

Request for Qualifications

RFQ EVENT# 264

Design Services for Pumping Station A-5

Pursuant to Section 287.055
Consultants' Competitive Negotiation Act (CCNA)

City of Fort Lauderdale



Erick Martinez

SENIOR PROCUREMENT SPECIALIST

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SECTION I – INTRODUCTION AND INFORMATION

1.1 Purpose

The City of Fort Lauderdale, FL (City) is actively seeking qualified, experienced, and licensed firm(s) to provide construction engineering and inspection services (CEI) for the City's Public Works Department as further described in Section III – Scope of Services. Those firms which are interested in submitting proposals in response to this Request for Qualifications (RFQ) shall comply with Section IV– Submittal Requirements.

1.2 ONLINE STRATEGIC SOURCING PLATFORM

The City uses an online strategic sourcing platform to administer the competitive solicitation process, including but not limited to soliciting proposals, issuing addenda, posting results and issuing notification of an intended decision. There is no charge to register and download the RFQ from the online strategic sourcing platform. Proposers are strongly encouraged to read the various vendor Guides and Tutorials available in the City's online strategic sourcing platform well in advance of their intention to submit a response to ensure familiarity with the use of the City's online strategic sourcing platform. The City shall not be responsible for a proposer's inability to submit a response by the end date and time for any reason, including issues arising from the use of the City's online strategic sourcing platform. There is no charge to proposers to register and participate in the solicitation process, nor will any fees be charged to the awarded proposer.

It is the sole responsibility of the proposer to ensure that its proposal is submitted electronically through the City's online strategic sourcing platform no later than the time and date specified in this solicitation. **PAPER BID SUBMITTALS WILL NOT BE ACCEPTED. PROPOSALS MUST BE SUBMITTED ELECTRONICALLY VIA** the City's online strategic sourcing platform.

1.3 Electronic Proposal Openings

This solicitation will be opened electronically via the City's online strategic sourcing platform at the date and time indicated in the solicitation. Once the Procurement Specialist opens the solicitation, the bid tabulations (where applicable) may be viewed immediately on a computer, laptop, cell phone, or any other device with WiFi access.

Anyone requesting assistance or having further inquiry in this matter must contact the Procurement Specialist indicated in the solicitation, via the Question and Answer (Q&A) forum on the City's online strategic sourcing platform before the Last Day for Questions indicated in the Solicitation.

1.4 Pre-Proposal Meeting

There will not be a pre-proposal meeting for this RFQ.

1.5 Point of Contact

City of Fort Lauderdale, Procurement Services Division
Attn: Erick Martinez, Senior Procurement Specialist
1 East Broward, 4th Floor
Fort Lauderdale, FL 33301
Telephone: (954) 828-4019
E-mail: emartinez@fortlauderdale.gov

For all inquiries concerning this RFQ, questions, and requests for additional information, please utilize the Q&A forum provided by the City's online strategic sourcing platform. Questions of a material nature must be received prior to the cut-off date specified in the RFQ. Material changes, if any, to the scope of services or bidding procedures will only be transmitted by written addendum.

Consultants please note: Proposals shall be submitted as stated in PART IV – Submittal Requirements. No part of your proposal can be submitted via FAX. Submission of a proposal will be considered evidence that the proposer has familiarized itself with the nature and extent of the work, and the equipment, materials, and labor required. The entire proposal must be submitted in accordance with all requirements contained in this solicitation. The questions and answers submitted on the City’s online strategic sourcing platform shall become part of any contract that is created from this RFQ.

1.6 Debarred or Suspended Bidders or Proposers

The proposer certifies, by submission of a response to this solicitation, that neither it nor its principals and subconsultants are presently debarred or suspended by any Federal department or agency.

1.7 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,” the Contractor 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, and that it does not have business operations in Cuba or Syria, as provided in Section 287.135, Florida Statutes (2022), as may be amended or revised. The Contractor certifies that it is not on the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2022), 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 Contractor is found to have submitted a false certification as provided under subsection (5) of Section 287.135, Florida Statutes (2022), 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 (2022), 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 (2022), as may be amended or revised.

By submitting a proposal or response, the company, principals, or owners certify that it is not listed on the Scrutinized Companies with Activities in Sudan List or listed on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or is engaged in business operations in Cuba or Syria.

END OF SECTION

SECTION II – GENERAL TERMS AND CONDITIONS

2.1 Addenda, Changes, and Interpretations

It is the sole responsibility of each firm to notify the point of contact utilizing the Q&A forum provided by the City's online strategic sourcing platform and request modification or clarification of any ambiguity, conflict, discrepancy, omission or other error discovered in this competitive solicitation. Requests for clarification, modification, interpretation, or changes must be received prior to the Q&A deadline. Requests received after this date may not be addressed. Questions and requests for information that would not materially affect the scope of services to be performed or the solicitation process will be answered within the Q&A forum provided by the City's online strategic sourcing platform and shall be for clarification purposes only. Material changes, if any, to the scope of services or the solicitation process will only be transmitted by official written addendum issued by the City and uploaded to as a separate addendum to the RFQ. Under no circumstances shall an oral explanation given by any City official, officer, staff, or agent be binding upon the City and should be disregarded. All addenda are a part of the competitive solicitation documents, and each firm will be bound by such addenda. It is the responsibility of each to read and comprehend all addenda issued.

2.2 Changes and Alterations

Consultant may change or withdraw a proposal at any time prior to the proposal submission deadline; however, no oral modifications will be allowed. Modifications shall not be allowed following the proposal deadline.

2.3 Consultants' Costs

The City shall not be liable for any costs incurred by consultants in responding to this RFQ, including costs incurred in connection with evaluation and award proceedings.

2.4 Mistakes

The consultant shall examine this RFQ carefully. The submission of a proposal shall be prima facie evidence that the consultant has full knowledge of the scope, nature, and quality of the work to be performed; the detailed requirements of the specifications; and the conditions under which the work is to be performed. Ignorance of the requirements will not relieve the consultant from liability and obligations under the Agreement.

2.5 Acceptance of Responses/Minor Irregularities

2.5.1 The City reserves the right to accept or reject any or all responses, part of responses, and to waive minor irregularities or variances to specifications contained in responses which do not make the response conditional in nature, and minor irregularities in the solicitation process. A minor irregularity shall be a variation from the solicitation that does not affect the price of the contract or does not give a respondent an advantage or benefit not enjoyed by other respondents, does not adversely impact the interests of other firms or does not affect the fundamental fairness of the solicitation process. The City also reserves the right to reissue a Request for Qualifications.

2.5.2 The City reserves the right to disqualify Consultant during any phase of the competitive solicitation process and terminate for cause any resulting contract upon evidence of collusion with intent to defraud or other illegal practices on the part of the Consultant.

2.6 Responsiveness

In order to be considered responsive to the solicitation, the firm's response shall fully conform in all material respects to the solicitation and all of its requirements, including all form and substance.

2.7 Responsibility

In order to be considered as a responsible firm, firm shall be fully capable to meet all of the requirements of the solicitation and subsequent contract, must possess the full capability, including financial and technical, to perform as contractually required, and must be able to fully document the ability to provide good faith performance.

2.8 Minimum Qualifications

Firms shall be in the business of professional engineering for at least **TEN (10)** years, and must possess sufficient financial support, equipment and organization to ensure that it can satisfactorily perform the services if awarded a contract. Firms must demonstrate that they, or the principals assigned to the project, have successfully provided services with similar magnitude to those specified in the scope of services to at least one city similar in size and complexity to the City of Fort Lauderdale or can demonstrate they have the experience with large scale private sector clients and the managerial and financial ability to successfully perform the work.

Firms shall satisfy each of the following requirements cited below. Failure to do so may result in the proposal being deemed non-responsive.

2.8.1 Proposer or principals shall have relevant experience in constructing additions / modifications to existing public buildings. Project manager assigned to the work must have at least **TEN (10)** years' experience in professional engineering and has served as project manager on similar projects.

2.8.2 Before awarding a contract, the City reserves the right to require that a firm submit such evidence of its qualifications as the City may deem necessary. Further, the City may consider any evidence of the financial, technical, and other qualifications and abilities of a firm or principals, including previous experiences of same with the City and performance evaluation for services, in making the award in the best interest of the City.

2.8.3 Firm or principals shall have no record of judgments, pending lawsuits against the City or criminal activities involving moral turpitude and not have any conflicts of interest that have not been waived by the City Commission.

2.8.4 Neither Firm nor any principal, officer, or stockholder shall be in arrears or in default of any debt or contract involving the City, (as a party to a contract, or otherwise); nor have failed to perform faithfully on any previous contract with the City.

2.8.5 Consultant(s) must be appropriately licensed and registered in the State of Florida in the required field of service required.

2.9 Lobbyist Ordinance

ALL CONSULTANTS PLEASE NOTE: Any consultant submitting a response to this solicitation must comply, if applicable, with City of Fort Lauderdale Ordinance No. C-11-42 & Resolution No. 07-101, Lobbying Activities. Copies of Ordinance No. C-11-42 and Resolution No. 07-101 may be obtained from the City Clerk's Office One East Broward, Suite 444 Fort Lauderdale, FL 33301. The Ordinance may also be viewed on the City's website at <https://www.fortlauderdale.gov/home/showdocument?id=6036>.

2.10 Protest Procedure

2.10.1 Any proposer who is not recommended for award of a contract and who alleges a failure by the City to follow the City's Procurement Ordinance or any applicable law, may follow the protest procedure as found in the City's Procurement Ordinance within five (5) days after a notice of intent to award is posted on the City's web site at the following link:

<https://www.fortlauderdale.gov/government/departments-a-h/finance/procurement-services/notices-of-intent-to-award>

2.10.2 The complete Protest Ordinance may be found on the City's web site at the following link: https://library.municode.com/fl/fort_lauderdale/codes/code_of_ordinances?nodeId=COOR_CH2AD_ARTVFI_DIV2PR_S2-182DIREPRAWINAW

2.11 Public Entity Crimes

In accordance with the Public Crimes Act, Section 287.133, Florida Statutes (2021), as may be amended or revised, 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 (2021), as may be amended or revised, 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.

2.12 Subconsultants

2.12.1 A Subconsultant is an individual or firm contracted by the Consultant or Consultant's firm to assist in the performance of services required under this RFQ. A subconsultant shall be paid through Consultant or Consultant's firm and not paid directly by the City. Subconsultants are permitted by the City in the performance of the services pursuant to the Agreement. Consultant must clearly reflect in its proposal, the major subconsultant(s) to be utilized in the performance of required services. The City retains the right to accept or reject any subconsultant proposed in the response of Successful Consultant(s) or prior to contract execution. Any and all liabilities regarding the use of a subconsultant shall be borne solely by the Successful Consultant and insurance for each subconsultant must be maintained in good standing and approved by the City throughout the duration of the Contract. Neither Successful Consultant nor any of its subconsultants are considered to be employees or agents of the City. Failure to list all subconsultants and provide the required information may disqualify any proposed subconsultant from performing work under this RFQ.

2.12.2 Consultants shall include in their responses, the requested subconsultant information and include all relevant information required of the Consultant. In addition, within five (5) working days after the identification of the award to the successful Consultant(s), the Consultant shall provide a list confirming the subconsultant(s) that the successful Consultant intends to utilize in the Contract, if applicable. The list shall include, at a minimum, the name, and location of the place of business for each subconsultant, the services subconsultant will provide relative to any contract that may result from this RFQ, subconsultants' hourly rates or fees, any applicable licenses, insurance, references, ownership, and other information required of Consultant.

2.13 Local Business Preference – Not applicable.

2.14 Disadvantaged Business Enterprise Preference – Not applicable.

2.15 Insurance Requirements

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, Contractor, 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 Contractor. Contractor shall provide the City a certificate of insurance evidencing such coverage. Contractor'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 Contractor shall not be interpreted as limiting Contractor'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 Contractor for assessing the extent or determining appropriate types and limits of coverage to protect Contractor 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 Contractor under this Agreement.

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:

- \$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 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 Contractor. 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 \$2,000,000 each claim and \$2,000,000 aggregate.

Contractor 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

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 Contractor does not own vehicles, Contractor 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.

Contractor waives, and Contractor shall ensure that Contractor'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.

Contractor 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. Contractor 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. Contractor 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 Contractor 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 Contractor following expiration or early termination of the Agreement goes beyond the expiration date of the insurance policy, Contractor 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 Contractor'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

Contractor 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 Contractor's expense.

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

Contractor'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 Contractor 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, Contractor 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 Contractor's insurance policies.

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

It is Contractor's responsibility to ensure that any and all of Contractor'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 Contractor. The City reserves the right to adjust insurance limits from time to time at its discretion with notice to Contractor.

NOTE: CITY PROJECT NUMBER, PROJECT NAME AND BID NUMBER MUST APPEAR ON EACH CERTIFICATE, AND THE CITY OF FORTLAUDERDALE MUST BE NAMED ON THE CERTIFICATE AS AN "ADDITIONAL INSURED" ON REQUIRED LIABILITY POLICIES.

A Sample Insurance Certificate shall be included with the proposal to demonstrate the firm's ability to comply with insurance requirements. Provide a previous certificate or other evidence listing the insurance companies' names for all required coverage, and the dollar amounts of the coverage.

2.16 Insurance – Subconsultants

Consultant shall require all of its subconsultants to provide the aforementioned coverage as well as any other coverage that the consultant may consider necessary, and any deficiency in the coverage or policy limits of said subconsultants will be the sole responsibility of the consultant.

2.17 Award of Contract

A Contract (the “Agreement”) will be awarded in accordance with Florida Statutes, by the City Commission. The City reserves the right to execute or not execute, as applicable, a contract with the Consultant(s) that is determined to be in the City’s best interests. The draft/sample agreement is provided herein as an attachment to this RFQ. The City reserves the right to award a contract to more than one Consultant as is in the City’s best interest.

2.18 Modification of Services

2.18.1 While this contract is for services provided to the department referenced in this RFQ, the City may require similar work for other City departments. Successful Proposer agrees to take on such work unless such work would not be considered reasonable or become an undue burden to the Successful Proposer.

2.18.2 The City reserves the right to delete any portion of the work at any time without cause, and if such right is exercised by the City, the total fee shall be reduced in the same ratio as the estimated cost of the work deleted bears to the estimated cost of the work originally planned. If work has already been accomplished and approved by the City on any portion of a contract resulting from this RFQ, the Successful Proposer shall be paid for the work completed on the basis of the estimated percentage of completion of such portion to the total project cost.

2.18.3 The City may require additional items or services of a similar nature, but not specifically listed in the contract. The Successful Proposer agrees to provide such items or services, and shall provide the City prices on such additional items or services. If the price(s) offered are not acceptable to the City, and the situation cannot be resolved to the satisfaction of the City, the City reserves the right to procure those items or services from other vendors, or to cancel the contract upon giving the Successful Proposer thirty (30) days written notice.

2.18.4 If the Successful Proposer and the City agree on modifications or revisions to the task elements, after the City has approved work to begin on a particular task or project, and a budget has been established for that task or project, the Successful Proposer will submit a revised budget to the City for approval prior to proceeding with the work.

2.19 No Exclusive Contract

Proposer agrees and understands that the contract shall not be construed as an exclusive arrangement and further agrees that the City may, at any time, secure similar or identical services from another vendor at the City’s sole option.

2.20 Contract Agreement

Any subsequent contract will be subject to the Agreement included as an attachment and made a part of this RFQ.

2.21 Contract Period

The contract term shall commence upon date of award by the City.

2.22 Unauthorized Work

The Successful Consultant(s) shall not begin work until a Contract has been awarded by the City Commission and a notice to proceed has been issued. Consultant(s) agree and understand that the issuance of a Purchase Order and/or Task Order shall be issued and provided to the Consultant(s) following Commission award.

2.23 Payment Method

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.

2.24 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.

2.25 Prohibition Against Contingent Fees

The architect (or registered surveyor and mapper or professional engineer, as applicable) warrants that he or she has not and will not employ or retain any company or person, other than a bona fide employee working solely for the architect (or registered surveyor and mapper, or professional engineer, as applicable) to solicit or secure an agreement pursuant to this competitive solicitation and that he or she has not and will not pay or agree to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the architect (or registered surveyor and mapper or professional engineer, as applicable) any fee, commission, percentage, gift, or other consideration contingent upon or resulting from an award or making of an agreement pursuant to this competitive solicitation.

2.26 Indemnity/Hold Harmless Agreement

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 design professional in the performance of the contract.

2.27 Substitution of Personnel

It is the intention of the City that the Proposer's personnel proposed for the contract will be available for the contract term. In the event the Proposer wishes to substitute personnel, he shall propose personnel of equal or higher qualifications and all replacement personnel are subject to City

approval. In the event substitute personnel are not satisfactory to the City and the matter cannot be resolved to the satisfaction of the City, the City reserves the right to cancel the Contract for cause. See Section 5.09 of the General Conditions.

2.28 Ownership of Work

The City shall have full ownership and the right to copyright, otherwise limit, reproduce, modify, sell, or use all of the work or product produced under this Contract without payment of any royalties or fees to the Consultant above the agreed hourly rates and related costs.

2.29 Canadian Companies

In the event Consultant is a corporation organized under the laws of any province of Canada or is a Canadian federal corporation, the City may enforce in the United States of America or in Canada or in both countries, a judgment entered against the Consultant. The Consultant waives any and all defenses to the City's enforcement in Canada, of a judgment entered by a court in the United States of America. All monetary amounts set forth in this Contract are in United States dollars.

2.30 Instructions

Careful attention must be given to all requested items contained in this RFQ. Proposers are invited to submit responses in accordance with the requirements of this RFQ. Please read the entire solicitation before submitting a proposal. Firms must provide a response to each requirement of the RFQ. Responses should be prepared in a concise manner with an emphasis on completeness and clarity. Firm's notes and comments may be rendered on an attachment, provided the same format of this RFQ text is followed. All responses shall be submitted electronically through the City's online strategic sourcing platform as stated in Section 4.1.

2.31 Discrepancies, Errors and Omissions

Any discrepancies, errors, or ambiguities in the RFQ or addenda should be reported in writing to the City's Procurement Services Division. Should it be necessary, a written addendum will be incorporated to the RFQ. The City will NOT be responsible for any oral instructions, clarifications, or other communications.

2.32 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, gender, creed, sex, 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, as may be amended or revised, ("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 of the Code of Ordinances of the City of Fort Lauderdale, Florida.

2.33 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 subconsultants 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 subconsultant does not employ, contract with, or subcontract with an unauthorized alien. The Consultant shall maintain a copy of the subconsultant'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 subconsultant 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 subconsultant 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 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 subconsultants, as defined in Section 448.095(1)(j), 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 subconsultants, as defined in Section 448.095(1)(j), 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.

END OF SECTION

SECTION III - SCOPE OF SERVICES

3.1 Introduction

The City is seeking the services of a qualified consulting firm to provide Professional Services related to a contract for engineering design. The following is a list of services that may be required. This list shall not be construed as an exclusive list of activities that successful firm(s) may be engaged in. 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 by architects, engineers, and surveyors pursuant to Section 287.055 Florida Statutes, and for which the firm(s) are experienced, qualified, and able to perform as follows.

3.2 Background

The City provides wastewater collection and treatment services for residents and business in the City as well as surrounding communities. The collection consists of 368 miles of gravity sanitary sewer, 186 pumping stations, 3 re-pump “booster” stations, and 135 miles of pressurized forcemain. Wastewater is treated at the George T. Lohmeyer Treatment Facility prior to disposal via deep injection well.

Capital Improvement Project (CIP) 12899 is for the construction of a new sanitary sewer pumping station A-5 (PS A-5) to split the existing A-7 sewage basin into two separate basins. Sewage Basin A-7 is served by Pumping Station A-7 (PS A-7) and is rated for 4,375 gallons per minute at 136ft of total dynamic head, it is anticipated PS A-5 will be of similar size and capacity and utilize submersible pumps. The engineering consultant (Consultant) will analyze the existing A-7 gravity basin and determine a location to split the system and divert approximately half the flow to PS A-5. The flow will be diverted to two possible locations, PS A-5 is to be constructed on City property either at 100 N Andrews Avenue or 301 N Andrews Avenue, the Consultant will assist the City in selecting the final location. The Consultant will perform a capacity analysis of the new A-5 basin, based on Broward County guidelines, for the existing flows and ultimate build out to size the pumping station.

3.3 Scope of Work

The Consultant will prepare detailed construction documents inclusive of all structural, civil, mechanical, electrical and ventilation equipment required for a complete and functional pumping station and be designed to meet Hydraulic Institute standards. All pumps, piping and equipment shall meet current conditions and consider any future development. It is anticipated the project will be delivered by the design-bid-build procurement method, the Consultant will assist the City during the procurement process by attending pre-bid meetings, responding to technical questions during bidding and assisting in issuing addenda, reviewing bids and other related work.

The Consultant will be retained to provide post design services during construction which shall include periodic site observation, review of shop drawings and submittals, responding to request for information, assist in negotiating change orders, prepare meeting agendas, lead construction meetings and prepare meeting minutes, review pay applications, participate in substantial and final walkthroughs, certification of the project and other similar work.

The selected Consultant will be familiar with the City's Unified Land Development Code & Department of Sustainable Development Permitting Process, National Electric Code, National Fire Protection Association, Florida Department of Environmental Protection, South Florida Water Management District, Broward County Environmental Protection and Growth Management Department and any other permitting agency having jurisdiction.

The Consultant shall provide a statement of qualifications for a variety of engineering disciplines including:

- Surveying
- Geotechnical
- Grading, Paving, & Drainage
- Landscaping
- Sanitary Engineering
- Onsite Utilities - Water and Sewer
- Process Mechanical
- Heating, Ventilation and Air Condition

- Architectural Services
- Piping System
- Hydraulic Transient Analysis
- Hydraulic Modeling
- Structural Engineering
- Low, Medium and High Voltage Electrical Power System
- Motor Control Centers
- Standby Generator System
- Lightning Protection
- Instrument & Controls, Supervisors Controls and Data Acquisition, and Telemetry
- Construction Document Development
- Permitting
- Cost Estimating
- Bid Evaluation
- Shop Drawing Review
- Request for Information
- Review of Change Orders

END OF SECTION

SECTION IV – SUBMITTAL REQUIREMENTS

4.1 Instructions

4.1.1 The City uses an online strategic sourcing platform to administer the competitive solicitation process, including but not limited to soliciting proposals, issuing addenda, responding to questions/requests for information. There is no charge to register and download the RFQ from the online strategic sourcing platform. Proposers are strongly encouraged to read the various vendor Guides and Tutorials available in the online strategic sourcing platform well in advance of their intention to submit a proposal to ensure familiarity with the use of the system. The City shall not be responsible for a proposer's inability to submit a proposal by the end date and time for any reason, including issues arising from the use of the online strategic sourcing platform.

All proposals must be submitted electronically.

4.1.2 Careful attention must be given to all requested items contained in this RFQ. Consultants are invited to submit proposals in accordance with the requirements of this RFQ. Please read entire solicitation before submitting a proposal. Proposers must provide a response to each requirement of the RFQ. Proposals should be prepared in a concise manner with an emphasis on completeness and clarity. Consultant's notes, exceptions, and comments may be rendered on an attachment, provided the same format of this RFQ text is followed.

4.1.3 All information submitted by proposer shall be typewritten or provided as otherwise instructed to in the RFQ. Proposers shall use and submit any applicable or required forms provided by the City and attach such to its response. Failure to use the forms may cause the proposal to be rejected and deemed non-responsive.

The proposer understands that the information contained in these proposal pages is to be relied upon by the City in awarding the proposed Agreement, and such information is warranted by the proposer to be true. The proposer agrees to furnish such additional information, prior to acceptance of any proposal, relating to the qualifications of the proposer, as may be required by the City.

4.1.4 Proposals shall be submitted by an authorized representative of the firm. Proposals must be submitted in the business entity's name by the President, Partner, Officer or Representative authorized to contractually bind the business entity. Proposals shall include an attachment evidencing that the individual submitting the proposal, does in fact have the required authority stated herein.

4.1.5 In the event of Contract award, all documentation produced as part of the Contract shall become the exclusive property of the City. The Proposer's response to the RFQ is a public record pursuant to Florida law, which is subject to disclosure by the City under the State of Florida Public Records Law, Florida Statutes Chapter 119.07 ("Public Records Law"). The City shall permit public access to all documents, papers, letters or other material submitted in connection with this RFQ and the Contract to be executed for this RFQ, subject to the provisions of Chapter 119.07 of the Florida Statutes.

Any language contained in the Proposer's response to the RFQ purporting to require confidentiality of any portion of the Proposer's response to the RFQ, except to the extent that certain information is in the City's opinion a Trade Secret pursuant to Florida law, shall

be void. If a Proposer submits any documents or other information to the City which the Proposer claims is Trade Secret information and exempt from Florida Statutes Chapter 119.07 ("Public Records Laws"), the Proposer shall clearly designate that it is a Trade Secret and that it is asserting that the document or information is exempt. The Proposer must specifically identify the exemption being claimed under Florida Statutes 119.07. The City shall be the final arbiter of whether any information contained in the Proposer's response to the RFQ constitutes a Trade Secret. The City's determination of whether an exemption applies shall be final, and the Proposer agrees to defend, indemnify, and hold harmless the City and the City's officers, employees, and agent, against any loss or damages incurred by any person or entity as a result of the City's treatment of records as public records. In addition, the Proposer agrees to defend, indemnify, and hold harmless the City and the City's officers, employees, and agents, against any loss or damages incurred by any person or entity as a result of the City's treatment of records as exempt from disclosure or confidential. Proposals purporting to be subject to copyright protection in full or in part will be rejected. The Proposer authorizes the City to publish, copy, and reproduce any and all documents submitted to the City bearing copyright symbols or otherwise purporting to be subject to copyright protection.

EXCEPT FOR CLEARLY MARKED PORTIONS THAT ARE BONA FIDE TRADE SECRETS PURSUANT TO FLORIDA LAW, DO NOT MARK YOUR RESPONSE TO THE SOLICITATION AS PROPRIETARY OR CONFIDENTIAL. DO NOT MARK YOUR RESPONSE TO THE SOLICITATION OR ANY PART THEREOF AS COPYRIGHTED.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES (2022), TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT PRRCONTRACT@FORTLAUDERDALE.GOV, 954-828-5002, CITY CLERK'S OFFICE, ONE EAST BROWARD, SUITE 444 FORT LAUDERDALE, FL 33301.

Consultant shall:

1. Keep and maintain public records 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 (2022), 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 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 this 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 this

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.

- 4.1.6** By submitting a response, Proposer is confirming that the firm has not been placed on the convicted vendors list as described in Section §287.133 (2) (a) Florida Statutes; that the only person(s), company or parties interested in the proposal as principals are named therein; that the proposal is made without collusion with any other person(s), company or parties submitting a proposal; that it is in all respects fair and in good faith, without collusion or fraud; and that the signer of the proposal has full authority to bind the firm.

4.2 Contents of the Proposal

The City deems certain documentation and information important in the determination of responsiveness and for the purpose of evaluating responses. Responses should seek to avoid information in excess of that requested, must be concise, and must specifically address the issues of this RFQ. The City prefers that responses be no more than 100 pages in one complete pdf document. The proposals should be organized, divided and indexed into the sections indicated herein. These are not inclusive of all the information that may be necessary to properly evaluate the proposal and meet the requirements of the scope of work and/or specifications. Additional documents and information should be provided as deemed appropriate by the respondent in proposal to specific requirements stated herein or through the RFQ.

Note: Do not include pricing - Compensation will be requested and considered only during the competitive negotiations process.

4.2.1 Table of Contents

The table of contents should outline in sequential order the major areas of the submittal, including enclosures. All pages should be consecutively numbered and correspond to the Table of Contents.

4.2.2 Executive Summary

Each proposer must submit an executive summary that identifies the business entity, its background, main office(s), and office location that will service this contract. Identify the officers, principals, supervisory staff and key individuals who will be directly involved with the work and their office locations. The executive summary should also summarize the key elements of the proposal.

4.2.3 Firm Qualifications and Experience

Respondents must provide documentation that demonstrates their ability to satisfy all of the minimum qualification requirements. A Standard Form 330 may be used to provide this information. Indicate the firm's number of years of experience in providing the professional services as it relates to the work contemplated. Provide details of past projects for agencies of similar size and scope, including information on your firm's ability to meet time and budget requirements. Indicate the firm's initiatives towards its own sustainable business practices that demonstrate a commitment to conservation. Indicate business structure, i.e. Corp., Partnership, LLC. Firm should be registered as a legal entity in the State of Florida; Minority or Woman owned Business (if applicable); company address, phone number, fax number, e-mail address, web site, contact person(s), etc. Relative size of the firm, including management, technical and support staff; licenses and any other pertinent information shall be submitted.

Provide a comprehensive summary of the experience and qualifications of the individual(s) who will be selected to serve as the project manager(s) for the City.

4.2.4 Qualifications of the Project Team

List the members of the project team (**may be on a Standard Form 330 if you choose**). Provide a list of the personnel to be used on each project and their qualifications. Providing this information on an organizational chart is recommended. A brief resume including education, experience, licenses and any other pertinent information shall be included for each team member, including subconsultants to be assigned to each project. Explain how each project team member will contribute to the project, in what capacity, and the level of involvement they will have. Each resume should not exceed two (2) pages in length. Provide any other documentation that demonstrates their ability to satisfy all of the minimum qualification requirements. Submittals that do not contain such documentation may be deemed non-responsive

4.2.5 Approach to Scope of Work

- Provide in concise narrative form, your understanding of the City's needs, goals and objectives as they relate to the project, and your overall approach to accomplishing the project.
- Give an overview on your proposed vision, ideas and methodology. Describe your proposed approach to the project. As part of the project approach, the firm shall propose a scheduling methodology (timeline) for effectively managing and executing the work in the optimum time.
- Also provide information on your firm's current workload and how this project will fit into your workload. Describe the firm's current and anticipated workload. Include a summary of current projects and anticipated completion timeframes. Describe how City tasks will be prioritized within your organization, and the availability of the project team to commit towards this project.
- Describe available facilities, technological capabilities and other available resources you offer for the project.
- Provide a proposed (realistic) schedule from Notice to Proceed until the construction drawings are issued. The City expects this project to be completed expeditiously and the City reserves the right to make adjustments to this schedule as necessary.

4.2.6 References

Provide at least three references, preferably government agencies, for projects with similar scope as listed in this RFQ. Information should include:

- Client Name, address, contact person telephone and e-mail address (E-mail will be primary means of contact).
- Description of work (types of projects completed).
- Year(s) the projects were completed.
- Total cost of the construction, estimated and actual.

Note: Do not simply include City of Fort Lauderdale work or staff as references to demonstrate your capabilities. The Committee is interested in work experience and references other than the City as well.

4.2.7 Minority/Women (M/WBE) Participation

If your firm is a certified minority business enterprise as defined by the Florida Small and Minority Business Assistance Act of 1985, provide copies of your certification(s). If your firm is not a certified M/WBE, describe your company's previous efforts, as well as planned efforts in meeting M/WBE procurement goals under Florida Statutes 287.09451.

4.2.8 Subconsultants

Consultant must clearly identify any subconsultants that may be utilized during the term of this contract.

4.2.9 Required Forms

a. Sample Insurance Certificate

Demonstrate your firm's ability to comply with insurance requirements. Provide a previous certificate or other evidence listing the Insurance Companies' names for both Professional Liability and General Liability, and the dollar amounts of the coverage.

b. Local Business Preference Certification [if applicable]

c. Disadvantaged Business Enterprise Preference Certification [if applicable]

d. Non-Collusion Statement

e. Non-Discrimination Certification Form

f. E-Verify Affirmation Statement

g. Contract Payment Method [if applicable]

This form must be completed and returned with your proposal. Proposers must presently have the ability to accept these credit cards or take whatever steps necessary to implement acceptance of a card before the start of the contract term, or contract award by the City.

h. Bid/Proposal Certification

i. Affidavit of Compliance with Foreign Entity Laws

4.3 By submitting a proposal, each firm is confirming that the firm has not been placed on the convicted vendors list as described in Section §287.133 (2) (a) Florida Statutes.

4.4 Before awarding a contract, the City reserves the right to require that a firm submit such evidence of its qualifications as the City may deem necessary. Further, the City may consider any evidence of the financial, technical, and other qualifications and abilities of a firm or principals, including previous experiences of same with the City and performance evaluation for services, in making the award in the best interest of the City.

END OF SECTION

SECTION V - EVALUATION AND AWARD

5.1 Evaluation Procedure

- 5.1.1** Evaluation of the submittals will be conducted by an Evaluation Committee, consisting of a minimum of three members of City Staff, or other persons selected by the City Manager or designee. All committee members must be present at scheduled evaluation meetings. Submittals shall be evaluated based upon the information and references contained in the proposal as submitted. Evaluation procedures shall be regulated by F.S. §287.055, referred to as Consultant's Competitive Negotiations Act (CCNA). Any firm(s) involved in a joint venture in its proposal will be evaluated individually, as each firm of the joint venture would have to stand on its own merits.
- 5.1.2** The Committee shall short list no less than three (3) submittals, assuming that three or more submittals have been received, that it deems best satisfy the weighted criteria set forth herein and attempt to select the best qualified firm(s) for the particular discipline. The Committee shall then hold discussions, conduct interviews, and/or require oral presentations with all short-listed firms. The Committee shall then re-rank the short-listed firms based upon the information provided in interviews and/or presentations, the materials presented, the firm's responses to the RFQ, and deliberations of the Evaluation Committee at publicly advertised evaluation meetings. The City may request, and the firm shall provide, additional information deemed necessary by the Evaluation Committee to conduct evaluations.
- 5.1.3** If the City manager or his/her designee is unable to negotiate a satisfactory contract with the first ranked firm, negotiations with that firm shall be formally terminated. Upon termination of said negotiations, negotiations shall then be undertaken with the second ranked firm, with this process being repeated until an agreement is reached which is then recommended and formally approved by the City Commission or until the short-list is exhausted in which case a new Request for Qualifications may be undertaken.

5.2 Evaluation Criteria

- 5.2.1** Per Florida Statute 287.055, in determining whether a firm is qualified, the agency shall consider such factors as the ability of professional personnel; whether a firm is a certified minority business enterprise; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the firms; and the volume of work previously awarded to each firm by the agency, with the object of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selection of the most highly qualified firms. The agency may request, accept, and consider proposals for the compensation to be paid under the contract only during competitive negotiations.
- 5.2.2** The City uses a mathematical formula to determine the scoring for each individual responsive and responsible firm based on the weighted criteria stated herein. Each evaluation committee member will rank each firm by criteria, giving their first ranked firm as number 1, the second ranked firm a number 2, and so on. The City shall average the ranking for each criterion, for all evaluation committee members, and then multiply that average ranking by the weighted criteria identified herein. The lowest average final ranking score will determine the recommendation by the evaluation committee to the City Manager.

5.2.3 Weighted Criteria

CRITERIA	PERCENTAGE
Qualifications of the Firm & the Team	40%
Project Methodology & Approach	40%
Previous Similar Projects; References	20%
TOTAL:	100

5.3 Contract Award

5.3.1 The City reserves the right to award a contract to that Consultant who will best serve the interest of the City. The City reserves the right, based upon its deliberations and in its opinion, to accept or reject any or all submittals. The City also reserves the right to waive minor irregularities or variations of the submittal requirements and RFQ process.

5.3.2 Upon award of a Contract by the City Commission, the City Manager is authorized to execute the Contract on behalf of the City.

5.3.3 The City Manager shall appoint a contract administrator or project manager for each contract to assure compliance with the contract and applicable law. The contract administrator or project manager shall review all pay requests or deny same as required prior to approval by the City Manager.

END OF SECTION

AGREEMENT

between

CITY OF FORT LAUDERDALE

and

for

Design Services for Pumping Station A-5

RFQ Event No. 264

THIS IS AN AGREEMENT, made and entered into this ____ day of _____,
2024, by and between:

CITY OF FORT LAUDERDALE, a municipal corporation of the State of Florida (hereinafter referred to as “CITY”)

and

_____ (hereinafter referred to as “CONSULTANT”), or collectively referred to as “Party or Parties”)

WHEREAS, the City Commission of the City of Fort Lauderdale, Florida at its meeting of _____, 2024, authorized the proper officials by motion to execute an Agreement between CONSULTANT and CITY authorizing the performance of services in connection with CCNA – Design Services for Pumping Station A-5; and

WHEREAS, the CITY issued a request for qualifications (“RFQ”) Event No. 264 for Design Services for Pumping Station A-5; and

WHEREAS, the CITY has met the requirements of Section 287.055, Florida Statutes, the CONSULTANTS’ Competitive Negotiation Act, and has selected CONSULTANT to perform the services hereunder; and

WHEREAS, the CONSULTANT is experienced in providing professional services set forth in Exhibit A, Scope of Services, for Design Services and is willing and able to render services for such project 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 agree as follows:

ARTICLE 1. DEFINITIONS

1.1 **Additional Services** means 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.

1.2 **Agreement** means this document between the CITY and CONSULTANT dated _____, 2024, and any duly authorized and executed Amendments to the Agreement.

1.3 **City** means the City of Fort Lauderdale, a municipal corporation of the state of Florida.

1.4 **City Commission** means the governing body of the CITY government.

1.5 **CONSULTANT** means _____, the CONSULTANT selected to perform professional services pursuant to this Agreement.

1.3 **Contract Administrator** means the Public Works Director, or his or her designee. In administration of this Agreement, as contrasted with matters of policy, all Parties may rely on instructions or determinations made by the Contract Administrator within the defined parameters of this Agreement.

1.4 **Contractor** means the person, firm, corporation, or other entity who enters into an agreement with CITY to perform the construction work for a project.

1.5 **City Manager** means the administrative head of the CITY appointed by the City Commission.

1.6 **City Attorney** means the chief legal counsel for CITY appointed by the City Commission.

1.7 **Notice to Proceed** means a written authorization to proceed with a project, phase, or task thereof, issued by the Contract Administrator.

1.11 **Services** consists of the work and phases set forth in Exhibit A, Scope of Services including all professional engineering, landscape architecture, registered surveying and mapping, and other professional design services, as described in each Work Authorization applicable to a project.

1.12 **Subconsultant** means 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.

1.13 **Task Order** means a document setting forth a negotiated detailed scope of services to be performed by the CONSULTANT at fixed contract prices in accordance with this Agreement between the CITY and CONSULTANT.

ARTICLE 2. EXHIBITS

The following exhibits are attached hereto and incorporated into this Agreement:

1. **Exhibit A Scope of Services**
2. **Exhibit B Schedule of Subconsultants**
3. **Exhibit C Rates**

ARTICLE 3. SCOPE OF SERVICES

3.1 CONSULTANT shall provide all Services as set forth in the Scope of Services, including all necessary, incidental, and related activities required for full and complete performance of this Agreement.

3.2 This Agreement and the Scope of Services may not delineate every detail and minor work task required to be performed by CONSULTANT to complete a project. If CONSULTANT determines that work should be performed to complete a project and, in CONSULTANT's opinion, that work is outside the level of effort originally anticipated, whether or not the Scope of Services identifies the work items, CONSULTANT shall notify the Contract Administrator in writing in a timely manner before proceeding with the work. If CONSULTANT proceeds with such work without notifying the Contract Administrator, the work shall be deemed to be within the original level of effort, whether or not specifically addressed in the Scope of Services. Notice to the Contract Administrator does not constitute authorization or approval by CITY to CONSULTANT to perform the work. Any such work that would entail additional compensation to CONSULTANT by CITY, or additional time for performance, shall require an amendment to this Agreement pursuant to Section 7.1 or a Work Authorization pursuant to Section 7.2. Unless there is a fully executed amendment or Work Authorization or a dispute as set forth in Section 7.3, any work performed by CONSULTANT outside the originally anticipated level of effort without prior written CITY approval shall be at no additional cost to CITY.

3.3 Exhibit A identifies the initial services related to this Agreement. Additional negotiations shall be required for other phases or additional services issued under this Agreement. CITY may select the type, amount, and timing of services under a Task Order executed by CONSULTANT and CITY, provided that no such selection, when combined with those goods or services required under this Agreement, would result in a payment obligation exceeding the applicable maximum amount stated in Article 6. CITY and CONSULTANT may negotiate additional services, compensation, time of performance, and other related matters, including for other phases of a project; notwithstanding the foregoing, CITY shall have the right to terminate negotiations at any time at no cost to County and procure services for other project phases from any other source.

3.4 CITY shall assist CONSULTANT by placing at CONSULTANT's disposal all information CITY has available pertinent to a project, 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. TASK ORDERS

4.1 All work to be performed by CONSULTANT under this Agreement must first be authorized in writing by a Task Order, in accordance with the requirements of this Article. The Task Orders shall be based upon the general description of basic services as described in Exhibit "A."

4.1.1 Before issuance of any Task Order, CONSULTANT shall provide Contract Administrator with a written estimate for all charges expected to be incurred for the tasks associated with the Task Order. Each Work Authorization (and amendments thereto) may be executed on behalf of County as follows: (a) the Chief Procurement Officer may execute any individual Task Order for which the cost to CITY is within the Chief Procurement Officer's delegated authority; and (b) any individual Task Order above the Chief Procurement Officer's delegated authority must be approved by the City Commission.

4.1.2 After complete execution of a Task Order under this Agreement, Contract Administrator will issue a Notice to Proceed for that authorized work. CONSULTANT must not commence such work until receipt of a Notice to Proceed.

4.1.3 Any modifications to a Task Order will require an amended Work Authorization approved by Contract Administrator, CITY's Chief Procurement Officer, or City Commission as required by the City Code. CONSULTANT's compensation will not exceed the amount approved in the Task Order unless such additional amount received the prior written approval from the appropriate authority.

4.1.4 All Task Orders and must contain, at a minimum, the following information and requirements:

4.1.4.1 A description of the work to be undertaken (which description must specify in detail the individual tasks and other activities to be performed by CONSULTANT), a reference to this Agreement under which the work to be undertaken is authorized, and a statement of the method of compensation.

4.1.4.2 A budget establishing the amount of compensation, which amount will constitute a guaranteed maximum and must not be exceeded unless prior written approval of CITY is obtained. If CITY does not approve an increase in the guaranteed maximum amount, and the need for such action is not the fault of CONSULTANT, the authorization will be terminated, and CONSULTANT will be paid in full for all work completed to that point, but said amount will in no case

exceed the guaranteed maximum amount. The information contained in the budget shall be in sufficient detail to identify the various elements of costs.

4.1.4.3 A time established for completion of the Services undertaken by CONSULTANT or for the submission to CITY of documents, reports, and other information under this Agreement.

4.1.4.4 Any other additional instructions or provision relating to the work authorized under this Agreement.

4.1.4.5 Task Orders must be dated, serially numbered, and signed.

**ARTICLE 5. TIME FOR PERFORMANCE; CONTRACTOR DAMAGES;
LIQUIDATED DAMAGES**

5.1 The initial term of this Agreement is for a period of _____ years starting from the Effective Date (the "Initial Term"). Beyond the Initial Term, CITY shall have the option to renew this Agreement, under the same terms and conditions, for up to _____ consecutive one (1) year terms; CITY's Chief Procurement Officer may exercise this renewal option by sending notice of renewal to CONSULTANT at least thirty (30) days prior to the expiration of the then-current term. Any renewal by CITY's Chief Procurement Officer shall not result in a substantive change to the Agreement's terms. CONSULTANT shall perform the Services within the time periods specified in the Task Order commencing from the date of the applicable Notice to Proceed.

5.2 CONSULTANT must receive a Notice to Proceed from the Contract Administrator prior to commencement of Services or any phase thereof under this Agreement and any operative Task Order. Prior to granting approval for CONSULTANT to proceed to any phase, the Contract Administrator may, at the Contract Administrator's sole option, require CONSULTANT to submit the itemized deliverables and documents identified in the Task Order for the Contract Administrator's review.

5.3 If the Contract Administrator determines that CONSULTANT is unable to complete Services under any Task Order because of delays resulting from untimely review by CITY or other governmental agencies having jurisdiction over a project and such delays are not the fault of CONSULTANT, or because of delays caused by factors outside the control of CONSULTANT, CITY shall grant a reasonable extension of time for completion of the Services and shall provide reasonable compensation, if appropriate. It shall be the responsibility of CONSULTANT to notify the Contract Administrator in writing whenever a delay in approval by a governmental agency is anticipated or experienced, and whenever a delay has been caused by factors outside of CONSULTANT's control, and to inform the Contract Administrator of all facts and details related to the delay. CONSULTANT must provide such written notice to the Contract Administrator within three (3) business days after the occurrence of the event causing the delay.

5.4 For any construction phase services authorized by a Task Order, if (a) Contractor fails to substantially complete a project on or before the substantial completion date specified in its agreement with CITY, or (b) if Contractor is granted an extension of time beyond said substantial completion date and Consultant's Services are extended beyond the substantial completion date through no fault of CONSULTANT, then CONSULTANT shall be compensated in accordance with Article 6 for all Services rendered by CONSULTANT beyond the substantial completion date.

5.5 If Contractor fails to substantially complete a project on or before the substantial completion date specified in its agreement with CITY, and the failure to substantially complete is caused in whole or in part by CONSULTANT, then CONSULTANT shall pay to CITY its proportional share of any claim for damages to Contractor arising out of the delay. The provisions for the computation of delay costs, damages, or any other amounts, whether direct or indirect, in the agreement between the Contractor and CITY are incorporated herein. This section shall not affect the indemnification rights or obligations of either party otherwise set forth in this Agreement.

5.6 If CONSULTANT is performing Services under a Task Order scheduled to be completed after the expiration of this Agreement, CONSULTANT agrees to continue those Services until completion under the same terms and conditions as stated in the existing Work Authorization.

ARTICLE 6. COMPENSATION AND METHOD OF PAYMENT

6.1 Amount and Method of Compensation. The total annual cumulative amount authorized for all Task Orders issued under this Agreement shall not exceed _____. It is agreed that the method of compensation is that of "Maximum Amount Not-to-Exceed" which means that CONSULTANT shall perform all services set forth in all Task Orders combined for total compensation amount of or less than the total stated. The hourly rate billing schedule to be used in negotiating each Task Order is attached as Exhibit C to this Agreement.

6.1.1 Optional Services. CITY may procure Optional Services up to a maximum not-to-exceed amount specified in the Task Order and in accordance with Article 7. Unused amounts of these Optional Services monies shall be retained by CITY.

6.1.2 Reimbursable Expenses. CITY will reimburse authorized Reimbursable Expenses as defined in Section 6.3 up to the maximum not-to-exceed amount specified in the Work Authorization. Unused amounts of those monies shall be retained by CITY.

6.1.3 Salary Costs. The maximum billing rates ("Maximum Billing Rates") payable by CITY for each of CONSULTANT's employee categories are shown on Exhibit C and are further described in Section 6.2.

6.1.4 Subconsultant Fees. CONSULTANT shall bill CITY for Subconsultant fees using the employee categories for Salary Costs on Exhibit C as defined in Section 6.2 and Reimbursable Expenses defined in Section 6.3. CONSULTANT shall bill Subconsultant fees with no mark-up and within any applicable maximum not to exceed amount.

6.1.5 Phased Amounts. Payments for Services shall be paid out in accordance with the project's phasing specified in the Task Order and shall not exceed the amount set forth in the Task Order. The invoiced fee amount for each phase will be subject to retainage as set forth in Section 6.5.

6.2 Salary Costs. The term Salary Costs as used herein means the hourly rate actually paid to all personnel engaged directly on tasks under a Task Order issued under this Agreement, as adjusted by an overall multiplier that consists of the following: 1) a fringe benefits factor; 2) an overhead factor; and 3) an operating margin. Said Salary Costs are to be used only for time directly attributable to those tasks. The fringe benefit and overhead rates shall be CONSULTANT's most recent and actual rates determined in accordance with Federal Acquisition Regulation ("FAR") guidelines and audited by an independent Certified Public Accountant. These rates shall remain in effect for the term of this Agreement except as provided for in this Section 6.2 inclusive of the subsections below.

6.2.1 CONSULTANT shall require all of its Subconsultants to comply with the requirements of Section 6.2.

6.2.2 Salary Costs for CONSULTANT and Subconsultants as shown in Exhibit C are the Maximum Billing Rates, which are provisional, subject to audit of actual costs, and if the audit discloses that the actual costs are less than the costs set forth on Exhibit C for CONSULTANT or any Subconsultant, CONSULTANT shall reimburse CITY based upon the actual costs determined by the audit. CITY may withhold the amount CONSULTANT is required to reimburse CITY from any payment due CONSULTANT.

6.3 Reimbursable Expenses. For reimbursement of any other direct non-salary expenses directly attributable to any Task Order permitted under this Agreement, CONSULTANT agrees to adhere to Section 112.061, Florida Statutes, as may be amended or revised, except to the extent otherwise stated herein. CITY shall not be liable for any such expenses that have not been approved in advance and in writing in a Task Order. Reimbursable Subconsultant expenses must also comply with the requirements of this section. Travel expenses are not allowed.

6.3.1 Direct non-salary expenses, entitled Reimbursable, directly attributable to the Project will be charged at actual cost. Reimbursable expenses are in addition to the compensation for basic services and include actual expenditures made by CONSULTANT and CONSULTANT's employees directly attributable to the Project 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 Task Order previously billed, exceeds the amount allocated for such Task Order shall be the responsibility of CONSULTANT unless otherwise agreed to in writing by the Contract Administrator. Travel and subsistence expenses for 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.

6.4 Method of Billing.

6.4.1 For Maximum Amount Not-To-Exceed 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 Reimbursable Expenses attributable to the Task Order. These billings shall identify the nature of the work performed, the total hours of work performed, and the employee category of the individuals performing same. The statement shall itemize and summarize Reimbursable Expenses by category and identify the personnel incurring the expense and the nature of the work with which such expense was associated. Where prior written approval by Contract Administrator is required for Reimbursable Expenses, a copy of said approval shall accompany the billing for such reimbursable. The statement shall show a summary of Salary Costs and Reimbursable Expenses with accrual of the total and credits for portions paid previously. External Reimbursable Expenses and Subconsultant fees must be documented by copies of invoices or receipts that describe the nature of the expenses and contain a project number or other identifier that clearly indicates the expense is identifiable to the Services authorized by the operative Task Order. 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, Reimbursable Expenses by category, and Subconsultant fees on a task basis, so that total hours and costs by task may be determined.

6.5 Payment Procedure.

6.5.1 CITY shall pay CONSULTANT in accordance with the Florida Prompt Payment Act. To be deemed proper, all invoices and billing statements must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by the Contract Administrator.

6.5.2 Unless otherwise provided in this section, retainage in the amount of five percent (5%) of each invoice shall be retained by CITY until satisfactory completion of the applicable phase. When the Services to be performed on all phases under a Task Order are fifty percent (50%) complete, upon written request by CONSULTANT and written approval by the Contract Administrator that the Services are progressing in a satisfactory manner, the Contract Administrator, in the Contract Administrator's sole discretion, may authorize the reduction of retainage of each invoice for subsequent payments. No amount shall be withheld from payments for Reimbursable Expenses or for Services performed during the construction phase, if applicable.

6.5.3 Upon CONSULTANT's completion of each phase to the satisfaction of the Contract Administrator, CITY shall remit to CONSULTANT any amounts withheld as

retainage for that phase. Final payment under each Task Order must be approved by the Chief Purchasing Officer.

6.5.4 Payment will be made to CONSULTANT at the following address:

6.6 Fiscal Year. The continuation of this Agreement beyond the end of any CITY fiscal year (October 1 through September 30) is subject to appropriation and the availability of funds.

6.7 CONSULTANT shall pay Subconsultants and suppliers providing Services under any Work Authorization issued in accordance with this Agreement within fifteen (15) days following receipt of payment from CITY for such subcontracted work or supplies. If CONSULTANT withholds an amount as retainage from a Subconsultant or supplier, CONSULTANT shall release such retainage and pay same within fifteen (15) days following receipt of payment of retained amounts from CITY. The Contract Administrator may, at its option, increase allowable retainage or withhold progress payments unless and until CONSULTANT demonstrates timely payments of sums due to all Subconsultants and suppliers. CONSULTANT shall include requirements substantially similar to those set forth in this section in its contracts with Subconsultants and suppliers.

6.8 Payments are scheduled to be made by CITY to CONSULTANT using a credit card/CITY Procurement Card (P-Card).

ARTICLE 7. OPTIONAL AND ADDITIONAL SERVICES; CHANGES IN SCOPE OF SERVICES

7.1 CITY or CONSULTANT may request changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under an operative Task Order. Unless otherwise expressly permitted herein, such changes must be made in accordance with the provisions of the CITY Procurement Code and must be contained in a written amendment, executed by the Parties hereto, with the same formality and of equal dignity herewith.

7.2 If a dispute between the Contract Administrator and CONSULTANT arises over whether any work requested by CITY is within the scope of contracted Services and such dispute cannot be resolved by the Contract Administrator and CONSULTANT, such dispute shall be promptly presented to City Manager or the City Manager's designee for resolution, whose decision shall be in writing and shall be final and binding on the Parties. During the pendency of any dispute, CONSULTANT shall promptly perform the disputed work.

ARTICLE 8. REPRESENTATIONS AND WARRANTIES

8.1 Representation of Authority. CONSULTANT represents and warrants that this Agreement constitutes the legal, valid, binding, and enforceable obligation of CONSULTANT, and that neither the execution nor performance of this Agreement constitutes a breach of any agreement that CONSULTANT has with any third party or violates any law, rule, regulation, or duty arising in law or equity applicable to CONSULTANT. CONSULTANT further represents and warrants that execution of this Agreement is within CONSULTANT's legal powers, and

each individual executing this Agreement on behalf of CONSULTANT is duly authorized by all necessary and appropriate action to do so on behalf of CONSULTANT and does so with full legal authority.

8.2 Solicitation Representations. CONSULTANT represents and warrants that all statements and representations made in CONSULTANT's proposal, bid, or other supporting documents submitted to CITY in connection with the solicitation, negotiation, or award of this Agreement, including during the procurement or evaluation process, were true and correct when made and are true and correct as of the date CONSULTANT executes this Agreement, unless otherwise expressly disclosed in writing by CONSULTANT.

8.3 Contingency Fee. CONSULTANT represents that it has not paid or agreed to pay any person or entity, 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. If this Agreement is subject to Section 287.055, Florida Statutes, the Parties agree and stipulate that the statutory language stated in Section 287.055(6)(a) is deemed included and fully incorporated herein.

8.4 Truth-In-Negotiation Representation. CONSULTANT's compensation under this Agreement is based upon its representations to CITY, and CONSULTANT certifies that the wage rates, factual unit costs, and other information supplied to substantiate CONSULTANT's compensation, including, without limitation, in the negotiation of this Agreement, are accurate, complete, and current as of the date CONSULTANT executes this Agreement. CONSULTANT's compensation will be reduced to exclude any significant sums by which the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs.

8.5 Public Entity Crime Act. CONSULTANT represents that it is familiar with the requirements and prohibitions under the Public Entity Crime Act, Section 287.133, Florida Statutes (2021), as may be amended or revised, and represents that its entry into this Agreement will not violate that Act. CONSULTANT further represents that there has been no determination that it committed a "public entity crime" as defined by Section 287.133, Florida Statutes (2021), as may be amended or revised, and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether CONSULTANT has been placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto and may result in debarment from the CITY's competitive procurement activities.

8.6 Scrutinized Companies List. The Boycott Israel List was created pursuant to Section 215.4725, Florida Statutes (2021), as may be amended or revised. CONSULTANT certifies that it is not on the scrutinized companies list and that it is not engaged in a boycott of Israel. The CITY may terminate this Agreement at the CITY's sole option if the CONSULTANT is found to have submitted a false certification as provided under subsection (5) of Section 287.135, Florida Statutes (2021), 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 (2021), as may be amended or revised, or is engaged in a boycott of Israel.

8.7 Verification of Employment Eligibility. CONSULTANT represents that CONSULTANT and each Subconsultant has registered with and uses the E-Verify system maintained by the United States Department of Homeland Security to verify the work authorization status of all newly hired employees in compliance with the requirements of Section 448.095, Florida Statutes (2021), as may be amended or revised, and that entry into this Agreement will not violate that statute. If CONSULTANT violates this section, County may immediately terminate this Agreement for cause and CONSULTANT shall be liable for all costs incurred by County due to the termination.

8.8 Warranty of Performance. CONSULTANT represents and warrants that it possesses the knowledge, skill, experience, and financial capability required to perform and provide all required and optional Services under this Agreement, and that each person and entity that will provide Services under this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and is sufficiently experienced and skilled in the area(s) for which such person or entity will render Services. CONSULTANT represents and warrants that the Services under this Agreement shall be performed in a skillful and respectful manner, and that the quality of all such services shall equal or exceed prevailing industry standards for the provision of such services.

8.9 Breach of Representations. In entering into this Agreement, CONSULTANT acknowledges that CITY is materially relying on the representations and warranties of CONSULTANT stated in this Article. CITY shall be entitled to recover any damages it incurs to the extent any such representation or warranty is untrue. In addition, if any such representation or warranty is false, CITY shall have the right, at its sole discretion, to terminate this Agreement without any further liability to CONSULTANT, to deduct from the compensation due CONSULTANT under this Agreement the full amount of any value paid in violation of a representation or warranty, or to recover all sums paid to CONSULTANT under this Agreement. Furthermore, a false representation may result in debarment from CITY's competitive procurement activities.

ARTICLE 9. TERMINATION

9.1 Termination. This Agreement or any Task Order issued under this Agreement may be terminated for cause by the CITY if CONSULTANT has not corrected the breach within ten (10) days after receipt of written notice from the aggrieved party identifying the breach. This Agreement may also be terminated for convenience by the City Commission. Termination for convenience by the City Commission shall be effective on the termination date stated in written notice provided by CITY, which termination date shall be not less than thirty (30) days after the date of such written notice. If this Agreement or any Task Order was approved by City Commission action, termination for cause by CITY of the Agreement or Task Order, as applicable, must be by action of the City Commission or the City Manager; in all other instances termination for cause may be affected by the City Manager, the CITY representative expressly authorized under this Agreement, on behalf of CITY. This Agreement may also be terminated by the City Manager upon such notice as the City Manager deems appropriate under the circumstances if the City Manager determines that termination is necessary to protect the public

health, safety, or welfare. If CITY erroneously, improperly, or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience and shall be effective thirty (30) days after such notice of termination for cause is provided.

9.2 This Agreement or any Task Order issued under this Agreement, may be terminated for cause by CITY for reasons including, but not limited to, any of the following:

9.2.1 CONSULTANT's failure to suitably perform the work, failure to continuously perform the Services in a manner calculated to meet or accomplish the objectives in this Agreement or Task Order, or repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices;

9.2.2 If CONSULTANT is a "scrutinized company" pursuant to Section 215.473, Florida Statutes, if CONSULTANT is placed on a "discriminatory vendor list" pursuant to Section 287.134, Florida Statutes, or if CONSULTANT provides a false certification submitted pursuant to Section 287.135, Florida Statutes;

9.3 Notice of termination shall be provided in accordance with the "Notices" section of this Agreement except that notice of termination by the City Manager to protect the public health, safety, or welfare may be oral notice that shall be promptly confirmed in writing.

9.4 If this Agreement or any Task Order issued under this Agreement is terminated for convenience, CONSULTANT shall be paid for any Services properly performed under this Agreement or operative Task Order through the termination date specified in the written notice of termination, subject to any right of County to retain any sums otherwise due and payable. CONSULTANT acknowledges and agrees that it has received good, valuable, and sufficient consideration from CITY, the receipt and adequacy of which are acknowledged by CONSULTANT, for CITY's right to terminate this Agreement for convenience.

9.5 In addition to any right of termination stated in this Agreement, CITY shall be entitled to seek any and all available remedies, whether stated in this Agreement or otherwise available at law or in equity.

CONSULTANT shall have the right to terminate this Agreement upon substantial breach by the CITY of its obligation under this Agreement as to unreasonable delay in payment or non-payment of undisputed items. CONSULTANT shall have no right to terminate this Agreement for convenience of CONSULTANT.

ARTICLE 10. INSURANCE

10.1 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:

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 CONSULTANTS.

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 \$2,000,000 each claim and \$2,000,000 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

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. 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, 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, 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 CONSULTANTS and SUBCONSULTANTS comply with these insurance requirements. All coverages for independent CONSULTANTS and SUBCONSULTANTS 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.

**ARTICLE 11. MINORITY AND DISADVANTAGED PARTICIPATION;
NON-DISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY,
AND AMERICANS WITH DISABILITIES ACT**

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

11.2 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 in 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 ADA 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.

ARTICLE 12. MISCELLANEOUS

12.1 Contract Administrator Authority. The Contract Administrator is authorized to coordinate and communicate with CONSULTANT to manage and supervise the performance of this Agreement. Unless expressly stated otherwise in this Agreement, the Contract Administrator may exercise any ministerial authority under this Agreement in connection with the day-to-day management of this Agreement provided that such instructions and determinations do not change the Scope of Services. The Contract Administrator may designate one or more CITY employees with authority pertaining to day-to-day project management or activities for each Work Authorization. CONSULTANT shall notify Contract Administrator in writing of CONSULTANT's representative(s) to whom matters involving the Work Authorization shall be addressed.

12.2 Rights in Documents and Work. Any and all reports, photographs, surveys, and documents created by CONSULTANT in connection with performing Services under this Agreement or any Work Authorization shall be owned by CITY and shall be deemed works for hire by CONSULTANT and its agents; if the Services are determined not to be a work for hire, CONSULTANT hereby assigns all right, title, and interest, including any copyright or other intellectual property rights in or to the work, to CITY. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents created by CONSULTANT, whether finished or unfinished, shall become the property of CITY and shall be delivered by CONSULTANT to the Contract Administrator within seven (7) days after termination of this Agreement. Any compensation due to CONSULTANT may be withheld until all documents are received as provided in this Agreement. CONSULTANT shall ensure that the requirements of this section are included in all agreements with its Subconsultant(s).

12.3 Ownership of Documents. All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, specifications and reports prepared or provided by CONSULTANT in connection with this Agreement shall become the property of CITY, whether the Work Authorization for which they are made is completed or not and shall be delivered by CONSULTANT to Contract Administrator within fifteen (15) days of the receipt of the written notice of termination. If applicable, CITY may withhold any payments then due to CONSULTANT until CONSULTANT complies with the provisions of this section.

12.4 Public Records. To the extent CONSULTANT is acting on behalf of CITY as stated in Section 119.0701, Florida Statutes, CONSULTANT shall:

12.4.1 Keep and maintain public records required by CITY to perform the services under this Agreement;

12.4.2 Upon request from CITY, provide CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

12.4.3 Ensure that public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion or termination of this Agreement if the records are not transferred to CITY; and

12.4.4 Upon completion or termination of this Agreement, transfer to CITY, at no cost, all public records in possession of CONSULTANT or keep and maintain public records required by CITY to perform the services. If CONSULTANT transfers the records to CITY, CONSULTANT shall destroy any duplicate public records that are exempt or confidential and exempt. If CONSULTANT keeps and maintains the public records, CONSULTANT shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to CITY upon request in a format that is compatible with the information technology systems of CITY.

A request for public records regarding this Agreement must be made directly to CITY, who will be responsible for responding to any such public records requests. CONSULTANT will provide any requested records to CITY to enable CITY to respond to the public records request. Any material submitted to CITY that CONSULTANT contends constitutes or contains trade secrets or is otherwise exempt from production under Florida public records laws (including Chapter 119, Florida Statutes) (“Trade Secret Materials”) must be separately submitted and conspicuously labeled “EXEMPT FROM PUBLIC RECORD PRODUCTION – TRADE SECRET.” In addition, CONSULTANT must, simultaneous with the submission of any Trade Secret Materials, provide a sworn affidavit from a person with personal knowledge attesting that the Trade Secret Materials constitute trade secrets under Section 812.081, Florida Statutes, and stating the factual basis for same. If a third party submits a request to CITY for records designated by CONSULTANT as Trade Secret Materials, CITY shall refrain from disclosing the Trade Secret Materials, unless otherwise ordered by a court of competent jurisdiction or authorized in writing by CONSULTANT. CONSULTANT shall indemnify and defend CITY and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments, and liabilities of any kind, including attorneys’ fees, litigation expenses, and court costs, relating to the nondisclosure of any Trade Secret Materials in response to a records request by a third party.

[IF CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONSULTANT’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY CLERK’S OFFICE, 100 NORTH ANDREWS AVENUE, FORT LAUDERDALE, FLORIDA, 33301, PHONE: 954-828-5002, EMAIL: PRRCONTRACT@FORTLAUDERDALE.GOV.](#)

12.5 Audit Rights and Retention of Records. CONSULTANT shall preserve all Contract Records (as defined below) for a minimum period of three (3) years after expiration or termination of this Agreement, any Work Authorization, or until resolution of any audit findings, whichever is longer. Contract Records shall, upon reasonable notice, be open to CITY inspection

and subject to audit and reproduction during normal business hours. CITY audits and inspections pursuant to this section may be performed by any CITY representative (including any outside representative engaged by CITY). CITY may conduct audits or inspections at any time during the term of this Agreement and for a period of three (3) years after the expiration or termination of this Agreement (or longer if required by law). CITY may, without limitation, verify information, payroll distribution, and amounts through interviews, written affirmations, and on-site inspection with CONSULTANT's employees, subconsultants, vendors, or other labor.

Contract Records include any and all information, materials and data of every kind and character, including, without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, drawings, receipts, vouchers, memoranda, and any and all other documents that pertain to rights, duties, obligations, or performance under this Agreement. Contract Records include hard copy and electronic records, written policies and procedures, time sheets, payroll records and registers, cancelled payroll checks, estimating work sheets, correspondence, invoices and related payment documentation, general ledgers, insurance rebates and dividends, and any other records pertaining to rights, duties, obligations or performance under this Agreement, whether by CONSULTANT or Subconsultants.

CITY shall have the right to audit, review, examine, inspect, analyze, and make copies of all Contract Records at a location within Broward County. CONSULTANT hereby grants CITY the right to conduct such audit or review at CONSULTANT's place of business, if deemed appropriate by CITY, with seventy-two (72) hours' advance notice. CONSULTANT agrees to provide adequate and appropriate workspace. CONSULTANT shall provide CITY with reasonable access to CONSULTANT's facilities, and CITY shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Agreement.

CONSULTANT shall, by written contract, require its Subconsultants to agree to the requirements and obligations of this section.

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. If an audit or inspection in accordance with this section discloses overpricing or overcharges to CITY of any nature by CONSULTANT or its Subconsultants in excess of five percent (5%) of the total contract value reviewed by CITY, the reasonable actual cost of CITY's audit shall be reimbursed to CITY by CONSULTANT in addition to making adjustments for the overcharges. Any adjustments or payments due as a result of such audit or inspection shall be made within thirty (30) days after presentation of CITY's findings to CONSULTANT.

12.6 Subconsultants. CONSULTANT shall utilize only the Subconsultants identified in the Schedule of Subconsultants, to provide the Services under this Agreement. CONSULTANT shall obtain written approval of Contract Administrator prior to changing or modifying the Schedule of Subconsultants, which shall be automatically updated upon such written approval. CONSULTANT shall bind in writing each and every approved Subconsultant to the terms stated in this Agreement, provided that this provision shall not, in and of itself, impose the insurance requirements set forth in Article 10 on CONSULTANT's Subconsultants.

12.7 Assignment. Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered without the prior written consent of the other party. CITY shall have the right to terminate this Agreement, effective immediately, if there is an assignment, or attempted assignment, transfer, or encumbrance, of this Agreement or any right or interest herein by CONSULTANT without CITY's prior written consent.

12.8 Indemnification of County. CONSULTANT shall indemnify and hold harmless CITY, 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 CONSULTANT or other persons employed or utilized by CONSULTANT in the performance of this Agreement. The provisions of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by Contract Administrator and City Attorney, any sums due CONSULTANT under this Agreement may be retained by CITY until all of CITY's claims subject to this indemnification obligation have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by CITY.

12.9 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.

12.10 Amendments. 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.

12.11 Notices. In order for a notice to a party to be effective under this Agreement, notice must be sent via U.S. first-class mail, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via e-mail, to the addresses listed below and shall be effective upon mailing or hand delivery (provided the contemporaneous email is also sent). The addresses for notice shall remain as set forth in this section unless and until changed by providing notice of such change in accordance with the provisions of this section.

FOR CITY:

Contract Administrator
City of Fort Lauderdale
1 East Broward, 4th Floor
Fort Lauderdale, Florida 33301

with copies to:

City Manager

City of Fort Lauderdale
1 East Broward, 4th Floor
Fort Lauderdale, Florida 33301

City Attorney
City of Fort Lauderdale
1 East Broward, 4th Floor
Fort Lauderdale, Florida 33301

FOR CONSULTANT:

12.12 Interpretation. The titles and headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as “herein,” “hereof,” “hereunder,” and “hereinafter” refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or article of this Agreement, such reference is to the section or article as a whole, including all of the subsections of such section, unless the reference is made to a particular subsection or subparagraph of such section or article. Any reference to “days” means calendar days, unless otherwise expressly stated.

12.13 Consultant’s Staff. CONSULTANT will provide the key staff identified in its proposal for each Work Authorization 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 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; upon such reasonable justification, CONSULTANT shall use good faith efforts to remove or reassign the staff at issue.

12.14 Drug-Free Workplace. To the extent required under Section 287.087, Florida Statutes, CONSULTANT certifies that it has a drug- free workplace program and that it will maintain such drug-free workplace program for the duration of this Agreement.

12.15 Independent Contractor. CONSULTANT is an independent contractor under this Agreement, and nothing in this Agreement shall constitute or create a partnership, joint venture, or any other relationship between the Parties. In providing Services under this Agreement, neither CONSULTANT nor its agents shall act as officers, employees, or agents of CITY, except as authorized by the Contract Administrator for permitting, licensing, or other regulatory

requirements. CONSULTANT shall not have the right to bind CITY to any obligation not expressly undertaken by CITY under this Agreement.

12.16 Regulatory Capacity. Notwithstanding the fact that CITY is a political subdivision with certain regulatory authority, CITY's performance under this Agreement is as a Party to this Agreement and in the capacity as owner. If CITY exercises its regulatory authority, the exercise of such authority and the enforcement of any rules, regulation, laws, and ordinances shall have occurred under CITY's regulatory authority as a governmental body separate and apart from this Agreement and shall not be attributable in any manner to CITY as a Party to this Agreement.

12.17 Sovereign Immunity. Except to the extent sovereign immunity may be deemed to be waived by entering into this Agreement, nothing herein is intended to serve as a waiver of sovereign immunity by CITY nor shall anything included herein be construed as consent by CITY to be sued by third parties in any matter arising out of this Agreement. CITY is a political subdivision as defined in Section 768.28, Florida Statutes, and shall be responsible for the negligent or wrongful acts or omissions of its employees pursuant to Section 768.28, Florida Statutes, as may be amended or revised.

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

12.19 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 and care related to its performance under this Agreement. During the term of this Agreement, none of CONSULTANT's officers or employees shall 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, such persons shall not give sworn testimony or issue a report or writing, as an expression of such person's expert opinion that 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 of such representation, in any action or in any administrative or legal proceeding. If CONSULTANT is permitted under this Agreement to utilize Subconsultants to perform any Services required by this Agreement, CONSULTANT shall require such Subconsultants, by written contract, to comply with the provisions of this section to the same extent as CONSULTANT.

12.20 Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth in this Agreement was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth in this Agreement is substantial and important to the formation of this Agreement, and each is, therefore, a material term of this Agreement. 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. To be effective, any waiver must be in writing signed by an authorized signatory of the waiving party.

12.21 Compliance with Laws. CONSULTANT and the Services must comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations including, without limitation, American with Disabilities Act, 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and any related federal, state, or local laws, rules, and regulations.

12.22 Severability. If any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.

12.23 Joint Preparation. This Agreement has been jointly prepared by the Parties and shall not be construed more strictly against either party.

12.24 Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached to, referenced by, or incorporated in this Agreement and any provision of Articles 1 through 12 of this Agreement, the provisions contained in Articles 1 through 12 shall prevail and be given effect.

12.25 Law, Jurisdiction, Venue, 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.

12.26 Reuse of Deliverables. CITY may, at its option, reuse (in whole or in part) the resulting end-product or deliverables resulting from CONSULTANT's Services (including, but not limited to, drawings, specifications, other documents, and services as described herein and in Exhibit A or any Work Authorizations); and CONSULTANT agrees to such reuse in accordance with this provision. If the Contract Administrator elects to reuse the services, drawings, specifications, and other documents, in whole or in part, prepared for any services rendered under this Agreement

for other projects on other sites, CONSULTANT will be paid a reuse fee to be negotiated between CONSULTANT and CITY, subject to approval by the proper awarding authority. Each reuse shall include all Services and modifications to the drawings, specifications, and other documents normally required to adapt the design documents to a new site. This reuse may include preparation of reverse plans, changes to the program, provision for exceptional site conditions, preparation of documents for off-site improvements, provisions for revised solar orientation, provisions for revised vehicular and pedestrian access, and modifications to building elevations, ornament, or other aesthetic features. In all reuse assignments, the design documents shall be revised to comply with building codes and other jurisdictional requirements current at the time of reuse for the new site location. The terms and conditions of this Agreement shall remain in force for each reuse project, unless otherwise agreed by the Parties in writing.

12.27 Payable Interest.

12.27.1 Payment of Interest. CITY shall not be liable to pay any interest to CONSULTANT 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 arising from, related to, or in connection with this Agreement. This subsection shall not apply to any claim for interest, including for post-judgment interest, if such application would be contrary to applicable law.

12.27.2 Rate of Interest. If the preceding subsection is inapplicable or is determined to be invalid or unenforceable by a court of competent jurisdiction, the annual rate of interest payable by CITY under this Agreement, whether as prejudgment interest or for any other purpose, shall be, to the full extent permissible under applicable law, one quarter of one percent (0.25%) simple interest (uncompounded).

12.28 Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated in this Agreement by reference. The attached Exhibits are incorporated into and made a part of this Agreement.

[THIS SPACE WAS INTENTIONALLY LEFT BLANK]

CITY

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

CITY OF FORT LAUDERDALE, a Florida
municipal corporation

By: _____
GREG CHAVARRIA
City Manager

Date: _____

(CORPORATE SEAL)

ATTEST:

By: _____
DAVID R. SOLOMAN
City Clerk

APPROVED AS TO LEGAL FORM:
Thomas J. Ansbro, City Attorney

By: _____
RHONDA MONTOYA HASAN
Assistant City Attorney

CONSULTANT

WITNESSES: _____, a Florida corporation

By: _____

Print Name

ATTEST:

Print Name

By: _____

Secretary

(CORPORATE SEAL)

STATE OF _____:

COUNTY OF _____:

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, 2021, by _____, a Florida corporation.

(Signature of Notary Public – State of _____)

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

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