

AGREEMENT

between

City of Fort Lauderdale

and

Smith Engineering Consultants, Inc.

for

a Design Criteria Package for  
Effluent Pumps Standby Generators & Administration Building Improvements  
George T. Lohmeyer Wastewater Treatment Plant

RFQ No. 12575-916

## AGREEMENT

THIS IS AN AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between:

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

and

SMITH ENGINEERING CONSULTANTS, INC., a Florida corporation (hereinafter referred to as "CONSULTANT"), collectively referred to as "Party" or "Parties."

WHEREAS, the City Commission of the City of Fort Lauderdale, Florida, at its meeting of \_\_\_\_\_, authorized the proper officials by motion to execute an Agreement between CONSULTANT and CITY authorizing the performance of services in connection with Effluent Pumps Standby Generators & Administration Building Improvements at the George T. Lohmeyer Wastewater Treatment Plant; and

WHEREAS, the CONSULTANT responded to the CITY's Solicitation RFQ #12575-916 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 hereto, do agree as follows:

### **ARTICLE 1** **DEFINITIONS AND IDENTIFICATIONS**

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

- 1.1 **ADDITIONAL SERVICES**: Services performed by the CONSULTANT authorized by Task Order and supplemental to the basic services described in this Agreement and listed in Exhibit "A," Scope of Services.
- 1.2 **AGREEMENT**: Means this document between the CITY and CONSULTANT dated \_\_\_\_\_ and any duly authorized and executed Amendments to Agreement.
- 1.3 **BASIC SERVICES**: Services performed by the CONSULTANT for authorized scope of work described in this Agreement and listed in Exhibit "A," Scope of Services.
- 1.4 **CITY**: The City of Fort Lauderdale, a municipal corporation of the State of Florida.

- 1.5 **CITY MANAGER:** The City Manager of the City of Fort Lauderdale, Florida.
- 1.6 **COMMISSION:** The City Commission of the City of Fort Lauderdale, Florida, which is the governing body of the CITY government.
- 1.7 **CONSULTANT:** **Smith Engineering Consultants, Inc.** the CONSULTANT selected to perform professional services pursuant to this Agreement.
- 1.8 **CONTRACT ADMINISTRATOR:** The Public Works Director, or his or her designee. In the administration of this Agreement, as contrasted with matters of policy, all Parties may rely upon instructions or determinations made by the Contract Administrator.
- 1.9 **ERROR:** A mistake in design, plans and/or specifications that incorporates into those documents an element that is incorrect and is deficient from the standard of care that a professional engineer in similar circumstances, working on a similar project and location would have exercised. Also includes mistakes in design, plans, specifications and/or shop drawings review that lead to materials and/or equipment being ordered and/or delivered where additional costs are incurred.
- 1.10 **NOTICE TO PROCEED:** A written Notice to Proceed issued by the Contract Administrator.
- 1.11 **OMISSION:** A scope of work missed by the CONSULTANT that is necessary for the Project, including a quantity miscalculation, which was later discovered and added by Change Order, and which is deficient from the standard of care that a professional engineer in similar circumstances, working on a similar project and location would have exercised. Also includes design that was wrong, but was corrected after award to the Design-Build Firm, but before the construction process was materially affected.
- 1.12 **PLANS AND SPECIFICATIONS:** The documents setting forth the complete design for the design criteria package, including architectural, civil, structural, mechanical, electrical, communications and security systems, materials, lighting equipment, site and landscape design, and other essentials as may be appropriate, all as approved by CITY as provided in this Agreement.
- 1.13 **PROJECT:** An agreed scope of work for accomplishing the completion of the design criteria package for the Effluent Pumps Standby Generator and the Administration Building. This may include, but is not limited to, planning, architectural, and engineering services. The services to be provided by the CONSULTANT shall be as defined in this Agreement and further detailed in Task Orders for the competition of the design criteria package.
- 1.15 **SPECIFICATIONS:** The specifications referred to in this Agreement are the CONSTRUCTION STANDARDS AND SPECIFICATIONS, Office of the City Engineer, City of Fort Lauderdale, January 1982, including any revisions.
- 1.16 **SUBSTANTIAL COMPLETION:** The CITY will consider the work substantially complete when the CONSULTANT submits 100% complete deliverables (i.e. Drawings, Specifications, Reports, Renderings) as described in this Agreement to the satisfaction of the CITY.

- 1.17 **TASK ORDER**: A document setting forth a detailed scope of services to be performed by CONSULTANT upon authorization of the CITY.
- 1.18 **TIME OF COMPLETION**: Time in which the entire work shall be completed.

## **ARTICLE 2** **PREAMBLE**

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

- 2.1 CITY has budgeted funds for the Project.

## **ARTICLE 3** **SCOPE OF SERVICES FOR BASIC SERVICES**

- 3.1 CONSULTANT shall provide all services set forth in Exhibit "A," Scope of Services, attached hereto and incorporated herein, including all necessary, incidental and related activities and services required by the Scope of Services and contemplated in CONSULTANT's level of effort.
- 3.2 CITY and CONSULTANT acknowledge that the Scope of Services does not delineate every detail and minor work tasks required to be performed by CONSULTANT to complete the Project. If, during the course of the performance of the services included in this Agreement, CONSULTANT determines that work should be performed to complete the Project which is in the CONSULTANT's opinion, outside the level of effort originally anticipated, whether or not the Scope of Services identifies the work items, CONSULTANT shall notify Contract Administrator and obtain written approval by the Contract Administrator in a timely manner before proceeding with the work. Notice to Contract Administrator does not constitute authorization or approval by CITY to perform the work. The CITY shall not pay for any work that is not approved by the Contract Administrator in writing prior to its commencement. If CONSULTANT proceeds with said work without notifying the Contract Administrator, said work shall be deemed to be within the original level of effort, whether or not specifically addressed in the Scope of Services. Notice to Contract Administrator does not constitute authorization or approval by CITY to perform the work. Performance of work by CONSULTANT outside the originally anticipated level of effort without prior written CITY approval is at CONSULTANT's sole risk.
- 3.3 CITY and CONSULTANT acknowledge that basic services described in Exhibit "A" are included in the fee agreed upon. The CITY and CONSULTANT may negotiate additional scopes of services, compensation, time of performance and other related matters for any necessary additional task phases. If CITY and CONSULTANT cannot contractually agree, CITY shall have the right to immediately terminate negotiations

at no cost to CITY and procure services from another source.

#### **ARTICLE 4**

#### **GENERAL PROVISIONS**

- 4.1 CONSULTANT shall include CITY's project number as part of the heading on all correspondence, invoices, etc. All correspondence shall be directed specifically to the Contract Administrator.
- 4.2 Negotiations pertaining to the professional design, engineering, architectural and project management services to be performed by the CONSULTANT have been undertaken between CONSULTANT and CITY representatives pursuant to Section 287.055, Florida Statutes, and this Agreement incorporates the results of such negotiation.
- 4.3 The Contract documents shall have the following order of precedence:
  - A. Change orders (to the extent they are permitted under this Agreement).
  - B. This Agreement, and all exhibits, addendums, and amendments thereto.
  - C. City's solicitation dated August 27, 2021.
  - D. Negotiated Task Orders.
  - E. Consultant's response to the City's Solicitation dated November 19, 2021.

#### **ARTICLE 5**

#### **TASK ORDERS FOR SERVICES**

- 5.1 Task Orders shall be jointly prepared by the CITY and CONSULTANT defining the detailed scope of services to be provided. Each Task Order shall be separately numbered and approved in accordance with this Agreement (and applicable CITY purchasing code requirements). These Task Orders shall be based upon the general description of basic services as described in Exhibit "A."
- 5.2 Under all Task Orders, CITY may require the CONSULTANT, by specific written authorization, and for mutually agreed upon additional compensation, to provide or assist in obtaining one or more of the following special services. These services may include, at the discretion of the CITY, the following items:
  - 5.2.1 Providing additional copies of reports and documents; and
  - 5.2.2 Assisting the CITY with litigation support services arising from the planning, development, or construction.
- 5.3 Prior to initiating the performance of any services under this Agreement, CONSULTANT must receive a written Notice to Proceed from the CITY. The CONSULTANT must receive the approval of the Contract Administrator or his designee in writing prior to beginning the performance of services in any subsequent Task Order under this Agreement.
- 5.4 If, in the opinion of the CITY, the CONSULTANT is improperly performing the services under a specific task, or if at any time the CITY shall be of the opinion that said task is being unnecessarily delayed and will not be completed within the agreed upon time,

the CITY shall notify the CONSULTANT in writing. The CONSULTANT has within ten (10) business days thereafter to take such measures as will, in the judgment of the CITY, ensure satisfactory performance and completion of the work. If the CONSULTANT fails to cure within the ten (10) business days, the CITY may notify the CONSULTANT to discontinue all work under the specified task. The CONSULTANT shall immediately respect said notice and stop said work and cease to have any rights in the possession of the work and shall forfeit the task order and any remaining monies. The CITY may then decide, after City Commission approval, to issue a new task order for the uncompleted work to another CONSULTANT using the remaining funds. Any excess costs arising therefrom over and above the original task order price shall be charged against you, as the original CONSULTANT.

- 5.5 In the event CONSULTANT is unable to complete the services on the date or dates as provided in this Agreement or subsequent Task Orders, because of delays resulting from the untimely review and approval by CITY and other governmental authorities having jurisdiction over the Project, CITY may grant an appropriate extension of time for completion of the work. It shall be the responsibility of the CONSULTANT to notify the CITY promptly in writing whenever a delay in approval by a governmental agency is anticipated or experienced, and to inform the CITY of all facts and details related to the delay.

## **ARTICLE 6**

### **TIME FOR PERFORMANCE; CONSULTANT DAMAGES**

- 6.1 CONSULTANT recognizes that **TIME IS OF THE ESSENCE**. The Work shall be complete within 120 calendar days.
- 6.2 CONSULTANT shall perform the basic services described in Exhibit "A" as follows: Task Order #1 shall be completed in 45 calendar days. Task Order #2 shall be completed in 75 calendar days; said time periods shall commence from the date of the Notice to Proceed for such services.
- 6.3 In the event CONSULTANT is unable to complete the above services because of delays resulting from untimely review by CITY, and such delays are not the fault of CONSULTANT, or because of delays which were caused by factors outside the control of CONSULTANT, CITY shall grant a reasonable extension of time for completion of the services and shall provide reasonable compensation, if appropriate. It shall be the responsibility of the CONSULTANT to notify CITY promptly in writing whenever a delay is anticipated or experienced, and to inform CITY of all facts and details related to the delay.
- 6.4 The time for the performance of services described in any supplemental Task Orders shall be negotiated by the CITY and the CONSULTANT as the services are requested and authorized by the CITY.
- 6.5 The term of this Agreement shall be limited to the time duration required to complete the basic services of the aforementioned Project and any additional related Task Orders for additional services.

**ARTICLE 7**  
**COMPENSATION AND METHOD OF PAYMENT**

7.1 **AMOUNT AND METHOD OF COMPENSATION**

**Not To Exceed Compensation**

CITY agrees to pay CONSULTANT as compensation for performance of all services as related to Exhibit "A" required under the terms of this Agreement an amount not to exceed **Five Hundred Thousand Dollars (\$500,000.00)**, for all related Task Orders. It is agreed that the method of compensation is that of "Not to Exceed Amount" which means that CONSULTANT shall perform all services set forth in all Task Orders combined for total compensation in the amount of or less than that stated total. The hourly rate-billing schedule to be used in negotiating each Task Order is attached as Exhibit "B" to this Agreement.

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

7.2 **REIMBURSABLES**

7.2.1 Direct non-salary expenses, entitled Reimbursables, 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, his staff and subconsultants and communication expenses, long distance telephone, courier and express mail between CONSULTANT's and subconsultants' various offices are not reimbursable under this Agreement. Reimbursables shall include only the following listed expenses unless authorized in writing by the Contract Administrator:

- A. Cost of reproduction, postage and handling of drawings and specifications which are required to deliver services set forth in this Agreement, excluding reproductions for the office use of CONSULTANT. Reimbursable printing and photocopying expenses shall include only those prints or photocopies of original documents which are (i) exchanged among CONSULTANT, CITY and other third parties retained or employed by any of them or (ii) submitted to CITY for review, approval or further distribution. Documents, which are reproduced for CONSULTANT's internal drafts, reviews, or other purposes, are not eligible for reimbursement.

- B. Identifiable testing costs and special inspections approved by Contract Administrator.
- C. Overnight Delivery/Courier Charges at actual cost (when CITY requires/requests this service).

It is acknowledged and agreed to by CONSULTANT that the dollar limitation set forth in each Task Order is a limitation upon and describes the maximum extent of CITY's obligation to reimburse CONSULTANT for direct, non-salary expenses, but does not constitute a limitation, of any sort, upon CONSULTANT obligation to incur such expenses in the performance of services hereunder. CONSULTANT shall be compensated for Reimbursable expenses associated with a particular Task Order up to the amount allocated for such Task Order. The CITY shall not remit payment for any of CONSULTANT's expenses that exceed the amount allocated for each Task Order, unless agreed to in writing by the Contract Administrator. If CITY or Contract Administrator requests CONSULTANT to incur expenses not contemplated in the amount for Reimbursables for each task order, CONSULTANT shall notify Contract Administrator in writing before incurring such expenses. Any such expenses shall be reviewed and approved by the Contract Administrator prior to incurring such expenses.

### 7.3 METHOD OF BILLING

#### Not To Exceed Amount Compensation

CONSULTANT shall submit billings, which are identified by the specific project number on a monthly basis in a timely manner for all salary costs and Reimbursables attributable to the Project. These billings shall identify the nature of the work performed for each phase, subtask, deliverable and item identified in the Exhibit "A" Scope of Services or Task Order, the total hours of work performed and the employee category of the individuals performing same. The statement shall show a summary of salary costs with accrual of the total and credits for portions paid previously. Subconsultant fees must be documented by copies of invoices or receipts, which describe the nature of the expenses and contain a project number or other identifier, which clearly indicates the expense, as identifiable to the Project. Except for meals and travel expenses, it shall be deemed unacceptable for the CONSULTANT to modify the invoice or receipt by adding a project number or other identifier. Internal expenses must be documented by appropriate CONSULTANT's cost accounting forms with a summary of charges by category. When requested, CONSULTANT shall provide backup for past and current invoices that records hours and salary costs by employee category and subconsultant fees on a task basis, so that total hours and costs by task may be determined.

### 7.4 METHOD OF PAYMENT

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



7.4.2 CITY will review CONSULTANT's invoices and, if inaccuracies or errors are discovered in said invoice, CITY will inform CONSULTANT within ten (10) working days by fax and/or by email of such inaccuracies or errors and request that revised copies of all such documents be re-submitted by CONSULTANT to CITY.

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

7.4.4 Payment will be made to CONSULTANT at:

Smith Engineering Consultants, Inc.  
2161 West Palm Beach Lakes Blvd.  
Suite 312  
West Palm Beach, Florida 333409  
Telephone: (954) 590-0488  
Email: [larry@smithengineeringconsultants.com](mailto:larry@smithengineeringconsultants.com)

## **ARTICLE 8**

### **ADDITIONAL SERVICES, AMENDMENTS AND CHANGES IN SCOPE OF SERVICES**

- 8.1 CITY or CONSULTANT may request changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement. Such changes must be contained in a written amendment, executed by the Parties hereto, with the same formality and of equal dignity herewith, prior to any deviation from the terms of this Agreement including the initiation of any Additional Services. CITY shall compensate CONSULTANT for such Additional Services as provided in Article 7.
- 8.2 In the event a dispute between the Contract Administrator and CONSULTANT arises over whether requested services constitute Additional Services, and such dispute cannot be resolved by the Contract Administrator and CONSULTANT, such dispute shall be promptly presented to the City Manager for resolution. The City Manager's decision shall be final and binding on the Parties for amounts in the aggregate under \$100,000.00. In the event of a dispute in an amount over \$100,000.00, the Parties agree to use their best efforts to settle such dispute. To this effect, they shall consult and negotiate with each other, in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both Parties. If they do not reach such solution within a period of sixty (60) days, then upon notice to the other, either Party may commence litigation to resolve the dispute in Broward County, Florida. During the pendency of any dispute, CONSULTANT shall promptly perform the disputed services.

## **ARTICLE 9**

### **CITY'S RESPONSIBILITIES**

- 10.1 CITY shall assist CONSULTANT by placing at CONSULTANT's disposal all information CITY has available pertinent to the Project including previous reports and any other data relative to design or construction of the Project.

- 10.2 CITY shall arrange for access to, and make all provisions for, CONSULTANT to enter upon public and private property as required for CONSULTANT to perform its services.
- 10.3 CITY shall review the itemized deliverables/documents identified in Scope of Services.
- 10.4 CITY shall give prompt written notice to CONSULTANT whenever CITY observes or otherwise becomes aware of any development that affects the scope or timing of CONSULTANT's services.

## **ARTICLE 10** **MISCELLANEOUS**

### **11.1 OWNERSHIP OF DOCUMENTS**

All documents prepared or furnished by CONSULTANT, its dependent professional associates and employees, pursuant to this Agreement shall be owned by the CITY upon full payment of all fees due the CONSULTANT.

Drawings, specifications, designs, models, photographs, reports, surveys and other data prepared in connection with this Agreement are and shall remain the property of the CITY whether the Project for which they are made is executed or not and are subject to reuse by the CITY in accordance with Section 287.055(10), Florida Statutes. They are not intended or represented to be suitable for reuse by the CITY or others on extensions of this Project or on any other project without appropriate verification or adaptation. This shall not limit the CITY's reuse of preliminary or developmental plans or ideas incorporated therein, should the Project be suspended or terminated prior to completion.

### **11.2 TERMINATION**

11.2.1 Termination for Cause. It is expressly understood and agreed that the CITY may terminate this Agreement at any time for cause in the event that the CONSULTANT (1) violates any provisions of this Agreement or performs same in bad faith or (2) unreasonably delays the performance of the services or does not perform the services in a timely and satisfactory manner upon written notice to the CONSULTANT. Notice of termination shall be provided in accordance with Section 11.26. In the case of termination by the CITY for cause, the CONSULTANT shall be first granted a ten (10) working day cure period after receipt of written notice from the CITY. In the event that the Agreement is terminated, the CONSULTANT shall be entitled to be compensated for the services approved by the CITY and rendered from the date of execution of the Agreement up to the time of termination, subject to other provisions of this Agreement. Such compensation shall be based on the fee as set forth above, wherever possible. For those portions of services rendered to which the applicable fee cannot be applied, payment shall be based upon the appropriate rates for the actual time spent on the project. In the event that the CONSULTANT abandons this Agreement or through violation of any of the terms and conditions of this Agreement, causes it to

be terminated, CONSULTANT shall indemnify the CITY against any loss pertaining to this termination.

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

11.2.2 This Agreement may also be terminated by CITY upon such notice as CITY deems appropriate in the event CITY or Contract Administrator determines that termination is necessary to protect the public health, safety, or welfare.

11.2.3 Notice of termination shall be provided in accordance with Section 11.26, NOTICES, except that Contract Administrator may provide a prior verbal stop work order if the Contract Administrator deems a stop work order of this Agreement in whole or in part is necessary to protect the public's health, safety, or welfare. A verbal stop work order shall be promptly confirmed in writing as set forth in Section 11.26, NOTICES.

11.2.4 Termination for Convenience. In the event this Agreement is terminated for convenience, CONSULTANT shall be paid for any services performed to the date the Agreement is terminated. Compensation shall be withheld until all documents specified in Section 11.2 of this Agreement are provided to the CITY. Upon being notified of CITY's election to terminate, CONSULTANT shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. Under no circumstances shall CITY make payment for services which have not been performed.

11.2.5 Termination by CONSULTANT. 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 amounts. CONSULTANT shall have no right to terminate this Agreement for convenience of the CONSULTANT.

### 11.3 AUDIT RIGHT AND RETENTION OF RECORDS

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

CONSULTANT shall preserve and make available, at reasonable times for examination and audit by CITY all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by

CITY to be applicable to CONSULTANT's records, CONSULTANT shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by CONSULTANT. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for CITY's disallowance and recovery of any payment upon such entry.

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

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

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

CONSULTANT shall comply with Title I of the 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.

#### 11.5 MINORITY AND DISADVANTAGED PARTICIPATION

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

year.

#### 11.6 PUBLIC ENTITY CRIMES ACT

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

In addition to the foregoing, CONSULTANT further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a “public entity crime” 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.

#### 11.7 ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered without the prior written consent of the other Party, and CONSULTANT shall not subcontract any portion of the work required by this Agreement except as authorized pursuant to Section 11.14.

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

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

#### 11.8 INDEMNIFICATION OF CITY

11.8.1 CONSULTANT shall indemnify and hold harmless CITY, its officers, elected officials, and employees from any and all liabilities, damages, losses, penalties, fines, judgments, and costs, including, but not limited to, attorneys’ fees, to the extent caused by the negligence, recklessness or intentionally wrongful conduct of CONSULTANT, and other persons employed or utilized

by CONSULTANT in the performance of this Agreement. The provisions of this selection 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 for indemnification pursuant to this Agreement have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by CITY.

11.8.2 It is specifically understood and agreed that the consideration inuring to the CONSULTANT for the execution of this Agreement are the promises, payments, covenants, rights and responsibilities contained herein and the award of this Agreement to the CONSULTANT.

11.8.3 The execution of this Agreement by the CONSULTANT shall obligate the CONSULTANT to comply with the foregoing indemnification provision.

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

## 11.9 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, the 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 the CONSULTANT. The CONSULTANT shall provide the CITY a certificate of insurance evidencing such coverage. The CONSULTANT's insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by the CONSULTANT shall not be interpreted as limiting the 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 the CONSULTANT for assessing the extent or determining appropriate types and limits of coverage to protect the 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 the 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 contractors.

The City, a Florida municipal corporation, 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 the CONSULTANT. The coverage shall contain no special limitation on the scope of protection afforded to the CITY, its officials, employees, and volunteers.

#### Business Automobile Liability

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

If the CONSULTANT does not own vehicles, the 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.

#### Professional Liability

Coverage must be afforded for Wrongful Acts in an amount not less than \$1,000,000 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.

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

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

The CONSULTANT waives 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.

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

#### Insurance Certificate Requirements

- a) The CONSULTANT shall provide the CITY with valid Certificates of Insurance (binders are unacceptable) no later than ten (10) days prior to the start of work contemplated in this Agreement.
- b) The CONSULTANT shall provide to the CITY a Certificate of Insurance having a thirty (30) day notice of cancellation; ten (10) days' notice if cancellation is for nonpayment of premium.
- c) In the event that the insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of the 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 the CONSULTANT following expiration or early termination of the Agreement goes beyond the expiration date of the insurance policy, the 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 named as an Additional Insured on all liability policies, with the exception of Workers' Compensation.
- g) The CITY shall be granted a Waiver of Subrogation on the 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

The CONSULTANT has the sole responsibility for all insurance premiums and shall be fully and solely responsible for any costs or expenses as a result of a coverage deductible, co-insurance penalty, or self-insured retention; including any loss not covered because of the operation 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 the CONSULTANT's expense.

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

The CONSULTANT's insurance coverage shall be primary insurance as respects to the City, a Florida municipal corporation, its officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, a Florida municipal corporation, its officials, employees, or volunteers shall be non-contributory.

Any exclusion or provision in any insurance policy maintained by the 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 shall be considered breach of contract. In addition, CONSULTANT must provide to the CITY confirmation of coverage renewal via an updated certificate 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.

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

It is the CONSULTANT's responsibility to ensure that any and all of the CONSULTANT's independent contractors and subcontractors comply with these insurance requirements. All coverages for independent contractors and subcontractors shall be subject to all of the applicable requirements stated herein. Any and all deficiencies are the responsibility of the CONSULTANT.

#### 11.10 LIMITATION OF CITY'S LIABILITY

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

#### 11.11 REPRESENTATIVE OF CITY AND CONSULTANT

11.11.1 Contract Administrator or his or her designee is the CITY's representative regarding this Agreement. The Parties, however, recognize that questions in the day-to-day conduct of the Project will arise. The Contract Administrator, upon CONSULTANT's request, shall advise CONSULTANT in writing of one (1) or more CITY employees to whom all communications pertaining to the day-to-day conduct of the Project shall be addressed.

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

#### 11.12 ALL PRIOR AGREEMENTS SUPERSEDED

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein; and the Parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.

It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

#### 11.13 CONSULTANT'S STAFF

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

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

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

#### 11.14 SUBCONSULTANTS

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

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

The list of subconsultants submitted is as follows:

Walters Zackria Associates, PLLC  
Lakdas/Yohalem Engineering, Inc.

#### 11.15 INDEPENDENT CONTRACTOR

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

#### 11.16 THIRD PARTY BENEFICIARIES

Neither CONSULTANT nor CITY intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties agree that there are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement, without prior written approval by both Parties to this Agreement.

#### 11.17 CONFLICTS

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

CONSULTANT agrees that none of its officers or employees shall, during the term of this Agreement, serve as expert witness against CITY in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process, nor shall such persons give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of CITY or in connection with any such pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding.

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

#### 11.18 CONTINGENCY FEE

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

percentage, gift or consideration.

#### 11.19 WAIVER OF BREACH AND MATERIALITY

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

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

#### 11.20 COMPLIANCE WITH LAWS

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

#### 11.21 SEVERANCE

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

#### 11.22 JOINT PREPARATION

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

#### 11.23 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1-11 of this Agreement shall prevail and be given effect.

#### 11.24 APPLICABLE LAW AND VENUE

The Agreement shall be interpreted and construed in accordance with, and governed by, the laws of the state of Florida. The Parties agree that the exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claims arising from, related to, or in connection with this Agreement must be litigated in federal court, the Parties agree that the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, THE PARTIES HEREBY EXPRESSLY WAIVE ANY AND ALL RIGHTS EITHER PARTY MIGHT HAVE TO A TRIAL BY JURY OF ANY ISSUES RELATED TO THIS**

**AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

11.25 EXHIBITS

Each Exhibit referred to in this Agreement forms an essential part of this Agreement. The Exhibits, if not physically attached, should be treated as part of this Agreement, and are incorporated herein by reference.

11.26 TWO ORIGINAL AGREEMENT

This Agreement shall be executed in two (2) signed Agreements, treated as originals.

11.27 NOTICES

Whenever either Party desires to give notice unto the other, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the Party for whom it is intended, at the place last specified, and the place for giving of notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective places for giving of notice, to-wit:

CITY: Axel Rivera  
Project Manager II  
City of Fort Lauderdale  
100 North Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 828-5142  
Email: [axrivera@fortlauderdale.gov](mailto:axrivera@fortlauderdale.gov)

With Copy to: City Manager  
City of Fort Lauderdale  
100 North Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 828-5013

City Attorney  
City of Fort Lauderdale  
100 North Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 828-5940

CONSULTANT: Larry Smith  
Smith Engineering Consultants, Inc.  
2161 West Palm Beach Lakes Blvd.  
Suite 312  
West Palm Beach, Florida 33409  
Telephone: (954) 590-0488  
Email: [larry@smithengineeringconsultants.com](mailto:larry@smithengineeringconsultants.com)

#### 11.28 ATTORNEY FEES

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

#### 11.29 PERMITS, LICENSES AND TAXES

CONSULTANT shall, at its own expense, obtain all necessary permits and licenses, pay all applicable fees, and pay all applicable sales, consumer, use and other taxes required to comply with local ordinances, state and federal law. CONSULTANT is responsible for reviewing the pertinent state statutes regarding state taxes and for complying with all requirements therein. Any change in tax laws after the execution of this Agreement will be subject to further negotiation and CONSULTANT shall be responsible for complying with all state tax requirements.

#### 11.30 TRUTH-IN-NEGOTIATION CERTIFICATE

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

#### 11.31 EVALUATION

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

#### 11.32 STATUTORY COMPLIANCE

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

### 11.33 SCRUTINIZED COMPANIES

Subject to *Odebrecht Construction, Inc., v. Prasad*, 876 F.Supp.2d 1305 (S.D. Fla. 2012), *affirmed*, *Odebrecht Construction, Inc., v. Secretary, Florida Department of Transportation*, 715 F.3d 1268 (11th Cir. 2013), with regard to the “Cuba Amendment,” CONSULTANT certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2021), as may be amended or revised, and that it is not engaged in a boycott of Israel, and that it does not have business operations in Cuba or Syria, as provided in section 287.135, Florida Statutes (2021), as may be amended or revised. The City may terminate this Agreement at the City’s option if CONSULTANT is found to have submitted a false certification as provided under subsection (5) of Section 287.135, Florida Statutes (2021), 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 (2021), 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 (2021), as may be amended or revised.

### 11.34 PUBLIC RECORDS

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

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 (2021), 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 contract if the CONSULTANT does not transfer the records to the CITY.
4. Upon completion of the Contract, 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 Contract, 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 Contract, 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.

#### 11.35 INTELLECTUAL PROPERTY

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

#### 11.36 RIGHTS IN DOCUMENTS AND WORK

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

#### 11.37 REPRESENTATION OF AUTHORITY

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

[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 written above.

CITY OF FORT LAUDERDALE, a municipal  
corporation of the State of Florida

By: \_\_\_\_\_  
CHRISTOPHER J. LAGERBLOOM  
ICMA-CM, City Manager

Dated: \_\_\_\_\_

(CORPORATE SEAL)

ATTEST:

By: \_\_\_\_\_  
DAVID R. SOLOMAN  
City Clerk

Approved as to Legal Form:  
Alain E. Boileau, City Attorney

By: \_\_\_\_\_  
RHONDA MONTOYA HASAN  
Assistant City Attorney

**CONSULTANT**

WITNESSES:

SMITH ENGINEERING CONSULTANTS,  
INC., a Florida corporation

\_\_\_\_\_

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

Larry M. Smith  
President

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

\_\_\_\_\_

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

ATTEST:

(CORPORATE SEAL)

\_\_\_\_\_

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

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_ day of \_\_\_\_\_, 2022, by Larry M. Smith as President for Smith Engineering Consultants, Inc., a Florida Corporation.

SEAL

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

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

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

## **EXHIBIT A**

### **SCOPE OF SERVICES FOR DESIGN CRITERIA PACKAGE**

#### **Task #1 - Project Definition Documentation**

- The Consultant will utilize available Feasibility Technical Memorandum, As-built documents, and information to develop an initial understanding of the project.
- Meet with City Staff in workshop format to establish project goals and define the project.
- Define design basis.
- Review the emergency generators options provided by the City and discuss technical details and equipment preferences with the City.
- Define noise and vibration requirements.
- Evaluation of electrical and I&C requirements and coordination with other on-going projects.
- Discuss site alternatives for options #1 and #2, Section 111-Scope of Services of the RFQ.
- Define sequence of construction constraints.
- Define permit requirements.
- Estimate probable construction costs.
- Compile documentation to be used as the basis for preparation of a thirty percent (30%) Design/Build Criteria Package.

#### **Task #2 -- Design Criteria Package**

This task will be developed upon completion of Task #1. The DCP for the proposed Emergency Generator(s) will be prepared under this task. The DCP will include the following sections:

- Introduction.
- Design Criteria.
- Electrical Requirements
- Instrumentation and Control Requirements.
- Mechanical Requirements.
- Civil Requirements.
- Architectural Requirements.
- Structural Requirements.
- Building Requirements.
- Engineer's Opinion of Probable Construction Cost.
- O&M and training requirements.
- Preliminary Drawings.

Drawings will be prepared to an approximate thirty percent (30%) percent level of detail, which provide the general layout, arrangement, size, spacing of the major equipment as well as approximate yard piping and ductback routing. Drawings will include major electrical, mechanical, architectural, and structural features including the equipment layout. The Design Criteria Package document shall be sufficient for solicitation of proposals from Design-Build Firms for design and pricing of the project as a lump sum for design/build delivery of the project.

The Consultant shall be familiar with the City's Development Services Department 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, project management, and construction management tasks including:

- Extensive knowledge of Emergency Standby Generators for Water and Wastewater Treatment Plants
- Extensive knowledge of Low, Medium and High Voltage Electrical Power Systems (Switchgears, Motor Control Centers, etc.)
- Extensive knowledge of Effluent Pumping Systems for Water and Wastewater Treatment Plants
- 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
- Motor Control Centers
- Lightning Protection
- Instrument & Controls, Supervisors Controls and Data Acquisition, and Telemetry
- Construction Document Development
- Permitting
- Cost Estimating
- Bid Evaluation
- Construction Project Administration / Project Management
- Construction Engineering & Inspections Services
- Shop Drawing Review
- Request for Information
- Review of Change Orders

**Exhibit B**

**HOURLY BILLING RATES**

**City of Fort Lauderdale**

**Effluent Pump Standby Generator & Administration Building – George T.  
Lohmeyer Wastewater Treatment Plant**

***PRIME CONSULTANT***

**Smith Engineering Consultants, Inc.**

<b><u>CATEGORY</u></b>	<b><u>HOURLY RATE</u></b>
Principal in Charge	\$190.00
<b><u>Mechanical Engineering</u></b>	
Engineering Assistant	\$ 70.00
Engineering Technician	\$ 80.00
Engineer/Engineer Intern	\$130.00
Professional Engineer	\$150.00
Chief Professional Engineer	\$170.00
<b><u>Electrical Engineering</u></b>	
Engineering Assistant	\$ 70.00
Engineering Technician	\$ 80.00
Engineer/Engineer Intern	\$130.00
Professional Engineer	\$150.00
Chief Professional Engineer	\$170.00
<b><u>Survey Services</u></b>	
Department Director	\$170.00
Project Land Surveyor	\$120.00
2 Man Field Crew	\$135.00
Senior Technician	\$ 75.00
Clerical	\$ 63.36
<b><u>Process Mechanical</u></b>	
Chief Engineer	\$190.00
Project Manager	\$160.00
Project Engineer	\$135.00
Engineer/Designer	\$150.00
Clerical	\$ 63.36

***SUBCONSULTANT***  
**Lakdas/Yohalem Engineering, Inc.**

<b><u>CATEGORY</u></b>	<b><u>HOURLY RATE</u></b>
Chief Structural Engineer	\$190.00
Project Manager	\$155.00
Project Engineer	\$135.00
Engineer/Designer	\$120.00
Inspector	\$100.52
Clerical	\$ 63.36

***SUBCONSULTANT***  
**Walters Zackria Associates, PLLC**

<b><u>CATEGORY</u></b>	<b><u>HOURLY RATE</u></b>
Principal Architect R.A.	\$245.00
Senior Architect R.A.	\$191.00
Project Manager 1	\$180.00
Project Manager 2	\$145.00
Architectural Technician	\$115.00
Drafting Technician	\$ 95.00
Clerical	\$ 93.00