFICATIONS: The documents setting forth the final design plans and specifications of the Projects, including architectural, civil, structural,

mechanical, electrical, communications and security systems, materials, lighting equipment, site and landscape design, and other essentials as may be appropriate, all as approved by CITY.

- 1.17 PROJECTS: The CEI Services set forth in a specific task order's scope of work. The services to be provided by CONSULTANT shall be as defined in this Agreement and further detailed in Task Orders for the performance of Construction Engineering and Inspection (CEI) Services for the NE 25th and NE 19th Avenue 24-inch Force Main Replacements and the NE 38th Street 42-inch Force Main Replacement Projects.
- 1.18 SPECIFICATIONS: The specifications referred to in this Agreement are the CONSTRUCTION STANDARDS AND SPECIFICATIONS, Office of the City Engineer, City of Fort Lauderdale, January 1982, including any revisions.
- 1.19 SUBCONSULTANT: an entity or individual providing services to CITY through CONSULTANT for all or any portion of the work under this Agreement. The term "Subconsultant" shall include all subcontractors.
- 1.20 TASK ORDER: A document setting forth a negotiated detailed scope of services to be performed by CONSULTANT at fixed contract prices in accordance with this Agreement between the CITY and CONSULTANT.
- 1.21 TIME OF COMPLETION: Time in which the entire work shall be completed for each Task Order.

ARTICLE 2 PREAMBLE

In order to establish the background, context and frame of reference for this Agreement and to generally express the objectives and intentions of the respective Parties hereto, the following statements, representations and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions of this Agreement which follow and may be relied upon by the Parties as essential elements of the mutual considerations upon which this Agreement is based.

- 2.1 Pursuant to Section 287.055, Florida Statutes, CITY has formed a Committee to evaluate CONSULTANT's statement of qualifications and performance data to ensure that CONSULTANT has met the requirements of the Consultant's Competitive Negotiation Act, as set forth in Section 287.055, Florida Statutes, and has selected CONSULTANT to perform services hereunder.

ARTICLE 3 SCOPE OF SERVICES

- 3.1 The CONSULTANT shall perform Construction Engineering and Inspection (CEI) Services as more specifically described in Exhibit A, Scope of Services, attached hereto and incorporated herein, and shall include, but not be limited to, services as applicable and authorized by individual Task Orders for the individual projects in accordance with Article 6 herein. CONSULTANT shall provide all services set forth in Exhibit "A" including all necessary, incidental and related activities and services

required by the Scope of Services and contemplated in CONSULTANT's level of effort. CONSULTANT will perform the Services in accordance with standard industry practices, with the care, knowledge and skill expected of similar construction and engineering firms. No other warranties, express or implied are made or intended.

- 3.2 CITY and CONSULTANT acknowledge that the Scope of Services does not delineate every detail and minor work tasks required to be performed by CONSULTANT to complete the Projects. If, during the course of the performance of the services included in this Agreement, CONSULTANT determines that work should be performed to complete the Projects, which is in the CONSULTANT's opinion, outside the level of effort originally anticipated, whether or not the scope of services identifies the work items, CONSULTANT shall notify Contract Administrator and obtain written approval by the Contract Administrator before proceeding with the work. Notice to the Contract Administrator does not constitute authorization or approval by the CITY to perform the work. The CITY shall not pay for any work that is not approved by the Contract Administrator in writing prior to its commencement. If CONSULTANT proceeds with said work without notifying the Contract Administrator, said work shall be deemed to be within the original level of effort, whether or not specifically addressed in the Scope of Services. Notice to Contract Administrator does not constitute authorization or approval by the CITY to perform the work. Performance of work by CONSULTANT without prior written CITY approval is at CONSULTANT's sole risk.
- 3.3 CITY shall assist CONSULTANT by placing at CONSULTANT's disposal all information CITY has available pertinent to the projects, including previous reports and any other data relative to a project. CITY shall arrange for access to, and make all provisions for, CONSULTANT to enter upon public and private property as required for CONSULTANT to perform its Services. CITY shall review any itemized deliverables and documents required to be submitted by CONSULTANT and respond in writing with any comments within the time set forth in the applicable Task Order. CITY shall give prompt written notice to CONSULTANT whenever CITY observes or otherwise becomes aware of any material defect in the work of CONSULTANT or Subconsultants, or other material development that affects the scope or timing of Consultant's Services.

ARTICLE 4 GENERAL PROVISIONS

- 4.1 Negotiations pertaining to the rates for professional services to be performed by CONSULTANT have been undertaken between CONSULTANT and CITY representatives pursuant to Section 287.055, Florida Statutes, and this Agreement incorporates the results of such negotiation.
- 4.2 CONSULTANT shall include CITY's specific Task Order number as part of the heading on all correspondence, invoices and drawings. All correspondence shall be directed specifically to the Contract Administrator.

ARTICLE 5
PRIORITY OF PROVISIONS

- 5.1 The Contract Documents are intended to include all items necessary for the proper execution and completion of the work by CONSULTANT. Any labor, services, materials, supplies, equipment or documentation that may reasonably be inferred from the Contract Documents or trade usage from prevailing custom as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to CITY. The Contract Documents are complementary, and wherever possible the provisions of the Contract Documents shall be construed in such manner as to avoid conflicts between provisions of the various Contract Documents. In the event of any inconsistency in the Contract Documents, where such inconsistency is not clarified by change order, addendum or amendment, the Contract Documents shall be construed according to the following priorities:

First priority: Approved Change Orders, Addendums or Amendments to all related documents.

Second priority: This Agreement.

Third priority: City of Fort Lauderdale Request for Qualifications No. 113.

Fourth priority: CONSULTANT's response to City of Fort Lauderdale Request for Qualifications No. 113.

- 5.2 Anything shown on the drawings and not mentioned in the specifications or mentioned in the specifications and not shown on the drawings, shall have the same effect as if shown or mentioned respectively in both. In the event of a conflict among the Contract Documents, the latest, most stringent, and more technical requirement(s), including, but not limited to, issues of quantities or cost of the work shall control.

Reference to standard specifications, manuals, rules, regulations, ordinances, laws or codes of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, rule, regulation, ordinance, law or code in effect at the time of permit submittal.

ARTICLE 6
TASK ORDERS

- 6.1 The Projects will be divided into "Tasks."
- 6.2 Task Orders shall be jointly prepared by the CITY and CONSULTANT defining the detailed scope of services to be provided for the particular Project. Each Task Order shall be separately numbered and approved in accordance with this Agreement and all applicable CITY code requirements.
- 6.3 Under all Task Orders and Projects, CITY may require the CONSULTANT, by specific written authorization, and for mutually agreed upon additional compensation, to provide or assist in obtaining one or more of the following special

services. These services may include, at the discretion of the CITY, the following items:

- 6.3.1 Providing additional copies of reports, contract drawings and documents; and
- 6.3.2 Assisting CITY with litigation support services arising from the planning, development, or construction.
- 6.4 Prior to initiating the performance of any services under this Agreement, CONSULTANT must receive a written Notice to Proceed from the CITY. The CONSULTANT must receive the approval of the Contract Administrator or his designee in writing prior to beginning the performance of services in any subsequent Task Order under this Agreement.
- 6.5 If, in the opinion of the CITY, the CONSULTANT is improperly performing the services under a specific Task Order, or if at any time the CITY shall be of the opinion that said Task Order is being unnecessarily delayed and will not be completed within the agreed upon time, the CITY shall notify the CONSULTANT in writing. The CONSULTANT has within ten (10) working days thereafter to take such measures as will, in the judgment of the CITY, ensure satisfactory performance and completion of the work. If the CONSULTANT fails to cure within the ten (10) working days, the CITY may notify the CONSULTANT to discontinue all work under the specified Task Order. The CONSULTANT shall immediately respect said notice and stop said work and cease to have any rights in the possession of the work and shall forfeit the Task Order and any remaining monies. The CITY may then decide, after CITY Commission approval, to issue a new Task Order for the uncompleted work to another CONSULTANT using the remaining funds. Any excess costs arising therefrom over and above the original Task Order price shall be charged against CONSULTANT, as the original CONSULTANT.

ARTICLE 7

TERM OF AGREEMENT; TIME FOR PERFORMANCE

- 7.1 CONSULTANT shall perform the services described in Task Orders within the time periods specified in the Task Order. Said time periods shall commence from the date of the Notice to Proceed for such services.
- 7.2 Prior to beginning the performance of any services under this Agreement, CONSULTANT must receive a Notice to Proceed. CONSULTANT must receive written approval from the Contract Administrator prior to beginning the performance of services in any subsequent phases of the Agreement. Prior to granting approval for CONSULTANT to proceed to a subsequent phase, the Contract Administrator may, at his or her sole option, require CONSULTANT to submit itemized deliverables/documents for the Contract Administrator's review.
- 7.3 In the event CONSULTANT is unable to complete any services because of delays resulting from untimely review by CITY or other governmental authorities having jurisdiction over the Projects, and such delays are not the fault of CONSULTANT, or because of delays which were caused by factors outside the control of CONSULTANT, CITY shall grant a reasonable extension of time for completion of

the services. It shall be the responsibility of the CONSULTANT to notify CITY promptly in writing whenever a delay in approval by a governmental agency is anticipated or experienced, and to inform CITY of all facts and details related to the delay.

- 7.4 The time for the performance of services described in assigned Task Orders shall be negotiated by the CITY and the CONSULTANT as the services are requested and authorized by the CITY.
- 7.5 The term of this Agreement shall be limited to the time duration required to complete the basic services of the aforementioned project and any additional project related Task Orders for additional services. This duration is not in the Consultant's control and is dependent upon performance of the Consultant. The time of completion of this contract may be extended.

ARTICLE 8 COMPENSATION AND METHOD OF PAYMENT

8.1 AMOUNT AND METHOD OF COMPENSATION

8.1.1 Not-To-Exceed Amount Compensation

CITY agrees to pay CONSULTANT as compensation for performance of basic services as related to Exhibit "A" required under the terms of this Agreement up to a Not-to-Exceed Amount of **\$1,781,093** and to reimburse CONSULTANT for Reimbursables as described in Section 8.2, up to a Not-to-Exceed Amount of **\$40,000**, for a total compensation amount of **ONE MILLION EIGHT HUNDRED AND TWENTY-ONE THOUSAND NINETY-THREE DOLLARS (\$1,821,093)**. It is agreed that the method of compensation is that of "Not-to-Exceed Amount" which means that CONSULTANT shall perform all services set forth in Exhibit "A" for total compensation in the amount of or less than that stated above. The total hourly rates payable by CITY for each of CONSULTANT's employee categories are shown on Exhibit "B."

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.

A not to exceed proposal shall be accompanied by CONSULTANT's estimate. The estimate shall detail the direct labor costs by categories of employees, work hours, and hourly rate; overhead; direct non-salary expenses including Reimbursables; and profit, or as required by individual Task Order.

8.2 REIMBURSABLES

8.2.1 Direct non-salary expenses, entitled Reimbursables, directly attributable to the Projects will be charged at actual cost and shall not exceed the amount of **\$40,000**. Reimbursable expenses are in addition to the compensation for basic services and include actual expenditures made by the CONSULTANT and the CONSULTANT's employees directly attributable to the Projects and will be charged at actual cost, without reference to the professional service fees above. CITY shall not withhold retainage from payments for Reimbursable Expenses. CONSULTANT shall be compensated for Reimbursables associated with a particular Task Order only up to the amount allocated for such Task Order. Any reimbursable or portion thereof which, when added to the Reimbursables related to a particular Task Order previously billed, exceeds the amount allocated for such Task Order shall be the responsibility of the CONSULTANT unless otherwise agreed to in writing by the Contract Administrator. Travel and subsistence expenses for the CONSULTANT, its staff and subconsultants and communication expenses, long distance telephone, courier and express mail between CONSULTANT's and subconsultants' various offices are **not** reimbursable under this Agreement. Reimbursables shall include only the following listed expenses unless authorized in writing by the Contract Administrator:

- A. Cost of reproduction, postage and handling of drawings and specifications which are required to deliver services set forth in this Agreement, excluding reproductions for the office use of the CONSULTANT. Reimbursable printing and photocopying expenses shall include only those prints or photocopies of original documents which are (i) exchanged among CONSULTANT, CITY and other third parties retained or employed by any of them or (ii) submitted to CITY for review, approval or further distribution. Documents, which are reproduced for CONSULTANT's internal drafts, reviews, or other purposes, are not eligible for reimbursement.
- B. Identifiable testing costs and special inspections approved by Contract Administrator.
- C. All permit fees paid to regulatory agencies for approvals directly attributable to the Projects. These permit fees do not include those permits required for the construction Contractor.
- D. Overnight Delivery/Courier Charges (when CITY requires/requests this service).

8.2.2 Reimbursable subconsultant expenses are limited to the items described above when the subconsultant agreement provides for reimbursable expenses. A detailed statement of expenses must accompany any request for reimbursement.

8.2.3 It is acknowledged and agreed to by CONSULTANT that the dollar limitation set forth in each Task Order is a limitation upon, and describes the maximum extent of CITY's obligation to reimburse CONSULTANT for direct,

non-salary expenses, but does not constitute a limitation, of any sort, upon CONSULTANT's obligation to incur such expenses in the performance of services hereunder. If CITY or Contract Administrator requests CONSULTANT to incur expenses not contemplated in the amount for Reimbursables, CONSULTANT shall notify Contract Administrator in writing before incurring such expenses. Any such expenses shall be reviewed and approved by CITY prior to incurring such expenses.

8.3 METHOD OF BILLING

8.3.1 Not-To-Exceed Amount Compensation

CONSULTANT shall submit billings, which are identified by the specific project number on a monthly basis in a timely manner for all salary costs and Reimbursables attributable to the Projects. These billings shall identify the nature of the work performed for each phase, subtask, deliverable and item identified in the Exhibit "A" Scope of Services or Task Order, contain a project number, the total hours of work performed and the employee category of the individuals performing same. The statement shall show a summary of salary costs with accrual of the total and credits for portions paid previously. Subconsultant fees must be documented by copies of invoices or receipts, which describe the nature of the expenses and contain a project number or other identifier, which clearly indicates the expense, as identifiable to the Projects. CONSULTANT will be reimbursed for the subconsultant fees only; no markup fee from CONSULTANT is permitted on any subconsultant fees. Internal expenses must be documented by appropriate CONSULTANT's cost accounting forms with a summary of charges by category. When requested, CONSULTANT shall provide backup for past and current invoices that records hours and salary costs by employee category and subconsultant fees on a task basis, so that total hours and costs by task may be determined.

8.4 METHOD OF PAYMENT

- 8.4.1 CITY shall pay CONSULTANT in accordance with the Florida Prompt Payment Act. 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 Contract Administrator.
- 8.4.2 CITY will review CONSULTANT's invoices and, if inaccuracies or errors are discovered in said invoice, CITY will inform CONSULTANT within ten (10) working days by fax and/or by email of such inaccuracies or errors and request that revised copies of all such documents be re-submitted by CONSULTANT to CITY.
- 8.4.3 The CITY shall make payment to the CONSULTANT through utilization of the CITY's P-Card Program. The CITY has implemented a Purchasing Card (P-Card) Program utilizing the MasterCard and Visa networks. Purchases from this contract will be made utilizing the CITY's Purchasing Card. CONSULTANT will receive payment from the purchasing card in the same manner as other credit card purchases.

Accordingly, CONSULTANT must presently have the ability to accept these credit cards or take whatever steps necessary to implement the ability before the start of the contract term, or contract award by the City. All costs associated with the CONSULTANT's participation in this purchasing program shall be borne by the CONSULTANT. The City reserves the right to revise this program as necessary.

8.4.4 Payment Card Industry (PCI) Compliance

Consultant agrees to comply with all applicable state, federal and international laws, as well as industry best practices, governing the collection, access, use, disclosure, safeguarding and destruction of Protected Information.

Consultant and/or any subconsultant that handles credit card data must be, and remain, PCI compliant under the current standards and will provide documentation confirming compliance upon request by the City of Fort Lauderdale, failure to produce documentation could result in termination of the contract.

ARTICLE 9 AMENDMENTS AND CHANGES IN SCOPE OF SERVICES

- 9.1 No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written amendment prepared with the same formality as this Agreement and executed by the CITY and CONSULTANT.
- 9.2 CITY or CONSULTANT may request changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under a Task Order. Such changes must be contained in a written amendment, executed by the Parties hereto, with the same formality and of equal dignity herewith, prior to any deviation from the terms of the Task Order including the initiation of any additional services. CITY shall compensate CONSULTANT for such additional services as provided in Article 8.
- 9.3 In the event a dispute between the Contract Administrator and CONSULTANT arises over whether requested services constitute additional services and such dispute cannot be resolved by the Contract Administrator and CONSULTANT, such dispute shall be promptly presented to the City Manager for resolution. The City Manager's decision shall be final and binding on the Parties for amounts in the aggregate under \$100,000. In the event of a dispute in an amount over \$100,000, the Parties agree to use their best efforts to settle such dispute. To this effect, they shall consult and negotiate with each other, in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both Parties. If they do not reach a solution within a period of sixty (60) days, then upon notice to the other, either Party may commence litigation to resolve the dispute in Broward County, Florida. Any resolution shall be set forth in a written document in accordance with Section 9.2 above. During the pendency of any dispute, CONSULTANT shall promptly perform the disputed services.

ARTICLE 10
CITY'S RESPONSIBILITIES

- 10.1 CITY shall assist CONSULTANT by placing at CONSULTANT's disposal, all information CITY has available pertinent to the Projects including previous reports and any other data relative to design or construction of the Projects.
- 10.2 CITY shall arrange for access to, and make all provisions for, CONSULTANT to enter upon public and private property as required for CONSULTANT to perform its services.
- 10.3 CITY shall review the itemized deliverables/documents identified per Task Order.
- 10.4 CITY shall give prompt written notice to CONSULTANT whenever CITY observes or otherwise becomes aware of any development that affects the scope or timing of CONSULTANT's services or any defect in the work of the Contractor.

ARTICLE 11
MISCELLANEOUS

11.1 OWNERSHIP OF DOCUMENTS

All documents including, but not limited to, drawings, renderings, models, and specifications prepared or furnished by CONSULTANT, its dependent professional associates and consultants, pursuant to this Agreement shall be owned by the CITY.

Drawings, specifications, designs, models, photographs, reports, surveys and other data prepared in connection with this Agreement are and shall remain the property of the CITY whether the Projects for which they are made is executed or not, and are subject to reuse by the CITY in accordance with Section 287.055(10), Florida Statutes. They are not intended or represented to be suitable for reuse by the CITY or others on extensions of these Projects or on any other project without appropriate verification or adaptation. Any reuse, except for the specific purpose intended hereunder, will be at the CITY's sole risk and without liability or legal exposure to CONSULTANT or its subcontractors. This does not, however, relieve CONSULTANT of liability or legal exposure for errors, omissions, or negligent acts made on the part of CONSULTANT in connection with the proper use of documents prepared under this Agreement. Any such verification or adaptation may entitle CONSULTANT to further compensation at rates to be agreed upon by the CITY and CONSULTANT. This shall not limit the CITY's reuse of preliminary or developmental plans or ideas incorporated therein, should the Project be suspended or terminated prior to completion.

11.2 TERMINATION

11.2.1 Termination for Cause. It is expressly understood and agreed that the CITY may terminate this Agreement at any time for cause in the event that the CONSULTANT (1) violates any provisions of this Agreement or performs same in bad faith or (2) unreasonably delays the performance of the services or does not perform the services in a timely and satisfactory

manner upon written notice to the CONSULTANT. Notice of termination shall be provided in accordance with Section 11.25. In the case of termination by the CITY for cause, the CONSULTANT shall be first granted a 10-working day cure period after receipt of written notice from the CITY. In the event that the Agreement is terminated, the CONSULTANT shall be entitled to be compensated for the services rendered and accepted by the CITY from the date of execution of the Agreement up to the time of termination. Such compensation shall be based on the fee as set forth above, wherever possible. For those portions of services rendered to which the applicable fee cannot be applied, payment shall be based upon the appropriate rates for the actual time spent on the Projects. In the event that the CONSULTANT abandons this Agreement or through violation of any of the terms and conditions of this Agreement, causes it to be terminated, CONSULTANT shall indemnify the CITY against any and all loss pertaining to this termination.

All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by CONSULTANT shall become the property of CITY and shall be delivered by CONSULTANT to the CITY within five (5) days of CITY's request. Upon payment of such sum by CITY to CONSULTANT, CITY shall have no further duties or obligations pursuant to or arising from this Agreement.

- 11.2.2 This Agreement may also be terminated by CITY upon such notice as CITY deems appropriate in the event CITY or Contract Administrator determines that termination is necessary to protect the public health, safety, or welfare.
- 11.2.3 Notice of termination shall be provided in accordance with Section 11.25, NOTICES, except that Contract Administrator may provide a prior verbal stop work order if the Contract Administrator deems a stop work order of this Agreement in whole or in part is necessary to protect the public's health, safety, or welfare. A verbal stop work order shall be promptly confirmed in writing as set forth in Section 11.25, NOTICES.
- 11.2.4 Termination for Convenience. In the event this Agreement is terminated for convenience, CONSULTANT shall be paid for any services performed and accepted by the CITY to the date the Agreement is terminated. Compensation shall be withheld until all documents specified in Section 12.1 of this Agreement is provided to the CITY. Upon being notified of CITY's election to terminate, CONSULTANT shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. Under no circumstances shall CITY make payment for services which have not been performed or accepted.
- 11.2.5 Termination by Consultant. CONSULTANT shall have the right to terminate this Agreement only based upon substantial breach by the CITY of its obligation under this Agreement as to unreasonable delay in payment or non-payment of undisputed amounts. CONSULTANT shall have no right to terminate this Agreement for convenience of the CONSULTANT.

11.3 AUDIT RIGHT AND RETENTION OF RECORDS

CITY shall have the right to audit the books, records, and accounts of CONSULTANT that are related to these Projects. CONSULTANT shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Projects.

CONSULTANT shall preserve and make available, at reasonable times and upon prior written notice for examination and audit by CITY 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 Act (Chapter 119, Florida Statutes), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum 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 until resolution of the audit findings. If the Florida Public Records Act is determined by CITY to be applicable to CONSULTANT's records, CONSULTANT shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by CONSULTANT. 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.

11.4 NON-DISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND AMERICANS WITH DISABILITIES ACT

CONSULTANT shall not unlawfully discriminate against any person in its operations and activities in its use or expenditure of the funds or any portion of the funds provided by this Agreement and shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded in whole or in part by CITY, including Titles I and II of the ADA (regarding nondiscrimination or the basis of disability), and all applicable regulations, guidelines, and standards.

CONSULTANT's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully or appropriately used as a basis for service delivery.

CONSULTANT shall comply with Title I of the Americans with Disabilities Act regarding nondiscrimination on the basis of disability in employment and further shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability. In addition, CONSULTANT shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including

apprenticeship), and accessibility.

CONSULTANT shall take affirmative action to ensure that applicants are employed, and employees are treated without regard to race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability during employment. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

11.5 MINORITY AND DISADVANTAGED PARTICIPATION

Historically, the CITY has been able to achieve participation levels of approximately twelve percent (12%) by MBE/WBE firms in CITY projects, and in the purchase of goods and services. The CONSULTANT shall make a good faith effort to help the CITY maintain and encourage MBE/WBE participation levels consistent with such historical levels and market conditions. The CONSULTANT will be required to document all such efforts and supply the CITY with this documentation at the end of the Projects, or in cases where projects are longer than one year, each CITY fiscal year.

11.6 PUBLIC ENTITY CRIMES ACT

In accordance with the Public Crimes Act, Section 287.133, Florida Statutes, a person or affiliate who is a contractor, consultant or other provider, 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 the CITY, may not submit a bid on a contract with the CITY for the construction or repair of a public building or public work, may not submit bids on leases of real property to the CITY, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with the CITY, and may not transact any business with the CITY in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. Violation of this section by CONSULTANT shall result in cancellation of the CITY purchase and may result in CONSULTANT debarment.

11.7 SUBCONSULTANTS

11.7.1 CONSULTANT may subcontract certain items of work to subconsultant. The Parties expressly agree that the CONSULTANT shall submit pertinent information regarding the proposed subconsultant, including subconsultant's scope of work and fees, for review and approval by the CITY prior to subconsultant's proceeding with any work.

11.7.2 CONSULTANT shall utilize the subconsultants identified in the proposal that were a material part of the selection of CONSULTANT to provide the services for this Project. CONSULTANT shall obtain written approval of Contract Administrator prior to changing or modifying the list of subconsultants submitted by CONSULTANT.

The list of subconsultants submitted is as follows:

ENCOBridge, Inc.
EXP U.S. Services Inc.

11.8 ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered without the prior written consent of the other Party, and CONSULTANT shall not subcontract any portion of the work required by this Agreement except as authorized pursuant to Section 11.7.

CONSULTANT represents that all persons delivering the services required by this Agreement have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in the Scope of Services and to provide and perform such services to CITY's satisfaction for the agreed compensation.

CONSULTANT shall perform its 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 meet or exceed all professional standards of the State of Florida.

11.9 INDEMNIFICATION OF CITY

11.9.1 THE CONSULTANT SHALL INDEMNIFY AND HOLD HARMLESS THE CITY, AND ITS OFFICERS AND EMPLOYEES, FROM LIABILITIES, DAMAGES, LOSSES, AND COSTS, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES, TO THE EXTENT CAUSED BY THE NEGLIGENCE, RECKLESSNESS, OR INTENTIONALLY WRONGFUL CONDUCT OF THE CONSULTANT AND OTHER PERSONS EMPLOYED OR UTILIZED BY THE CONSULTANT IN THE PERFORMANCE OF THE AGREEMENT.

11.9.2 To the extent considered necessary by Contract Administrator and CITY, any sums due the CONSULTANT under this Agreement may be retained by CITY until all of the 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.

11.9.3 The Indemnification provided above shall obligate CONSULTANT to defend at its own expense to and through appellate, supplemental or bankruptcy proceeding, or to provide for such defense, at CITY's option, any and all claims of liability and all suits and actions of every name and description covered by Section 11.9.1 above that may be brought against CITY

whether performed by CONSULTANT, or persons employed or utilized by CONSULTANT.

11.10 LIMITATION OF CITY'S 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 arising out of this Agreement, so that the CITY's liability for any breach never exceeds the sum of \$1,000.00. For other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the CONSULTANT expresses its willingness to enter into this Agreement with the knowledge that the CONSULTANT's recovery from the CITY to any action or claim arising from the Agreement is limited to a maximum amount of \$1,000.00 less the amount of all funds actually paid by the CITY to the CONSULTANT pursuant to this Agreement. Accordingly, and notwithstanding any other term or condition of this Agreement that may suggest otherwise, the CONSULTANT agrees that the CITY shall not be liable to the CONSULTANT for damages in an amount in excess of \$1,000.00, which amount shall be reduced by the amount actually paid by the CITY to the CONSULTANT pursuant to this Agreement, for any action or claim arising out of this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any manner intended either to be a waiver of the limitation placed upon the CITY's liability as set forth in Section 768.28, Florida Statutes, or to extend the CITY's liability beyond the limits established in said Section 768.28; and no claim or award against the CITY shall include attorney's fees, investigative costs, extended damages, expert fees, suit costs or pre-judgment interest. Notwithstanding the foregoing, the Parties agree and understand that the provisions of this Article 12.10 do not apply to monies owed, if any, for services rendered to CONSULTANT by the CITY under the provisions of this Agreement.

11.11 INSURANCE REQUIREMENTS

11.11.1 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.

11.11.2 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.

11.11.3 The following insurance policies and coverages are required:

Commercial General Liability

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

- \$2,000,000 each occurrence and \$2,000,000 aggregate for Bodily Injury, Property Damage, and Personal and Advertising Injury
- \$2,000,000 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 covered 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.

Professional Liability

Coverage must be afforded for Wrongful Acts in an amount not less than \$5,000,000 each claim and \$5,000,000 aggregate.

CONSULTANT must keep the professional liability insurance in force until the third anniversary of expiration or early termination of this Agreement or the third anniversary of acceptance of work by the CITY, whichever is longer, which obligation shall survive expiration or early termination of this Agreement.

Business Automobile Liability

Coverage must be afforded for all Owned, Hired, Scheduled, and Non-Owned vehicles for Bodily Injury and Property Damage in an amount not less than \$1,000,000 combined single limit each accident.

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. 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.

The 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.

11.11.4 Insurance Certificate Requirements

- a. The 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. The 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, with the exception of Workers' Compensation and Professional Liability.
- g. The CITY shall be granted a Waiver of Subrogation on CONSULTANT's Workers' Compensation insurance policy.
- h. The title of the Agreement, Proposal/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

11.11.5 The 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.

11.11.6 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.

11.11.7 The 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.

11.11.8 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.

11.11.9 The 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.

11.11.10 It is the 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.

11.12 REPRESENTATIVE OF CITY AND CONSULTANT

11.12.1 The Parties recognize that questions in the day-to-day conduct of the Project will arise. The Contract Administrator, upon

CONSULTANT's request, shall advise CONSULTANT in writing of one (1) or more CITY employees to whom all communications pertaining to the day-to-day conduct of the Project shall be addressed.

11.12.2 CONSULTANT shall inform the Contract Administrator in writing of CONSULTANT's representative to whom matters involving the conduct of the Project shall be addressed.

11.13 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 executed with the same formality and of equal dignity herewith.

11.14 CONSULTANT'S STAFF

CONSULTANT will provide the key staff identified in its proposal for the Project as long as said key staff are in CONSULTANT's employment.

CONSULTANT will obtain prior written approval of Contract Administrator to change key staff. CONSULTANT shall provide Contract Administrator with such information as necessary to determine the suitability of any proposed new key staff. Contract Administrator will be reasonable in evaluating key staff qualifications.

If Contract Administrator desires to request removal of any of CONSULTANT's staff, Contract Administrator shall first meet with CONSULTANT and provide reasonable justification for said removal.

11.15 INDEPENDENT CONTRACTOR

CONSULTANT is an independent contractor under this Agreement. Services provided by CONSULTANT shall be subject to the supervision of CONSULTANT. In providing the services, CONSULTANT or its agents shall not be acting and shall not be deemed as acting as officers, employees, or agents of the CITY. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement shall be those of CONSULTANT. The Parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.

11.16 THIRD PARTY BENEFICIARIES

Neither CONSULTANT nor CITY intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties agree that there are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement.

11.17 CONFLICTS

Neither CONSULTANT nor its 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 related to its performance under this Agreement.

CONSULTANT agrees that none of its officers or employees shall, during the term of this Agreement, serve as expert witness against CITY in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process, nor shall such persons 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 or in connection with any such pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding.

In the event CONSULTANT is permitted to utilize subconsultants to perform any services required by this Agreement, CONSULTANT agrees to prohibit such subconsultants, by written contract, from having any conflicts as within the meaning of this section.

11.18 CONTINGENCY FEE

CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For a breach or violation of this provision, the CITY shall have the right to terminate this Agreement without liability at its discretion, or to deduct from the Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

11.19 WAIVER OF BREACH AND MATERIALITY

Failure by CITY to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement.

CITY and CONSULTANT agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.

11.20 COMPLIANCE WITH LAWS

CONSULTANT shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations related to this Agreement.

11.21 SEVERANCE

In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless CITY or CONSULTANT elects to terminate this Agreement. The election to terminate this Agreement based upon this provision shall be made within seven (7) days after the findings by the court become final.

11.22 JOINT PREPARATION

Preparation of this Agreement has been a joint effort of CITY and CONSULTANT and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.

11.23 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1-12 of this Agreement shall prevail and be given effect.

11.24 APPLICABLE LAW AND VENUE AND WAIVER OF JURY TRIAL

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. 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 claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, CONSULTANT AND CITY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION 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.**

11.25 NOTICES

Whenever either Party desires to give notice unto the other, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the Party for whom it is intended, at the place last specified, and the place for giving of 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, to-wit:

CITY: Cyrill Garcia
City of Fort Lauderdale
101 Northeast 3rd Avenue, Suite 1420
Fort Lauderdale, FL 33301
Telephone: (954) 828-5867
Email:
cygarcia@fortlauderdale.gov

With a copy to: City Manager
City of Fort Lauderdale
101 East 3rd Ave
Fort Lauderdale, FL 33301
Telephone: (954) 828-5364

City Attorney
City of Fort Lauderdale
1 East Broward Boulevard, Suite 1605
Fort Lauderdale, FL 33301
Telephone: (954) 828-5037

CONSULTANT: WSP USA Environment & Infrastructure Inc.
Attn: Brian Hathaway, PE
901 Northpoint Parkway, Suite 204
West Palm Beach, FL 33407
Telephone: (561) 242-7713
Email: Brian.Hathaway@wsp.com

11.26 ATTORNEY FEES

If CITY or CONSULTANT incurs any expense in enforcing the terms of this Agreement through litigation, the prevailing party in that litigation shall be reimbursed for all such costs and expenses, including but not limited to court costs, and reasonable attorney fees incurred during litigation.

11.27 ENVIRONMENTAL, HEALTH AND SAFETY

CONSULTANT shall maintain a safe working environment during performance of the work. CONSULTANT shall comply, and shall secure compliance by its employees, agents, and 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.

11.28 STANDARD OF CARE

CONSULTANT represents that it is qualified to perform the work, that CONSULTANT possesses current, valid state and/or local licenses to perform the work, and that its services shall be performed in a manner consistent with that level of care and skill ordinarily exercised by other qualified consultants under similar circumstances.

11.29 TRUTH-IN-NEGOTIATION CERTIFICATE

Signature of this Agreement by CONSULTANT shall act as the execution of a Truth-in-Negotiation Certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting. The original contract price and any additions thereto shall be adjusted to exclude any significant sums, by which the CITY determines that contract price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such contract adjustments must be made within one (1) year following the end of the contract.

11.30 EVALUATION

The CITY maintains the right to periodically review the performance of the CONSULTANT. This review will take into account the timely execution of Task Orders, the quality of the work performed, the cost to the CITY and the good faith efforts made by the CONSULTANT to maintain MBE/WBE participation in CITY projects. Any deficiencies in performance will be described in writing and an opportunity afforded, where practicable, for the CONSULTANT to address and/or remedy such deficiencies.

11.31 STATUTORY COMPLIANCE

CONSULTANT shall prepare all documents and other materials for the Projects in accordance with all applicable rules, laws, ordinances and governmental regulations of the State of Florida, Broward County, the City of Fort Lauderdale, Florida, and all governmental agencies having jurisdiction over the services to be provided by CONSULTANT under this Agreement or over any aspect or phase of the Project.

11.32 PROHIBITION AGAINST CONTRACTING WITH SCRUTINIZED COMPANIES

Subject to *Odebrecht Construction, Inc., v. Prasad*, 876 F.Supp.2d 1305 (S.D. Fla. 2012), *affirmed*, *Odebrecht Construction, Inc., v. Secretary, Florida Department of Transportation*, 715 F.3d 1268 (11th Cir. 2013), with regard to the "Cuba Amendment," 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 or 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, and that it does not have business operations in Cuba or Syria, as provided in section 287.135, Florida Statutes (2023), as may be amended or revised. The CITY may terminate this Agreement at the CITY's option if 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 with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or 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 or has been engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes (2023), as may be amended or revised.

11.33 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, 1 EAST BROWARD BOULEVARD, SUITE 444, FORT LAUDERDALE, FLORIDA 33301, PHONE: 954-828-5002, EMAIL: PRRCONTRACT@FORTLAUDERDALE.GOV.

CONSULTANT shall:

1. Keep and maintain public records that ordinarily and necessarily would be required by the CITY in order 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 contract term and following completion of this 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 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 this 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 this 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.

11.34 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.

11.35 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.

11.36 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.

11.37 NON-DISCRIMINATION

The CONSULTANT shall not, in any of its activities, including employment, discriminate against any individual on the basis of race, color, national origin, age, disability, religion, creed, sex, disability, sexual orientation, gender, gender identity, gender expression, marital status or any other protected classification as defined by applicable law.

1. The CONSULTANT certifies and represents that it will comply with Section 2-187, Code of Ordinances of the City of Fort Lauderdale, Florida ("Section 2-187").
2. The failure of the CONSULTANT to comply with Section 2-187 shall be deemed to be a material breach of the 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, Code of Ordinances of the City of Fort Lauderdale, Florida.

11.38 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 subcontractors, 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 Subsection 448.09(1), Florida Statutes (2023), as may be amended or revised, shall terminate the contract with the person or entity.
3. The CITY, upon good faith belief that a subcontractor knowingly violated the provisions of Subsection 448.095(5), Florida Statutes (2023), as may be amended or revised, but that the Consultant otherwise complied with Subsection 448.095(5), 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, and the CONSULTANT shall comply with such order.
4. A contract terminated under Subparagraph 448.095(5)(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 contract under Paragraph 448.095(5)(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 contract 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 Subsection 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 Subsection 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.

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IN WITNESS OF THE FOREGOING, the Parties have set their hands and seals the day and year first written above.

CITY

CITY OF FORT LAUDERDALE, a Florida
municipal corporation

By: _____
GREG CHAVARRIA
City Manager

Date: _____

ATTEST:

By: _____
DAVID R. SOLOMAN
City Clerk

Approved as to Legal Form and Correctness:
Thomas Ansbro, City Attorney

By: _____
RHONDA MONTOYA HASAN
Assistant City Attorney

CONTRACTOR

WSP USA ENVIRONMENT &
INFRASTRUCTURE INC., a Nevada
corporation authorized to transact business in
the State of Florida

By: _____
Bradley J. Knight
Vice President

WITNESSES:

Print Name

(CORPORATE SEAL)

Print Name

STATE OF _____:

COUNTY OF _____:

The foregoing instrument was acknowledged before me by means of ☐ physical presence
or ☐ online notarization, this _____ day of _____, 2023, by **Bradley J.
Knight**, as Vice President, for **WSP USA Environment & Infrastructure Inc.**, a Nevada
corporation authorized to transact business in the State of Florida.

(Signature of Notary Public - State of Florida)

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

Personally Known _____ OR Produced Identification _____
Type of identification Produced: _____

EXHIBIT A

The following is a list of services that may be required on an as-needed basis. CITY shall have the right, in its sole and absolute discretion, to require additional services that are consistent with the scope of services and those activities typically performed under CEI services and for which the CONSULTANT is experienced, qualified, able to perform: project management, material sampling and testing, inspection, quality assurance, compliance verification and other services deemed necessary by the CITY to ensure that the project is constructed in accordance with plans and specification, and applicable requirements from any agency having an interest or jurisdiction over the project.

The CEI services must be provided by one individual that has completed the Advanced Maintenance of Traffic Advanced Level Training under the supervision of Florida licensed engineer. The CEI staff shall be present on the Project at all times that the contractor is working.

The scope of services to be provided by the CONSULTANT in the functional areas listed above shall include, but not limited to, the following:

Task 1 - General:

The CONSULTANT shall provide project management services during construction of the project. All communications, correspondence, and submittals shall be directed through the CITY's Project Manager. CONSULTANT services shall include the following:

- a) Administer, monitor, and inspect, the construction such that the project is constructed in conformity with the plans, specifications, special provisions, and any other applicable contract documents.
- b) Inform the CITY's Project Manager (PM) of any significant discrepancies, omissions, substitutions, and deficiencies, which are noted in the work of the Contractor, and the corrective actions or steps that the Contractor has been directed to perform.
- c) Attend and participate in meetings with the CITY, Contractor, Engineer of Record (EOR), and appropriate regulatory agencies, when requested by the CITY, and as necessary for consultation and conferences, relating to construction of the project.
- d) Attend one (1) Project Pre-Construction Meeting at Municipality location and one (1) Pre-Construction Meeting with CITY staff and Broward County Inspector at project site.
- e) Prepare and distribute agendas for project meeting.
- f) Creating, maintaining and distributing logs for permits, RFI's, submittals, shop drawings, samples, action items, tests, claims, change orders, errors/omissions and unforeseen conditions issues.
- g) Review and provide opinions on Contractor claims and negotiating Contractor's proposals, submitting recommendations to the CITY and if they are accepted, preparing change orders and construction change directives which incorporate

the modifications to the contract documents for CITY approval.

- h) Prepare meeting minutes for progress meetings.
- i) Review quantities, coordinate required revisions, and approve payment application requests.
- j) Act as an extension of the CITY's project management staff.

Deliverables: The following deliverables shall be provided under Task 1.0:

- Meeting Minutes.

Task 2 - Onsite Inspection:

The CONSULTANT shall provide onsite inspection services during construction of the Projects. CONSULTANT services shall include the following:

- a) Monitor the Contractor's on-site construction activities and inspect materials entering into the work in accordance with the plans, specifications, and special provisions for the Construction Contract to determine that the Projects are constructed in conformity with the plans and specifications.
- b) Monitor
- c) Perform full-time inspections, of Contractor's work activities, for compliance with the Contract Documents.
- d) Monitor compliance with permits and applicable regulatory agencies.
- e) Maintain detailed accurate records of the Contractor's daily operations and of significant events that affect the work.
- f) Monitor and inspect Contractor's approved maintenance of traffic (MOT) plan and review modifications to the MOT.
- g) Prepare punchlist and provide to the CITY PM for issuance to the Contractor. Monitor Contractor's punchlist work and provide certification to the CITY PM when all punchlist work is complete.
- h) Participate in the substantial completion inspection for the project. Verify all work is substantially complete and notify CITY PM of same.
- i) Participate in final inspection of the project. Verify all work is complete and in conformance with the plans and specifications.
- j) Monitor all testing and inspections performed by the Contractor are in accordance with the plans and specifications, contractual requirements, engineering principles, and industry standards.
- k) Provide copies of all inspection reports to the EOR and CITY on a weekly basis.

Deliverables: The following deliverables shall be provided under Task 2.0:

- Daily inspection reports of site visits and work inspected. Reports to be submitted at a minimum once a week for the five-day work week.

DATA OR ASSISTANCE TO BE PROVIDED BY THE CITY

1. Reproduce and distribute the contract documents to the consultant and contractor for execution;
2. Prepare notice to proceed for the contractor;
3. Accounts Payable contractor's pay applications;
4. Commission approves change order requests;
5. Issuance of Directives (as indicated in item c);
6. Coordination efforts of EOR;
7. Site access coordination;
8. Scheduling of pre-con meeting;
9. Material and Geotechnical testing,
10. Certification/Permit Fees

Task 3 - Sampling and Testing:

Provide inspection services as required to properly monitor the project to ensure that testing and inspections are done in accordance with contractual requirements, engineering principles, and industry standards for the features of work in question. It is anticipated that Field Services and Laboratory Services will be necessary.

Determine the acceptability of all materials and completed work items on the basis of either test results or verification of a certification.

The City will provide the following contract documents:

- a. Plans
- b. Specifications
- c. Special Provisions
- d. City Standard Specifications
- e. Utility Agreements

Schedule: Construction Schedule (approx.): **22 months**

EXHIBIT B

Event No: 113

Event Title: CEI Services related to the NE 25th and NE 19th Avenue 24-inch Force Main Replacements and the NE 38th Street 42-Inch Force Main Replacement Projects.

PROJECT TOTAL COST INCLUDING REIMBURSABLES

Project Hours Total	\$ 1,781,093.00
Reimbursables	\$ 40,000.00
Total	\$ 1,821,093.00

MAXIMUM HOURLY BILLING RATES

Consultant/Subconsultant Name: WSP USA Environment & Infrastructure Inc.

Labor Category/Title	Maximum Hourly Billing Rate
CEI Senior Project Engineer	\$ 215.00
CEI Assistant Project Manager	\$ 116.00
CEI Senior Inspector	\$ 135.00
CEI Inspector	\$ 110.00
CEI Inspector Aid	\$ 75.00
CEI Clerical	\$ 65.00
Principal	\$ 240.00
Senior Engineer	\$ 215.00
Staff Engineer	\$ 115.00

*Consultant/Subconsultant Name: WSP USA Environment & Infrastructure Inc. / EXP
U.S. Services Inc.*

Labor Category/Title	Maximum Hourly Billing Rate
CEI Senior Inspector	\$ 135.00
CEI Inspector	\$ 110.00
CEI Inspector Aid	\$ 75.00

*Consultant/Subconsultant Name: WSP USA Environment & Infrastructure Inc. /
ENCOBridge*

Labor Category/Title	Maximum Hourly Billing Rate
CEI Senior Project Engineer	\$ 215.00
CEI Senior Inspector	\$ 135.00
CEI Inspector	\$ 110.00
CEI Inspector Aid	\$ 75.00
CEI Clerical	\$ 65.00

TESTING RATES

Standard Penetration Test Borings (ATSM D-1586), Truck Rig or Mud Bug Rig		
0 - 50 Foot Depth Interval	\$ 14.00	Per Foot
Grout Boreholes	\$ 5.00	Per Foot
Truck/Mud Bug 0-50 Ft	\$ 15.00	Per Foot
Permeability/Percolations Tests – Field (SFWMD Usual Open Hole Method)	\$ 380.00	EACH TEST
SOIL TESTING		
Field Density/Test (five [5] minimum)	\$ 30.00	EACH TEST
Standard Proctors	\$ 35.00	EACH TEST
Modified Proctors	\$ 30.00	EACH TEST
Florida Bearing Value Test	\$ 20.00	EACH TEST
Limerock Bearing Ratio Test	\$ 15.00	EACH TEST
Atterberg Limit Test	\$ 80.00	EACH TEST
SAMPLING & TESTING OF FRESH CONCRETE		
Curing, capping and compressive strength testing of concrete cylinders in Consultant's laboratory	\$ 90.00	SET OF 4
Field Sampling Fresh Concrete (sampling, molding, slump testing, temperature)	\$ 65.00	SET OF 4
CONCRETE & MASONARY MATERIALS		
Additional Concrete cylinders with slump	\$ 35.00	EACH
Concrete Compression test (Min. four [4] cylinders per trip) - Prepare cylinders & slump test on site, and deliver to lab	\$ 85.00	SET OF 4
Concrete Compression test only [delivered to lab]	\$ 35.00	EACH
Slump test	\$ 35.00	EACH
Stand-by (Beyond 1 hour on site)	\$ 70.00	EACH
Grout Prism (Six [6] per set) - Includes preparation of Prism on site	\$ 130.00	SET OF 6
2" x 2" - Includes preparation of Cubes on site	\$ 160.00	SET OF 6
AGGREGATE TESTING		
Grain size determination:		
A. Full grain size (8 sieves)	\$ 70.00	EACH
B. Wash through (#200)	\$ 65.00	EACH
Sieve Analysis – Coarse Aggregate	\$ 55.00	EACH

ASPHALT TESTING		
Asphalt Cores (obtaining core samples) (Min. 3)	\$ 180.00	SET OF 3
MISCELLANEOUS SERVICES		
Percolation test (open hole)	\$ 360.00	EACH
Exfiltration Test (SFWMD)	\$ 390.00	EACH
Install Groundwater Monitoring Well, <25' (per PBCWUD Stds & Details)	\$ 40.00	PER FOOT
Install Groundwater Monitoring Well, 25' - 50' (per PBCWUD Stds & Details)	\$ 50.00	PER FOOT
DRILLING EQUIPMENT MOBILIZATION (includes drill rig mileage)		
Truck - Mounted Rig	\$ 380.00	** Per Occurrence
FOUNDATION TESTING SERVICES		
Vibration/ Noise Monitoring Equipment - seismograph with geophone or microphone (includes mobilization, equipment and labor).	\$ 700.00	PER DAY
SITE PREPARATION MONITORING & TESTING		
In-situ Density Tests - Nuclear Gauge Method (ASTM D 2922)	\$ 50.00	EACH
MONITOR WELL INSTALLATION & TESTING		
Non-Environmental (2-inch diameter)* 0 - 25-ft depth	\$ 40.00	PER FOOT
Environmental (2-inch diameter)* 0 - 25-ft depth	\$ 40.00	PER FOOT
Well sampling *	\$ 100.00	PER HOUR