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elombard@radeylaw.com

August 29, 2022

By FEDEX Priority Overnight

Mr. Glenn Marcos
Chief Procurement Officer
City of Fort Lauderdale
Procurement and Contracts
100 N. Andrews Avenue
Fort Lauderdale, FL 33301

**Re: NOTICE OF APPEAL
Request for Qualifications RFQ# 12665-1026
Program Management and Mapping Services**

Dear Mr. Marcos:

This is WGI, Inc.'s notice of appeal of the Chief Procurement Officer's (CPO) August 25, 2022 decision denying WGI's protest of the intended award to Craven, Thompson & Associates, Inc. under Request for Qualifications RFQ#12665-1026, Water Consent Order Program Management and Mapping Services. A copy of the August 25 decision is attached as Exhibit 1. That decision denied WGI's protest, a copy of which is attached to this Notice as Exhibit 2.

Pursuant to City ordinance 2-182, WGI requests that this matter be scheduled before the City Commission at a publicly noticed meeting. Additionally, WGI requests that the contracting process be stayed so that the City Commission has an opportunity to consider this appeal and correct the CPO's erroneous decision.

August 29, 2022
Page 2 of 2



WGI reserves all rights.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Eduardo S. Lombard', written in a cursive style.

Eduardo S. Lombard
Radey Law Firm



City of Fort Lauderdale • Procurement Services Division
100 N. Andrews Avenue, 619 • Fort Lauderdale, Florida 33301
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August 25, 2022

Eduardo S. Lombard
Radey Attorneys & Counselors at Law
P.O. Box 10967
Tallahassee, FL 32302

SENT VIA:

Certified Mail No. 91-7199-9991-7039-9616-6858
and
Email: elombard@radeylaw.com

RE: Response to Protest- Request for Qualifications (RFQ) No. 12665 - 1026: Program Management and Mapping Services

Dear Mr. Lombard:

The City of Fort Lauderdale ("City") is in receipt of your protest on behalf of WGI, Inc. ("WGI") regarding Request for Qualifications No. 12665-1026 ("RFQ"). The protest indicates it is being filed pursuant to RFQ Section 2.10 and the City's Procurement Ordinance 2-182 based on the City's Notice of Intent to Award to Craven. Under your first footnote, you further state that WGI expressly reserves the right to supplement or amend this protest based on facts or additional protest grounds discovered in the future that are not currently known by WGI, because your public records requests have not been provided by the City. The City's Procurement Ordinance Section 2-182(b)(4) clearly requires for the written protest to state the specific facts and law or ordinance upon which the protest of the proposed award is based and shall include all relevant documents and evidence. It does not allow for the protest to be supplemented or amended after the protest is filed. Therefore, I will only acknowledge and address the protest as filed and received on August 16th, 2022, with the accompanied protest bond of \$5,000.

It is alleged in your protest that Craven, Thompson & Associates, Inc.'s ("Craven") proposal should not have been considered and deemed non-responsive for failure to comply with the scope of work requiring services to be completed by July 2023. The protest mentions section 3.3.1 and 3.3.3 of the solicitation highlighting the fact that the RFQ states the contractor will ensure the conditions set forth by the Florida Department of Environmental Protection (FDEP) Consent Agreement are met in a timely fashion and that the mapping must be certified complete and accessible in accordance with the Consent Order by July 23, 2023. It is important to underscore that throughout your protest great emphasis and primary focus is placed on the "time" element. This is apparent based on your references to certain sections of the RFQ. For instance, besides the sections mentioned above, you also refer to additional sections, including Section 4.2.3, where it states proposers must include information on their ability to meet time and budget requirements and Section 4.2.5, seeking proposer's approach and proposed scheduling methodology and/or timeline for effectively managing and executing the work in optimum time. Addendum No. 2 is also referenced. This addendum was issued to incorporate Section 3.5 into the RFQ to include an incentive-disincentive clause to expedite the rendering of professional services to complete the Water Consent Program Management and Mapping Services by providing a \$3,000 daily incentive to encourage the firm to complete the services in advance of the desired date and a \$3,000 daily disincentive for each day after the desired date work is completed.



All of the previously cited sections and documents are undisputed and factual, as they originate from the RFQ. However, the allegation that Craven's proposal should have been deemed non-responsive because they failed to meet the requirements of these sections is disputed and inaccurate. Interestingly enough, your argument is narrowly tailored to just the time factor, but every other factor in the RFQ is completely ignored. Based on your arguments, it seems that you are under the impression that the City issued an Invitation to Bid ("ITB"), as you are incorrectly applying the ITB standards to this RFQ. These two types of procurement methods are vastly different. When using an ITB as a procurement method, a bid shall be considered responsive only if it conforms to the requirements of the formal competitive bidding process concerning pricing, surety, insurance, specifications of the goods or services requested, and any other matter unequivocally stated in the ITB as a determinant of responsiveness.¹ A RFQ is a qualification-based formal competitive process containing various factors that may include a proposer's method of approach, proposer's experience, capabilities, implementation procedures, past performance, qualifications to meet time and budget, etc.²

After misunderstanding the procurement standards to this RFQ, you then turn your focus on to the Evaluation Process, the Evaluation of Proposals, and the Evaluation Committee. In this part of the protest, your allegations are speculative in nature and contains general presumptions despite being contrary to the facts, standards, and practice of this RFQ procurement process. This is evidenced by the erroneous assumption that the highest ranked, responsive, and responsible firm, Craven, was required to file a challenge to the specifications of the RFQ, if it believed that the July 23rd completion date and scope of services were impossible to perform. No such requirement to challenge the specifications is necessary, when the Evaluation Committee has the ability to consider the methodology and approach to the scope of work, which includes the firm's proposed timelines and scheduling, and score the proposal accordingly. The maximum score for this criterion was 40 points/percent. As a matter of fact, two out of the three Evaluation Committee members agreed that WGI's proposed methodology and approach was superior to Craven's. However, there were two other evaluation factors that for whatever reason are not mentioned in your protest. These two other factors consist of a firm's qualifications and experience and project team experience and qualifications with a weighted factor of 30% for each category totaling 60% percent out of a 100% scale. The three Evaluation Committee members unanimously decided that Craven in these two criteria far exceeded WGI. Therefore, the scoring involving these two factors tipped the scale in favor of Craven.

With regard on how the Evaluation Committee members scored Craven's proposal, WGI nor anyone else is in the position to substitute their judgment, opinions, beliefs, or thoughts for those of the Evaluation Committee. Moreover, the City has the opportunity to negotiate the terms, conditions, approach, methodology (which includes proposed timelines and scheduling), scope of work, and pricing. As a result, the City might be able to improve upon any portion of Craven's proposal, including timelines considered to be advantageous and its best interest. Pursuant to Section 5.1.3 of the RFQ, if at a given point in time during negotiations, the City fails to negotiate a contract with the highest rank, responsive, and responsible proposer, it can move forward with entering into the negotiations with the next ranked, responsive, and responsible firm.

As a side note, the City has been recently informed by Florida Department of Environmental Protection that it has extended the deadline to complete the project from July 2023 to December 2024.

¹ Pursuant to the City of Fort Lauderdale Procurement Manual, Section M., Competitive Sealed Bid Process

² Pursuant to the City of Fort Lauderdale Procurement Manual, Section O., Request for Qualifications Solicitations



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Notwithstanding FDEP's revised deadline, and in response to your protest, Craven's responsiveness determination and the Evaluation Committee's decision is correct and without bias, and is not arbitrary or capricious. Further, the decision contains no material deviation from the solicitation and fully complies with all legal and procurement standards and practices of a qualification-based procurement, and is in full compliance with the solicitation requirements of this RFQ.

For the reasons provided herein, I am hereby denying your protest and will move forward with recommending an award to Craven.

Respectfully,

Glenn Marcos Digitally signed by Glenn Marcos
Date: 2022.08.25 15:26:50 -04'00'

Glenn Marcos, CPPO, CPPB, FCPM, FCPA
Chief Procurement Officer
Assistant Finance Director – Procurement and Contracts

cc: Susan Grant, Director of Finance
Alan Dodd, P.E., Director of Public Works
Alain E. Boileau, City Attorney
Rhonda Montoya Hasan, Assistant City Attorney
Sylejman Ujkani, Program Manager
Erick Martinez, Senior Procurement Specialist
File



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elombard@radeylaw.com

August 15, 2022

By Email (gmarcos@fortlauderdale.gov) and original by FEDEX Priority Overnight

Mr. Glenn Marcos
Chief Procurement Officer
City of Fort Lauderdale
Procurement and Contracts
100 N. Andrews Avenue
Fort Lauderdale, FL 33301

**Re: Notice of Protest – Request for Qualifications RFQ# 12665-1026
Program Management and Mapping Services**

Dear Mr. Marcos:

We represent WGI, Inc., which is one of the largest and most experienced engineering firms in the Southeast and which has successfully provided high-quality services to the City of Fort Lauderdale in the past. Seeking to again provide services to the City, WGI submitted a response to the City's Request for Qualifications RFQ#12665-1026, Water Consent Order Program Management and Mapping Services (the RFQ). On August 10, 2022, the City posted on the City's Procurement webpage a Notice of Recommended Award approved by you, recommending award of the contract arising out of the RFQ to Craven, Thompson & Associates, Inc. (Craven). A copy of the Notice of Recommended Award is attached as Exhibit A.



Pursuant to RFQ Section 2.10 and City ordinance 2-182 (Protest Policy), this letter constitutes WGI's Notice of Protest of the City's intended contract award to Craven.¹ In accordance with the Protest Policy, this notice is being timely submitted within five business days of the date the City posted the Notice of Recommended Award on the City Procurement webpage. As required by the Protest Policy, a cashier's check payable to the City in the amount of \$5,000 is enclosed. Accordingly, WGI has perfected its protest rights under the City's Protest Policy.

This Notice of Protest challenges the recommended award to Craven. As explained below, Craven is not entitled to the contract award because Craven was non-responsive to the RFQ. Craven's proposal explicitly refuses to comply with the scope required by the RFQ and the RFQ requirement that the solicited work be completed by July 2023. Craven expressly stated it could not complete the work as specified in the RFQ and, instead, proposed to perform a different, undefined scope by a date *after* July 2023. The City should have declared Craven non-responsive and should not have invited Craven to make an oral presentation, much less award the contract to Craven. The City's intended contract award to Craven is contrary to the RFQ specifications, City purchasing ordinances, and Florida law. Accordingly, the contract should be awarded to WGI as the only proposer that submitted a proposal in compliance with the RFQ.

I. THE CITY'S DECISION AT ISSUE

The decision at issue in this Notice of Protest is the City's decision to award the contract being procured through the RFQ as reflected in Exhibit A.

II. THE PROTESTOR

The protestor is WGI, Inc., with its principal address at 2035 Vista Parkway, West Palm Beach, Florida 33411. For purposes of this Notice of Protest, however, all

¹ WGI is submitting this Notice of Protest based solely on documents and information regarding the City's procurement available to WGI at this time. WGI has requested certain public records which have not yet been provided by the City. WGI expressly reserves the right to supplement or amend this protest based on facts or additional protest grounds discovered in the future that are not currently known by WGI.



communications should be directed to Eduardo S. Lombard and Angela D. Miles at elombard@radeylaw.com and amiles@radeylaw.com, as WGI's legal counsel in this matter.

WGI is an aggrieved and substantially affected bidder because WGI is adversely affected by the City's decision to award the contract to Craven, which fails to comply with the RFQ and Florida law. As the second ranked bidder, and the highest ranked bidder that submitted a proposal that complies with the RFQ, if WGI's protest is granted (as it should be), WGI should receive the contract award.

WGI is a national design and professional services firm headquartered in West Palm Beach, Florida. WGI, and its predecessor firm, has spent five decades performing countless professional engineering and professional surveying projects for federal agencies, cities, counties, municipalities, special improvement districts, expressway authorities, and the Florida Department of Transportation (FDOT). In 2021, WGI provided services in 37 states in the U.S. WGI's expertise, experience, and quality of work has led to WGI being prequalified to submit proposals on FDOT projects involving a wide range of professional consulting work in areas such as Project Development and Environmental Studies, Systems Planning, Subarea/Corridor Planning, Land Planning/Engineering, Major Bridge Design, Major Highway Design, Professional Land Surveying, Mapping, Landscape Architecture, and Architecture to name a few. WGI also regularly pursues projects at the local government level, including with counties and municipalities throughout Florida, including South Florida, on its own and as part of teams that bring multiple disciplines and resources to bear on often large and complex projects.

Recognizing WGI as a high caliber engineering firm, the City has previously contracted WGI to provide professional consulting services, such as surveying and mapping under the Survey and Mapping Consulting Services, Continuing Contract.

III. FACTUAL BACKGROUND

A. *The FDEP Consent Order*

In July 2019, the City's water system suffered a main break that led to the issuance of a City-wide boil water notice. After investigating the incident, the Florida Department of



Environmental Protection (FDEP) concluded that the City was unable to quickly isolate the damage and redirect flow, primarily because the City has inaccurate maps of valve locations of its water system. FDEP also concluded that the City had failed to properly exercise/maintain isolation valves in compliance with the manufacturer's requirements and failed to follow the preventative maintenance program. This was one of four boil water events in 2019.

The City accepted FDEP conclusions and stipulated to a Consent Order that fines the City and requires it to take several actions and steps to improve its water system, including development of a new preventative maintenance plan, implementation of that plan, and submittal of annual maintenance reports to FDEP. The Consent Order was included in the RFQ. The RFQ is attached as Exhibit B. Additionally, and most relevant to this protest, the Consent Order required the City to submit a plan for developing a complete and accurate map of the existing water supply network, including existing source and distribution mains, control valves, and directional flow routes. The system mapping must, pursuant to the Consent Order and RFQ, be completed by July 2023.

B. The Request for Qualifications

In April 2022, the City issued the RFQ soliciting proposals from qualified firms who could provide professional services so the City could timely comply with the Consent Order. The winning contractor is required to provide the services necessary to perform the full mapping and exercising of the water system, including program management; reporting to FDEP; data collection, survey, and geo-referenced mapping of the water infrastructure; and assistance with the water line valves exercise program. *See* Ex. B, Scope of Services, p. 16-20.

The City's water system is not small. It is comprised of approximately 783 miles of source and distribution water mains, 19,000 valves, 6,200 fire hydrants, 250 air release valves, and 62,600 water meters and service lines. *Id.* at p. 16. Additionally, it includes two treatment plants and two remote storage and repump facilities.

The RFQ included Section 3, "Scope of Services" that detailed the scope of work required to be performed, along with specific tasks to be accomplished by the selected



contractor. *Id.* The City repeated a critical requirement of the RFQ throughout the scope of services section: timely completion of the work by July 2023. For example, RFQ Section 3.3.1 provided that the contractor “*will ensure the conditions set forth by the FDEP Consent Agreement are met in a timely fashion in order to prevent additional penalties and corrective action measures in order to meet all Consent Agreement mandates and deadlines, and to stay in compliance with FDEP regulations.*” *Id.* at p. 18 (emphasis added). Section 3.3.3 provided that “[t]he mapping *must be certified complete and accessible in accordance with the Consent Order by July 23, 2023.*” *Id.* at p. 18-19 (emphasis added).

The RFQ also contained instructions on how to submit a proposal. Those instructions underscored the need to timely complete the project and to select a contractor whose experience demonstrated it could perform the scope of work in accordance with the FDEP-imposed deadline. *Id.* at p. 23. Specifically, Section 4.2.3 explained that the contractor was required to “demonstrate experience on projects for agencies of similar size and scope, including information on *your firm’s ability to meet time and budget requirements.*” *Id.* Contractors were even required to provide a “scheduling methodology (timeline) for effectively managing and executing the work in the optimum time.” *Id.* at p. 24. Indeed, the submittal instructions, like the scope of services section, were clear: “The City expects this project to be completed expeditiously” *Id.* To this end, the RFQ required each contractor to include a “proposed (realistic) schedule” that demonstrates the timeline for completion of the contract by July 2023. *Id.*

To further underscore just how important it was to the City that the work be completed expeditiously and timely, the City issued RFQ Addendum 2 which added Section 3.5 to the RFQ and provided an “incentive-disincentive” term to the project. A copy of Addendum 2 is attached as Exhibit C. The City was plain:

The City *desires to expedite* the professional services on this Contract *to reduce the time to complete* the program management, reporting to FDEP, data collection, survey, and georeferenced mapping of the water infrastructure, and assistance with the water line valves exercise program to comply and meet the civil enforcement actions mandates by FDEP Consent Agreement.

Ex. C at p. 2. The incentive-disincentive clause provided a \$3000 per day incentive for each day the actual completion of the project precedes the deadline. *Id.* Conversely, the clause



provided a penalty of \$3000 per day for each day the actual completion exceeds the project deadline to offset FDEP penalties for not complying with the Consent Order. *Id.* at p. 4.

Completion of the project by July 2023 was not optional nor aspirational. Nor was the scope of work just a guide. It was specific and concrete. Despite this clear and unequivocal deadline, Craven did not challenge the specifications of the RFQ.²

C. The Evaluation Process

Upon receipt of proposals, the City's Evaluation Committee was to evaluate responsive proposals by scoring each proposal using the weighted criteria in section 5.2.3. *See* Ex. B at p.26-27. Specifically, each Evaluation Committee member was to individually assign a rank to each proposal in each of the three weighted criterion. *Id.* The City would then average the ranking for each criterion for all evaluation committee members. *Id.* The average ranking by criterion would then be multiplied by the weight identified in section 5.2.3. *Id.* The weighted rank for the three criteria would be summed to comprise a proposal's average ranking. *Id.*

The top three firms were to be invited to provide oral presentations and answer questions of the Evaluation Committee. *Id.* After those presentations, each Evaluation Committee member would re-rank the proposals in the manner described above. *Id.* The firm with the lowest average ranking would then be invited to negotiations, where they would be required to provide a price for the project and negotiate final contract terms. *Id.*

The RFQ indicates that the City would attempt to negotiate an agreement with the highest ranked firm. *Id.* at 26. If an agreement with the highest ranked firm could not be reached, the City would negotiate with the next highest ranked firm until an agreement is reached. *Id.*

² Indeed, if Craven believed the July 2023 completion date and scope of services were impossible to perform, Craven was required to file a challenge to specifications of the RFQ. By failing to protest the specifications, Craven accepted the RFQ's scope of services and mandatory July 2023 deadline. Craven cannot, through its proposal, now assert that the deadline and associated scope of services are impossible to perform.



D. The Evaluation of Proposals

The City received only two proposals: one from WGI and one from Craven. The Evaluation Committee held a meeting to rank the proposals. During this meeting, the evaluators all agreed that the Craven proposal did not meet the requirement for a project completion deadline. *See* Audio File of Evaluation Committee Initial Evaluation Meeting³, minute mark 28:38 through 30:50. In fact, the evaluators admitted that Craven's proposal included a negotiation to change the scope and to change the project deadline, which one evaluator called an "empty promise" because it was unlikely and Craven did not have a compliant alternative should FDEP declined to change the scope and deadline. *Id.* This conclusion was based on the repeated statements in Craven's proposal that Craven could not meet the mandatory July 2023 deadline and that it wished to change the scope of the work to be performed. Craven's proposal is attached as Exhibit D.

For example, in its introductory proposal section, Craven states:

We understand the importance of the services required under this RFQ in meeting the City's obligations in the Water Consent Order from FDEP. Due to the limited timeframe to complete and certify the mapping of the water distribution system, we do not believe that meeting the July 24, 2023 deadline stipulated in the Consent Order is achievable under normal conditions, so we have provided two different approaches to the data collection process for the City to consider.

Our preferred approach for consideration would be to revisit the water distribution mapping plan with the City and FDEP. We believe that the actual intent of the scope in the Consent Order differs significantly from the scope identified in the WGI water distribution system mapping plan. With a modified plan, which will meet the Consent Order intent, we can significantly reduce the overall time that it will take to complete and certify the system data collection and mapping.

Ex. D, Letter of Interest.

Later in the proposal, Craven offered two alternate approaches, neither of which complies with the RFQ project deadline and both of which require changes to the scope of work mandated by the RFQ:

³ The audio file is in the possession of the Procurement Office and readily accessible to you. WGI has provided minute marks so you can easily locate the relevant portion.



The "First Approach Method" is suggested because it would be the more traditional survey approach and cost-effective for the City and the Craven Thompson Team to renegotiate the data collection timeframe with FDEP and spread the costs to the City over a period of two years instead of one year while still meeting the intent of the Consent Order. This method would more closely adhere to the current requirements stipulated in the Mapping Plan and the Consent Order. However, this option would require the Craven Thompson Team to renegotiate the data collection and mapping timeframe with FDEP.

We understand that the current accepted mapping plan allows for thirty-six (36) months to complete (from the date of the effective Consent Order, July 24, 2020) the data collection and system certification efforts. As of today, no additional mapping of the water system has occurred since the Consent Order effective date. Therefore, only thirteen (13) months remain and we believe that thirteen (13) months to complete the tasks as currently detailed in the Mapping Plan is not a realistic schedule. The attached Method 1 Approach schedule delineates the actual timeframes we believe necessary to complete the data collection and system certification efforts including renegotiation with FDEP of plan requirements that we feel confident can be accomplished.

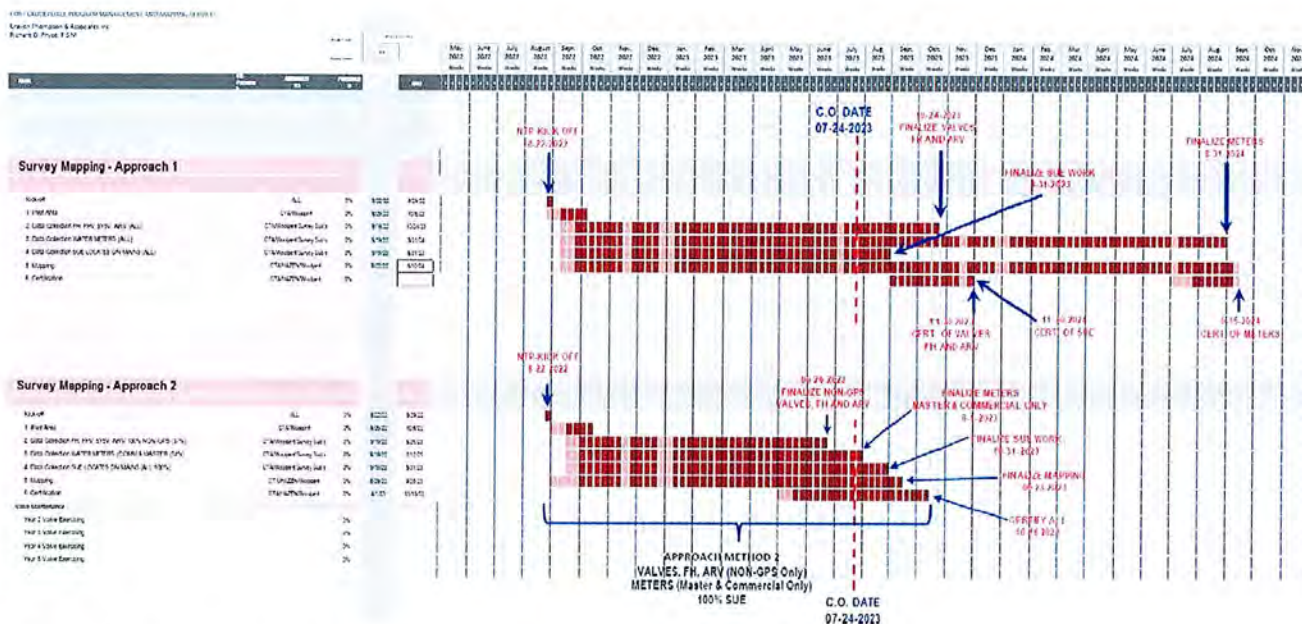
The "Second Approach Method" is a very aggressive schedule that will come closer to the current Consent Order data collection and certification of the potable water system map deadline of July 24, 2023. The methods employed under this effort, although significantly more costly, will allow us to accomplish the data collection and certification by October 2023. We will focus specifically on the Consent Order requirements using the Mapping Plan as a reference only and recommend ways to reduce actual field time and apply innovative advanced technologies and utilize highly trained technicians and field personnel to speed up the process. Both Approaches will require the City to accelerate the negotiation process and issue the Notice to Proceed so that we may begin the project no later than August 22, 2022. Due to the extremely large amount of data that will be delivered, the method of managing the City's review and acceptance will need to be discussed in detail prior to commencing the project. The schedule we prepared for the Method 2 Approach details the timeframe that meets the intent of the Consent Order for certification of the mapping of City's water system.

Ex. D at p. 4 of section 4.2.5 of proposal.

And Craven offered two alternate schedules, neither of which is compliant with the RFQ:



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Ex. D at p. 16 of section 4.2.5 of proposal.

Craven's first schedule has a completion date of September 2024. The second, although faster, has a completion date of October 2023. Neither meets the July 2023 deadline required by the RFQ.

WGI, on the other hand, proposed a fully compliant schedule with a completion date of July 2023, and proposed to complete the scope of work as specified in the RFQ. WGI's proposal is attached as Exhibit E.

Despite Craven's abject failure to meet the critical RFQ requirements, the Evaluation Committee ranked Craven first and WGI second.

After the Evaluation Committee ranked the proposals, the City then scheduled oral presentations to the Evaluation Committee by both firms. During those presentations, Craven confirmed the content of its proposal: Craven cannot complete the required mapping of the water system within the deadline established in the RFQ and to the precise scope. Instead, Craven reaffirmed its proposal to negotiate a reduction in requirements of the Consent Order and stated that it would need to work with FDEP to negotiate a new



deadline. This was contrary to, and in direct violation of, the RFQ requirement that the successful firm be able to (i) achieve completion by July 2023 and (ii) perform the scope of services outlined in the RFQ and Consent Order. The project deadline was material, was not altered or changed by addendum, and could not be waived by the City. The scope of services was also obviously material and was not altered or changed by addendum.

After oral presentations, the Evaluation Committee met once again to issue a final rank. Again, and despite Craven's material deviations from the RFQ requirements, the Evaluation Committee ranked Craven first and WGI second. The Final Ranking is attached as Exhibit F. The City then entered negotiations with Craven. On August 10, the City posted the Notice of Intended Award to Craven. Notably, the Notice states that an award to Craven meets the "specifications as per the department's request and as advertised" in the RFQ requirements. This is untrue.

IV. GROUNDS FOR PROTEST

A. Legal Standards

The Florida Supreme Court recognized long ago that the object and purpose of competitive bidding is

to protect the public against collusive contracts; to secure fair competition upon equal terms to all bidders; to remove not only collusion but temptation for collusion and opportunity for gain at public expense; to close all avenues to favoritism and fraud in its various forms; to secure the best values at the lowest possible expense; and to afford an equal advantage to all desiring to do business with [public authorities], by providing an opportunity for an exact comparison of bids.

Wester v. Belote, 138 So. 721, 723-24 (Fla. 1931). A governmental body in conducting a procurement must ensure proposals are "assured fair consideration," and "may not arbitrarily or capriciously discriminate between bidders, or make the award on the basis of personal preference." *Emerald Corr. Mgmt. v. Bay Cty. Bd. of Cty. Comm'rs*, 955 So. 2d 647, 652 (Fla. 1st DCA 2007); see also, e.g., *City of Sweetwater v. Solo Constr. Corp.*, 823 So.



2d 798, 802 (Fla. 3d DCA 2002) (“While a public authority has wide discretion in award of contracts for public works on competitive bids, such discretion must be exercised based upon clearly defined criteria, and may not be exercised arbitrarily or capriciously.”). The City’s own procurement ordinance reflects the same principles. See City of Fort Lauderdale Code of Ordinances, ch. 2, art. V div. 2, § 2.-172.

Governmental action is arbitrary if it is “not supported by facts or logic” and is capricious if it is “taken without thought or reason or irrationally.” *Agrico Chem. Co. v. Dep’t of Envtl. Regul.*, 365 So. 2d 759, 763 (Fla. 1st DCA 1978). An agency’s failure to comply with its own solicitation requirements is arbitrary and capricious as it calls into question the integrity of the competitive procurement. See *Emerald Corr. Mgmt.*, 955 So. 2d at 652-54; *City of Sweetwater*, 823 So. 2d at 802 (concluding that city’s actions not following the award process advertised in the bid documents were arbitrary and capricious); see also *Acad. Express, LLC v. Broward Cty.*, 53 So. 3d 1188, 1190 (Fla. 4th DCA 2011) (“In the procurement context, whether an action was arbitrary or capricious depends upon whether the awarding committee complied with its own proposal criteria.”) (citing *Emerald Corr. Mgmt.*, 955 So. 2d at 653)).

An act is contrary to competition if it frustrates the objectives of competitive bidding. *Wester*, 138 So. at 723–24. An act that is contrary to competition either (1) creates the appearance of and opportunity for favoritism; (2) erodes public confidence that contracts are awarded equitably and economically; (3) causes the procurement process to be genuinely unfair or unreasonably exclusive; or (4) is unethical, dishonest, illegal, or fraudulent. E.g., *Syslogic Tech. Servs., Inc. v. S. Fla. Water Mgmt. Dist.*, Case No. 01-4385BID, 2002 WL 76312 (Fla. DOAH Jan. 18, 2002).

Here, the City’s decision to award the contract to Craven violated the City’s own purchasing ordinances and Florida law and is arbitrary, capricious, and contrary to competition. WGI submitted a proposal in full compliance with the requirements of the RFQ, while Craven was allowed to materially deviate from the requirements and propose a different scope of work with a completion date after the RFQ-imposed deadline. This type of conduct by a government entity is per se a violation of Florida law.



B. Craven was non-responsive because it affirmatively stated that it could not complete the scope of work on time and proposed to complete an undefined scope of service to be negotiated with FDEP in the future.

The government is required to reject a proposal where the bidder refuses to accept the material terms of a procurement solicitation. *See, e.g., Unisys Corp. v. Dep't of Health & Rehab. Servs.*, No. 88-2525BID, ¶¶ 79, 103, 105-06, 120, 122 (Fla. DOAH July 26, 1998) (Recommended Order) (concluding that agency should have rejected proposal as non-responsive where bidder qualified and refused to unconditionally accept terms of contract required by invitation to bid); *Marpan Supply Co., Inc. v. Dep't of Mgmt. Servs.*, No. 96-27777BID, ¶¶ 18, 83-84 (Fla. DOAH Sept. 26, 1996; DMS Nov. 22, 1996) (concluding that agency should have rejected proposal as non-responsive where bidder deleted certain terms in the General Conditions from its bid). A proposal is nonresponsive if it contains material irregularities or material deviations from the solicitation's requirements. *See, e.g., Robinson Elec. Co. v. Dade Cnty.*, 417 So. 2d 1032, 1034 (Fla. 3d DCA 1982). Florida courts apply two criteria to determine whether a deviation is material: (1) whether the effect of waiving the deviation would be to deprive the agency of assurance that the contract will be performed and guaranteed according to its specified requirements and (2) whether the deviation is of such a nature that its waiver would adversely affect competitive bidding by placing a bidder in a position of advantage over other bidders or by otherwise undermining the necessary common standard of competition. *Id.*; *see also Harry Pepper & Assocs. v. City of Cape Coral*, 352 So. 2d 1190, 1193 (Fla. 2d DCA 1977).

Proposals containing material or substantial deviations from the procurement requirements are non-responsive. *Harry Pepper & Assocs., Inc.*, 352 So. 2d at 1192-93. Material or substantial deviations cannot be waived by the government. *City of Opa-Locka v. Trustees of the Plumbing Indus. Promotion Fund*, 193 So. 2d 29, 32 (Fla. 3d DCA 1966). In the *Opa-Locka* case, the City of Opa-Locka purported to waive a material bid requirement that each bidder possess a certificate of competency from the county. *Id.* In rejecting the argument that the requirement could be waived, the court reasoned that "[i]f the city may in its discretion waive this section [certificate of competency] it would be conducive to favoritism by allowing some bidders to qualify after their bids are accepted while refusing to consider bids of others on the ground that they did not prequalify." *Id.*



In *Harry Pepper*, the appellate court followed the rationale of *Opa-Locka* and reversed a trial court determination that a government entity could accept a nonconforming bid. *Harry Pepper*, 352 So. 2d at 1193. Indeed, the *Harry Pepper* court explained that waiver of material requirements is not an option available to the government. *Id.* at 1193 (“Faced with Gulf’s substantially nonconforming bid, the City had but two proper alternatives: to award the contract to the next lowest bidder who met the specifications, or to reject all bids and re-advertise for new ones.”). The *Harry Pepper* court also explained that the government cannot waive material deviations as a non-responsive bidder would gain a significant advantage (the “second look” advantage) if his bid is not rejected:

No one suggests that Gulf [nonresponsive bidder] could have been required to perform the contract with conforming pumps, as its bid specifically stated that it would use Aurora, the nonconforming pumps. Therefore, Gulf had everything to gain and nothing to lose. After everyone else's bids were opened, Gulf was in a position to decide whether it wanted the job bad enough to incur the additional expense of supplying conforming pumps.

Id. The principle of law reflected in both *Opa-Locka* and *Harry Pepper* makes sense as any other result would render the procurement criteria meaningless and would not allow for exact comparison of bids. *City of Miami Beach v. Klinger*, 179 So. 2d 864, 866 (Fla. 3d DCA 1965).

Here, despite unequivocal terms throughout the RFQ specifying that the winning firm must have the ability to complete the work no later than July 2023, Craven explicitly told the City it could not meet this material term. And it went so far as to tell the City that it was proposing *not to* performed the specific scope in the RFQ but, rather, would negotiate a *different* scope of services with FDEP. At that point, the City was required to deem Craven non-responsive or non-responsible and cease any further consideration of Craven’s proposal. Unlike WGI, which always stated that it has the resources available to complete the project on time, Craven was given the distinct advantage of being able to avoid compiling the necessary resources and team members to complete the project by the mandatory deadline. WGI, on the other hand, teamed with one of the country’s



largest engineering firms, Jacobs, to ensure that, together with WGI's statewide resources, the project would be performed timely and correctly. Had WGI known that – despite the clear terms of the RFQ – it could propose any schedule and any scope, WGI would have responded accordingly and submitted a different proposal. But the City did not so advise WGI and instead afforded a distinct advantage to Craven, by allowing Craven to materially deviate from the RFQ.

Alternatively, and at best for Craven, it submitted a conditional proposal which, under Florida law, is non-responsive. *See, e.g., Jukebox Express Drive-In Rests. of Am., Inc. v. Sch. Dist. of Palm Beach Cnty., Fla.*, No. 96-5062BID, ¶¶ 15–16, 24–31 (Fla. DOAH Jan. 31, 1997; SDPB Mar. 5, 1997). For example, in the *Jukebox* case, a bidder seeking to be placed on a public agency's "approved vendor" list included a cover letter with its bid stating that its agreement to fulfill its obligations under any contract resulting from the bid was contingent on the public agency's agreement to additional conditions that were contrary to the solicitation. *See id.* ¶ 15. The agency approved the bidder for the approved-vendor list and that decision was challenged in a bid-protest proceeding. *See generally id.* Based on the conditional nature of the bid, the administrative law judge (ALJ) concluded the bidder to be both nonresponsive and nonresponsible. *See id.* ¶ 24. The ALJ concluded the award (that is, adding the bidder to the approved-vendor list) was clearly erroneous as the bid failed to comply with the solicitation specifications. *Id.* ¶ 31. The ALJ further concluded the award was contrary to competition as other bidders were required to comply with the solicitation specifications. *Id.* The ALJ additionally determined the award was arbitrary as the award based on a conditional bid was not supported by the facts or by logic. *Id.*

The result should be no different here. Craven is at a distinct advantage as it has refused to accept a critical term of the City's RFQ – the project deadline.

C. Even if Craven was responsive, the scoring of was entirely irrational because Craven expressly represented it could not meet the FDEP deadline.

Alternatively, the Evaluation Committee's ranking is arbitrary and capricious. It defies all logic for an evaluator to assign the highest rank to a firm that admits it cannot perform in compliance with the terms of the solicitation. Yet that is exactly what occurred



here. The Evaluation Committee assigned a number one rank to Craven in the "Firm Qualifications and Experience" criterion. Under the submittal requirements for that criterion, firms were required to provide sufficient information and documentation demonstrating that the firm could in fact achieve the substantial completion deadline of July 2023. Yet Craven admitted to the City that, regardless of what may have been included in its proposal, Craven would need additional time from FDEP to complete the project. Conversely, WGI expressly represented that it had more than sufficient dedicated resources to timely complete the project on or before July 2023. Accordingly, the rank of number one for Craven by the evaluators in the "Firm Qualifications and Experience" criterion was arbitrary, capricious, and contrary to competition. WGI should have received the highest ranking by all evaluators for that criterion. Had that been done, WGI would have had the lowest overall ranking and thus should have received the contract award.

V. REQUESTED RELIEF

For the reasons stated above, the City's intended contract award to Craven fails to comply with the RFQ, the City's purchasing ordinance, and Florida law. Thus, the City's Notice of Intent to Award to Craven cannot stand.

Accordingly, WGI requests an opportunity to informally resolve this dispute with the Chief Procurement Officer pursuant to the Protest Policy, and asks that you grant this protest and recommend corrective action consisting of the City 1) withdrawing the Notice of Intent to Award to Craven, and 3) awarding the contract to WGI. Alternatively, WGI requests corrective action consisting of a rejection of all proposals. WGI also requests return of its cashier's check in full.

WGI reserves all of rights, none which are waived.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Eduardo S. Lombard', written over a light blue circular stamp.

Eduardo S. Lombard

August 15, 2022
Page 16 of 16



Radey Law Firm

cc: Erick Martinez, Senior Procurement Specialist
City of Fort Lauderdale (by email: emartinez@fortlauderdale.org)

RFP/RFQ AWARD RECOMMENDATION / INTENT TO AWARD

PROCUREMENT SPECIALIST: Erick Martinez

DATE: 08/10/22

RFP / RFQ#: 12665-1026

ITEM / SERVICE: Program Management and Mapping Services (CCNA)

Attached is a tabulation for subject items/services requisitioned by the department.

RECOMMENDATION:

A. Which vendor has been recommended?

Craven, Thompson & Associates, Inc.

B. Does this meet specifications as per the department's request and as advertised?

YES ☒

NO ☐

If NO, is the variance considered:

MINOR ☐

or

MAJOR ☐

Explain:

C. Is the recommendation the highest ranking firm?

YES ☒

NO ☐

SIGNATURE: Glenn Marcos
Digitally signed by
Glenn Marcos
Date: 2022.08.10
12:00:07 -04'00'
Chief Procurement Officer or designee

Date: 8/10/22

THIS FORM MUST BE COMPLETED FOR ALL AWARD RECOMMENDATIONS OF \$25,000 AND ABOVE.

Over \$25,000

YES ☒

NO ☐

04/09/2018
R 3

Approved by Chief Procurement Officer
Uncontrolled in hard copy unless otherwise marked

Page 1 of 1

Q:\PURCHASING\FINAL FORMS\FINAL FORMS - ISO COMPLIANT\Approved Forms\RFP Documents\RFP-RFQ Intent to Award Form

EXHIBIT A
Exhibit 2

CAM #22-1089
Exhibit 5A
Page 22 of 100

Solicitation 12665-1026

Water Consent Order Program Management and Mapping Services

Bid Designation: Public



City of Fort Lauderdale

Bid 12665-1026

Water Consent Order Program Management and Mapping Services

Bid Number **12665-1026**
 Bid Title **Water Consent Order Program Management and Mapping Services**

Bid Start Date **Apr 22, 2022 3:58:27 PM EDT**
 Bid End Date **Jun 27, 2022 2:00:00 PM EDT**
 Question & Answer End Date **May 13, 2022 5:00:00 PM EDT**

Bid Contact **Erick Martinez**
Senior Procurement Specialist
Finance
954-828-4019
emartinez@fortlauderdale.gov

Contract Duration **One Time Purchase**
 Contract Renewal **Not Applicable**
 Prices Good for **120 days**

Bid Comments The City of Fort Lauderdale (City) is seeking the services of a qualified consulting firm(s) to provide Professional Services related to the civil enforcement actions mandated by a Florida Department of Environmental Protection (FDEP) Consent Agreement. The services provided under this contract shall include program management; reporting to FDEP; data collection, survey, and georeferenced mapping of the water infrastructure; and assistance with the water line valves exercise program.

The following is a list of services that may be required on an as-needed basis, as requested by the City, which will be authorized by individual Task Orders. This list shall not be construed as an exclusive list of activities that successful firm(s) may be engaged in. The 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 design consultants and for which the firm(s) are experienced, qualified, and able to perform.

Added on May 23, 2022:

The purpose of Addendum 1 is to extend the Proposal Due Date to Monday, June 27, 2022 at 2:00PM Local Time.

Added on Jun 16, 2022:

The purpose of Addendum 2 is to add Section 3.5 "Incentive – Disincentive" to Section III, "Scope of Services".

Addendum # 1

New Documents: **RFQ No. 12665-1026 - Water Consent Order Program Management Addendum 1.pdf**

Previous End Date: **May 23, 2022 2:00:00 PM EDT**

New End Date: **Jun 27, 2022 2:00:00 PM EDT**

Item Response Form

Item **12665-1026-01-01 - Water Consent Order Program Management and Mapping Services**
 Quantity **1 each**

Prices are not requested for this item.

Delivery Location **City of Fort Lauderdale**
See Specifications
See Specifications
Fort Lauderdale FL 33301
Qty 1

Description

Water Consent Order Program Management and Mapping Services per the Scope of Services of this solicitation.

Request for Qualifications

RFQ # 12665-1026

Water Consent Order Program Management and Mapping Services

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

City of Fort Lauderdale



**Sylejman Ujkani
Program Manager**

**Erick Martinez
Senior Procurement Specialist**
Telephone: (954) 828-4019 E-mail: emartinez@fortlauderdale.gov

SECTION I – INTRODUCTION AND INFORMATION

1.1 Purpose

The City of Fort Lauderdale (City) is seeking the services of a qualified consulting firm(s) to provide Professional Services related to the civil enforcement actions mandated by a Florida Department of Environmental Protection (FDEP) Consent Agreement. The services provided under this contract shall include program management; reporting to FDEP; data collection, survey, and georeferenced mapping of the water infrastructure; and assistance with the water line valves exercise program.

The following is a list of services that may be required on an as-needed basis, as requested by the City, which will be authorized by individual Task Orders. This list shall not be construed as an exclusive list of activities that successful firm(s) may be engaged in. The 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 design consultants and for which the firm(s) are experienced, qualified, and able to perform.

1.2 BidSync

The City uses BidSync (www.bidsync.com) to administer the competitive solicitation process, including but not limited to soliciting bids, issuing addenda, posting results and issuing notification of an intended decision. There is no charge to register and download the RFQ from BidSync. Proposers are strongly encouraged to read the various vendor Guides and Tutorials available in BidSync well in advance of their intention of submitting a response to ensure familiarity with the use of BidSync. The City shall not be responsible for an offeror's inability to submit a response by the end date and time for any reason, including issues arising from the use of BidSync. There is no charge to bidders/construction managers 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 bid is submitted electronically through BidSync at bidsync.com no later than the time and date specified in this solicitation. **PAPER BID SUBMITTALS WILL NOT BE ACCEPTED. BIDS MUST BE SUBMITTED ELECTRONICALLY VIA bidsync.com.**

1.3 Electronic Bid Openings

This solicitation will be opened electronically via bidsync.com at the date and time indicated in the solicitation. All openings will be held on the bidsync.com platform. 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. The opening may also be viewed in real time through a "Zoom meeting" by using the following information:

Microsoft Teams meeting

Join on your computer or mobile app

[Click here to join the meeting](#)

Or call in (audio only)

[+1 954-686-7296](tel:+19546867296), [696755482#](tel:+1696755482) United States, Fort Lauderdale

Phone Conference ID: 696 755 482#

[Find a local number](#) | [Reset PIN](#)

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
100 N. Andrews Avenue, 6th Floor
Fort Lauderdale, FL 33301
Telephone: (954) 828-4019
E-mail: erickmartinez@fortlauderdale.gov

For all inquiries concerning this RFQ, questions, and requests for additional information, please utilize the Q&A platform provided by BidSync at bidsync.com. 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. (See addendum section of BidSync Site). **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 in BidSync 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 sub-consultants 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 (2021), 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 (2021), 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 (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.

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 Bidsync 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 Bidsync 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 Bidsync 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.

General Conditions

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 consulting services for **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 Program Management and Mapping services. Program Manager must be Registered Professional Engineer in the State of Florida with experience in management of similar programs and/or services, preferably for municipal water systems, consent order programs, and mapping services. Project manager assigned to the work must have relevant experience, appropriate certifications, and have served as project manager on similar projects. The Project Manager for Mapping must be a Registered Surveyor and Mapper with experience in survey and mapping of municipal utility systems, preferably water systems and citywide/large-scale surveying and have 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

General Conditions

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 on the 7th Floor of City Hall, 100 N. Andrews Avenue, Fort Lauderdale, Florida 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 Contractor shall result in cancellation of the City purchase and may result in Contractor debarment.

2.12 Sub-Consultants

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

2.12.2 Consultants shall include in their responses, the requested Sub-Consultant 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

General Conditions

shall provide a list confirming the Sub-Consultant(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 Sub-Consultant, the services Sub-Consultant will provide relative to any contract that may result from this RFQ, Sub-consultants' 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, the 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 the Contractor. The Contractor shall provide the City a certificate of insurance evidencing such coverage. The Contractor's insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the 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 the Contractor for assessing the extent or determining appropriate types and limits of coverage to protect the 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 the 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 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 Contractor. The coverage shall contain no special limitation on the scope of protection afforded to the City, its officials, employees, and volunteers.

General Conditions

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.

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.

Watercraft Liability

Coverage must be afforded in an amount not less than \$1,000,000 per occurrence and must cover the utilization of watercraft, including Bodily Injury and Property Damage arising out of ownership, maintenance, or use of any watercraft, including owned, non-owned, and hired.

Coverage may be provided in the form of an endorsement to the Commercial General Liability policy, or in the form of a separate policy covering Watercraft Liability or Protection and Indemnity for Bodily Injury and Property Damage.

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 Contractor does not own vehicles, the 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.

The Contractor waives, and the Contractor shall ensure that the 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.

The Contractor 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 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. The 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 the Contractor to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested, and addressed to the certificate holder.

General Conditions

- d. In the event the Agreement term or any surviving obligation of the Contractor following expiration or early termination of the Agreement goes beyond the expiration date of the insurance policy, the 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 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 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

The 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 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 Contractor's expense.

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

The Contractor'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 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 shall be considered breach of contract. In addition, Contractor 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 Contractor's insurance policies.

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

General Conditions

It is the Contractor's responsibility to ensure that any and all of the 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 the 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 sub-consultants 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 sub-consultants 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 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 Request for Proposals, 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.

General Conditions

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 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.

2.21 Payment Method

The City shall make payment to the Consultant by check.

2.23 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.

2.24 Indemnity/Hold Harmless Agreement

The Consultant agrees to protect, defend, indemnify, and hold harmless the City and its officers, employees and agents from and against any and all losses, penalties, damages, settlements, claims, costs, charges for other expenses, or liabilities of every and any kind including attorney's fees, in connection with or arising directly or indirectly out of the work agreed to or performed by Consultant under the terms of any agreement that may arise due to the bidding process. Without limiting the foregoing, any and all such claims, suits, or other actions relating to personal injury, death, damage to property, defects in materials or workmanship, actual or alleged violations of any applicable statute, ordinance, administrative order, rule or regulation, or decree of any court shall be included in the indemnity hereunder.

2.25 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 General Conditions.

2.26 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.

General Conditions

2.27 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.

2.28 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 Bidsync as stated in Section 4.1.

2.29 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.

2.30 Liquidated damages for Failure to Perform

If the city fails to meet the mandates and deadlines set forth by the Consent Agreement due to the Contractor's failure to perform, the Contractor shall be responsible for paying all fines and fees imposed by FDEP.

Consent Decree Liquidated Damages:

The Consent Decree provides that the Regulatory Agencies may impose stipulated penalties against City of Fort Lauderdale for failure to meet certain deadlines. In the event the Regulatory Agencies impose such penalties against City of Fort Lauderdale, and such penalties are a result of the Consultant lack of performance, failure to meet Compliance Dates or a SSO that occurs during project, the consultant shall be liable to the City of Fort Lauderdale for such amounts as additional Liquidated Damages ("Consent Decree Liquidated Damages") ("COLD"). Please note these COLD are in addition to the Contract Liquidated Damages as specified previously and may be assessed separately and/or in combination.

2.31 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.

END OF SECTION

General Conditions

SECTION III - SCOPE OF SERVICES

3.1 Purpose/Background

The City of Fort Lauderdale (City) is seeking the services of a qualified consulting firm(s) to provide Professional Services related to the civil enforcement actions mandated by a Florida Department of Environmental Protection (FDEP) Consent Agreement. The services provided under this contract shall include program management; reporting to FDEP; data collection, survey, and georeferenced mapping of the water infrastructure; and assistance with the water line valves exercise program. The following is a list of services that may be required on an as-needed basis, as requested by the City, which will be authorized by individual Task Orders. This list shall not be construed as an exclusive list of activities that successful firm(s) may be engaged in. The 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 design consultants and for which the firm(s) are experienced, qualified, and able to perform.

Background

On July 17th, 2019, a source water main break of the public water system occurred that led to the issuance of a Citywide boil water notice. Review of the incident report by the FDEP concluded that the City was unable to quickly isolate the damage and redirect flow. This prompted the City to voluntarily enter into Consent Order (CO) Number 19-1637 with FDEP on July 24, 2020. In response to this Consent Agreement, the City is seeking a qualified Consultant that will serve as the Program Manager. The role of the Program Manager will be to ensure that the City meets the requirements and deadlines set forth by the FDEP Consent Agreement, to actively engage in the mapping of the water infrastructure, and assists with valve exercise reporting in order to comply with the Agreement's mandates and to enable the City to quickly isolate breaks and redirect flow.

The City of Fort Lauderdale provides water service to Fort Lauderdale and seven neighboring cities, including parts or all of Dania Beach, Davie, Lauderdale-by-the-Sea, Wilton Manors, Lazy Lake, Oakland Park and Tamarac. The City's water infrastructure consists of approximately 783 miles of source and distribution water mains, 19000 valves, 6,200 fire hydrants, 250 air release valves, and 62,600 water meters and service lines. The City maintains and operates a potable water system consisting of the following three main components: two (2) water treatment plants (WTPs): Fiveash WTP and the Peele-Dixie WTP; two (2) remote storage and repump facilities: Poinciana Park Water Tank & Pump Station and the Northwest 2nd Avenue Water Tank & Pump Station; and approximately 750 miles of water distribution pipeline. The City withdraws groundwater from the surficial Biscayne Aquifer from two active wellfields, the Dixie Wellfield (serving Peele-Dixie WTP) and the Prospect Wellfield (serving Fiveash WTP). The WTPs treat the raw groundwater to meet all water quality regulations and pump the finished water through the City's distribution system to its customers either directly or via the remote storage and repump facilities.

3.2 Scope of Services

The City of Fort Lauderdale (City) is seeking statements of qualifications from qualified engineering firms in response to this Request for Qualifications (RFQ) for the purpose of managing the overall delivery of the following tasks:

1. Data collection, surveying, and mapping of water infrastructure, including all source and distribution mains, control valves, hydrants, air release valves, water meters, inactive mains, and directional flow routes.

Scope of Services

2. Assist with the water valves exercising program through planning the field work, providing and updating field schedules, and preparation of field activity reports. Provide supplemental resources to exercise the valves only if needed.
3. Review and validation of maintenance records and preparation of annual report showing that the water line valves were exercised as required.
4. Physical condition assessments of all water valves and provide recommendations as needed.
5. Reporting to FDEP to ensure that all Consent Agreement mandates are met in a timely fashion.
6. **Table 1** below provides an updated list of the future activities stipulated within (or as may be necessary) to comply with the FDEP Consent Agreement. Additional projects may be required and added to this list in the future.

TABLE 1:

Item No.	Project / Item
1	Exercise 20% of the Water Distribution System Valves per PMP in Year 2.
2	Prepare an Annual Report showing the number of water line valves exercised in Year 2.
3	Exercise 20% of the Water Distribution System Valves per PMP in Year 3.
4	Exercise 20% of the Water Distribution System Valves per PMP in Year 4.
5	Exercise last 20% of the Water Distribution System Valves per PMP in Year 5.
6	Prepare a revised plan (or amendment to the plan) if requested by the City to develop a complete map of the existing water supply network. (The current Mapping Plan accepted by FDEP is available upon request.)
7	Complete all mapping and certify to the Department in writing.

The selected Consultant shall ensure that the program components are technically, economically, and functionally consistent and are implemented in a manner that meets the requirements and deadlines of the Consent Order; specific milestones determined by the City; and any applicable regulatory requirements, such as the Clean Water Act, Florida Department of Environmental Protection (FDEP) regulations, and Environmental Protection Agency (EPA) rules.

The Proposer will develop a complete map of the existing water supply network in order to satisfy the agreement with FDEP while also meeting the City's water mapping needs. The maps shall include all existing source and distribution mains, hydrants, control valves, and directional flow routes. In addition, inactive mains and related appurtenances with shut-off valves should be illustrated and highlighted to define their unique operational status.

Note: A copy of the referenced Consent Order agreement is included in this solicitation. Also, the current Mapping Plan (prepared by WGI, dated September 22, 2020) accepted by FDEP is included in this solicitation.

General Conditions

SEE EXHIBIT A - WGI Water Distribution Mapping Plan

SEE EXHIBIT B - Consent Order

3.3 Tasks

The scope of services for this project is expected to include, but is not limited to, the following tasks:

3.3.1 Program Reporting to FDEP

- a. Prepare and maintain, together with City staff, a Program Management Plan which establishes communication protocols and data collection, and process standards that will ensure the conditions set forth by the FDEP Consent Agreement are met in a timely fashion in order to prevent additional penalties and corrective action measures.
- b. Consultant shall develop documents, memorandums and progress reports as required for submission to FDEP in order to meet all Consent Agreement mandates and deadlines, and to stay in compliance with FDEP regulations.
- c. Submit copies of the deliverables for review by the City, Florida Department of Transportation (FDOT) and Broward County as required.
- d. Ensure compliance with all regulatory agencies having an interest or jurisdiction over this project and which may require permits.
- e. Ensure compliance with all applicable Maintenance of Traffic (MOT) permits.

3.3.2 Data Collection and Valve Exercising:

- a. Monitor the City's valve maintenance program and provide reports as required by the CO.
- b. Plan the field work in accordance to the City's Water System Valve Maintenance Plan, including but not limited to providing and updating field schedules.
- c. Provide field support and issue field activities reports, as needed.
- d. Perform assessment of the City's existing water valves currently in the City's Geographic Information System database and collect/validate locations for geo-referencing accuracy as needed.
- e. Perform a Citywide operability testing of all water valves if requested.
- f. Provide supplemental resources to exercise valves if needed.
- g. Perform a Citywide records review of the existing water valves and maintenance based on available GIS data and historical documentation.
- h. Collect data required to deliver a complete georeferenced GIS database of all the water valves belonging to the City if needed.
- i. Review of maintenance records and preparation of annual reports showing that the water line valves were exercised in accordance to the City's Water System Valve Maintenance Plan and Consent Order requirements.

3.3.3 Data Collection and Mapping:

- a. Review the Water Distribution Mapping Plan and timeline currently approved by FDEP. If requested by City, make recommendations for City consideration, and revise the mapping plan for resubmittal to FDEP.

General Conditions

- b. Develop complete maps in accordance with the approved (original or resubmitted) mapping plan to comply with the requirements of the consent order.
- c. Validate the City's existing water distribution system infrastructure currently in the City's Geographic System (GIS) database and validate its locational accuracy.
- d. Perform survey and collect data required to deliver a complete, spatially accurate and connected GIS water utility network of the entire water system, including all source and distribution mains, control valves, hydrants, air release valves, water meters, and inactive mains.
- e. Perform verification of infrastructure component attributes, such as pipe size and material.
- f. Provide resources to verify the open/close status of valves in the field if needed. Provide and update field schedule and issue field activity reports. Deliver the open/close status information collected in City's desired format for incorporation into the City's GIS database.
- g. Provide confirmation of horizontal and vertical locations. Utilize subsurface utility engineering methods and technologies as appropriate. Designate source and water distribution mains providing quality as specified in final mapping plan.
- h. Deliver to the City a completed GIS database compatible with the City's existing GIS and asset management software systems. Ensure that deliverable(s) are formatted in a way that can be seamlessly loaded and operated with little to no processing or downtime for the City. This may require entering new location and attribute information, as well as editing existing GIS data, based on data collected from survey fieldwork, inspections, and by referencing historic documentation. Required database schema will be provided as an Esri File Geodatabase (FGDB), and delivery may require populating one FGDB for each survey zone.
- i. The mapping must be certified complete and accessible in accordance with the Consent Order by July 23, 2023.

3.4 Additional Scope Details:

Additional work may include the employment of technologies and methods necessary to implement the mapping plan and provide confirmation of horizontal and vertical locations, such as utility designates and locates, lidar, and test holes. Proposers are encouraged to be innovative and provide new ideas including the use of latest technologies. The Consultant shall coordinate with all regulatory agencies that have jurisdictional authority and ensure that the designs meet and exceed their standards and criteria.

The Consultant may propose to the City for approval and retain multiple, qualified sub-consultants for mapping, design and related program services. Other services and disciplines may be added by the City as needed during the course of the program work. The Consultant must be able to provide services in the following disciplines:

- 1. Utility Designating and Locating
- 2. Subsurface Utility Engineering
- 3. Surveying and Mapping
 - a. Aerial Photogrammetry
 - b. Land Surveying

General Conditions

4. Geographic Information Services (GIS)
5. Water Asset Management
6. Community Relations
7. Field Staff (Various)
8. Geotechnical Engineering and Testing
9. Civil Engineering (General)
10. Environmental Engineering
11. Project Management
12. Project Staff Extension
13. Computerized Visualization Tools
14. Value, Risk, and Benefit to Cost Business Case Analysis
15. City shall have the right, in its sole and absolute discretion, to require additional services that are required per the FDEP Consent Agreement and/or consistent with the scope of services and those activities typically performed by utility design consultants and for which the firm(s) are experienced, qualified, and able to perform.

END OF SECTION

General Conditions

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p. 20

EXHIBIT B
Exhibit 2

SECTION IV – SUBMITTAL REQUIREMENTS

4.1 Instructions

4.1.1 The City uses BidSync (bidsync.com) 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 BidSync. Proposers are strongly encouraged to read the various vendor Guides and Tutorials available in BidSync well in advance of their intention of submitting a proposal to ensure familiarity with the use of BidSync. 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 BidSync.

All proposals must be submitted electronically.

4.1.2 Careful attention must be given to all requested items contained in this RFQ. Proposers 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. 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.

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

Submittal Requirements

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, TO THE CONTRACTOR'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, 100 N. ANDREWS AVENUE, FORT LAUDERDALE, FLORIDA 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 (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 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

Submittal Requirements

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

Submittal Requirements

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.
- Year the project was 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 Sub-consultants

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

Submittal Requirements

4.2.8 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. Non-Collusion Statement

This form is to be completed, if applicable, and inserted in this section.

c. Non-Discrimination Certification Form

d. E-Verify Affirmation Statement

e. Bid/Proposal Certification

Complete and attach the Certification

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

Submittal Requirements

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 proposals 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.

Evaluation and Award

5.2.3 Weighted Criteria

Criteria	Percentage
Firm Qualifications and Experience	30%
Project Team Experience and Qualifications	30%
Methodology and Approach to Scope of Work	40%
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

Evaluation and Award

AGREEMENT

between

City of Fort Lauderdale

and

COMPANY NAME

for

Water Consent Order Program Management and Mapping Services

RFQ No. 12665-1026

C-1

AGREEMENT

THIS IS AN AGREEMENT made and entered into this ____ day of _____, 202__, by and between:

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

and

(COMPANY NAME), a _____ (company/corporation) authorized to conduct business in the State of Florida, (hereinafter referred to as "CONSULTANT")

WHEREAS, the City Commission of the City of Fort Lauderdale, Florida at its meeting of (COMMISSION DATE) authorized by motion the execution of this Agreement between CONSULTANT and CITY authorizing the performance of Water Consent Order Program Management and Mapping Services, RFQ No. 12665-1026, incorporated herein, (the "Agreement"); and

WHEREAS, the CONSULTANT is willing and able to render professional 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 **AGREEMENT:** Means this document between the CITY and CONSULTANT dated (COMMISSION DATE), 202__, and any duly authorized and executed Amendments to Agreement.
- 1.2 **BASIC SERVICES:** Services performed by CONSULTANT for authorized scope of work for the Project phase described in this Agreement and listed in Exhibit "A," Scope of Services.
- 1.3 **CONSULTANT'S PERIODIC ESTIMATE FOR PAYMENT:** A statement by CONSULTANT based on observations at the site and on review of documentation submitted by the Contractor that by its issuance recommends that

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CITY pay identified amounts to the Contractor for services performed by the Contractor on the Project.

- 1.4 CHANGE ORDER: A written order approved by the CITY authorizing a revision of this Agreement between the CITY and CONSULTANT that is directly related to the original scope of work or an adjustment in the original contract price or the contract time directly related to the original scope of work, issued on or after the effective date of this Agreement.

The CONSULTANT may review and make recommendations to the CITY on any proposed Change Orders, for approval or other appropriate action by the CITY.

- 1.5 CITY: The City of Fort Lauderdale, a Florida municipality.
- 1.6 CITY MANAGER: The City Manager of the City of Fort Lauderdale, Florida.
- 1.7 COMMISSION: The City Commission of the City of Fort Lauderdale, Florida, which is the governing body of the CITY government.
- 1.8 CONSTRUCTION COST: The total construction cost to CITY of all elements of the Project designed or specified by CONSULTANT.
- 1.9 CONSTRUCTION COST LIMIT: A maximum construction cost limit established by the CITY defining the maximum budget amount to which the final construction documents should be designed so as not to exceed.
- 1.10 CONSTRUCTION DOCUMENTS: Those working drawings and specifications and other writings setting forth in detail and prescribing the work to be done, the materials, workmanship and other requirements for construction of the entire Project, including any bidding information.
- 1.11 CONSULTANT: (CONSULTANT'S NAME), the CONSULTANT selected to perform professional services pursuant to this Agreement.
- 1.12 CONTRACT ADMINISTRATOR: The Public Works Director of the City of Fort Lauderdale, or his 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.
- 1.13 CONTRACTOR: One or more individuals, firms, corporations, or other entities identified as such by a written agreement with CITY ("Contract for Construction") to perform the construction services required to complete the Project.
- 1.14 DEPARTMENT DIRECTOR: The director of the (Department) Department for the City of Fort Lauderdale.

- 1.15 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.
- 1.16 FINAL STATEMENT OF PROBABLE CONSTRUCTION COSTS: A final cost estimate prepared by CONSULTANT during the Final Design Phase of the Project, based upon the final detailed Construction Documents of the Project.
- 1.17 NOTICE TO PROCEED: A written Notice to Proceed with the Project issued by the Contract Administrator.
- 1.18 OMISSION: A scope of work missed by CONSULTANT that is necessary for the Project, including a quantity miscalculation, which was later discovered and added by Change Order and which is deficient from the standard of care that a professional engineer in similar circumstances, working on a similar project and location would have exercised. Also includes design that was wrong, but was corrected after award to the Contractor, but before the construction process was materially affected.
- 1.19 ORIGINAL CONTRACT PRICE: The original bid and/or contract price as awarded to a Contractor based upon CONSULTANT'S final detailed Construction Documents of the Project.
- 1.20 PLANS AND SPECIFICATIONS: The documents setting forth the final design plans and specifications of the Project, 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.
- 1.21 PRELIMINARY PLANS: The documents prepared by CONSULTANT consisting of preliminary design drawings, renderings and other documents to fix and describe the size and character of the entire Project, and the relationship of Project components to one another and existing features.
- 1.22 PROJECT: An agreed scope of work for accomplishing a specific plan or development. This may include, but is not limited to, planning, architectural, engineering, and construction support services. The services to be provided by CONSULTANT shall be as defined in this Agreement and further detailed in Task Orders for individual projects or combinations of projects. The Project planning, design and construction may occur in separate phases and Task Orders at the CITY's discretion.

- 1.23 RESIDENT PROJECT REPRESENTATIVE: Individuals or entities selected, employed, compensated by and directed to perform services on behalf of CITY, in monitoring the Construction Phase of the Project to completion.
- 1.24 STATEMENT OF PROBABLE PROJECT COSTS: A document to be prepared by CONSULTANT that shall reflect a detailed statement of the total probable costs.
- 1.25 SUBSTANTIAL COMPLETION: The CITY will consider the work substantially complete when the Contractor submits 100% complete deliverables (i.e. Drawings, Specifications, Reports, Renderings) as described in this Agreement to the satisfaction of the City.
- 1.26 TASK ORDER: A document setting forth a negotiated detailed scope of services to be performed by CONSULTANT at fixed contract prices in accordance with this Agreement between the CITY and CONSULTANT.
- 1.27 TIME OF COMPLETION: Time in which the entire work shall be completed for each Task Order.

ARTICLE 2

PREAMBLE

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

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

ARTICLE 3

SCOPE OF SERVICES

- 3.1 The CONSULTANT shall perform the following professional services: Water Consent Order Program Management and Mapping Services as more specifically described in Exhibit "A," Scope of Services, attached hereto and incorporated herein, and shall include, but not be limited to, services as applicable and authorized by individual Task Orders for the individual projects in accordance with Article 5 herein. CONSULTANT shall provide all services set forth in Exhibit "A" including all necessary, incidental and related activities and services required by

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

- 3.2 CITY and CONSULTANT acknowledge that the Scope of Services does not delineate every detail and minor work tasks required to be performed by CONSULTANT to complete the 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 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 CITY 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. 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 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.

ARTICLE 4

GENERAL PROVISIONS

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

ARTICLE 5

PRIORITY OF PROVISIONS

- 5.1 The Contract Documents are intended to include all items necessary for the proper execution and completion of the work by CONSULTANT. Any labor, services, materials, supplies, equipment or documentation that may reasonably be inferred from the Contract Documents or trade usage from prevailing custom as being required to produce the indicated result will be provided whether or not specifically

called for, at no additional cost to CITY. The Contract Documents are complementary, and wherever possible the provisions of the Contract Documents shall be construed in such manner as to avoid conflicts between provisions of the various Contract Documents. In the event of any inconsistency in the Contract Documents, where such inconsistency is not clarified by change order, addendum or amendment, the Contract Documents shall be construed according to the following priorities:

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

Second priority: Specifications (quality) and Drawings (location and quantity) of CONSULTANT.

Third priority: This AGREEMENT.

Fourth priority: City of Fort Lauderdale Request for Qualifications (RFQ #12665-1026).

Fifth priority: CONSULTANT's response to City of Fort Lauderdale Request for Qualifications (RFQ #12665-1026).

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

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

ARTICLE 6

TASK ORDERS

- 6.1 The Project will be divided into "Tasks."
- 6.2 Task Orders shall be jointly prepared by the CITY and CONSULTANT defining the detailed scope of services to be provided for the particular Project. Each Task Order shall be separately numbered and approved in accordance with this Agreement and all applicable CITY code requirements.

ARTICLE 7
TERM OF AGREEMENT; TIME FOR PERFORMANCE

- 7.1 CONSULTANT shall perform the basic services described in Exhibit "A" within the time periods specified in the project schedule indicated in Exhibit C. The Project Schedule shall be automatically incorporated into this Agreement. Said time periods shall commence from the date of the Notice to Proceed for such services.
- 7.2 Prior to beginning the performance of any services under this Agreement, CONSULTANT must receive a Notice to Proceed. CONSULTANT must receive written approval from the Contract Administrator prior to beginning the performance of services in any subsequent phases of the Agreement. Prior to granting approval for CONSULTANT to proceed to a subsequent phase, the Contract Administrator may, at his or her sole option, require CONSULTANT to submit itemized deliverables for the Contract Administrator's review.
- 7.3 In the event CONSULTANT is unable to complete the above services because of delays resulting from untimely review by CITY or other governmental authorities having jurisdiction over the Project, 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 in approval by a governmental agency is anticipated or experienced, and to inform CITY of all facts and details related to the delay.
- 7.4 In the event Contractor fails to substantially complete the Project on or before the substantial completion date specified in the project schedule with CITY or 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, CONSULTANT shall be compensated in accordance with Article 7 for all services rendered by CONSULTANT beyond the substantial completion date.
- 7.5 The time for the performance of services described in the Task Orders Scope of Services and supplemental Task Orders shall be negotiated by the CITY and CONSULTANT as the services are requested and authorized by the CITY.
- 7.6 The term of this Agreement shall be limited to the time duration required to complete the basic services of the aforementioned project and any additional project related Task Orders for additional services.

ARTICLE 8
COMPENSATION AND METHOD OF PAYMENT

8.1 AMOUNT AND METHOD OF COMPENSATION

8.1.1 Not-To-Exceed Amount Compensation

CITY agrees to pay CONSULTANT as compensation for performance of basic services as related to Exhibit "A" required under the terms of this Agreement up to a Not-to-Exceed Amount of **(AGREEMENT TOTAL IN WORDS) (\$AGREEMENT TOTAL IN NUMBERS)**. It is agreed that the method of compensation is that of "Not-to-Exceed Amount" which means that CONSULTANT shall perform all services set forth in Exhibit "A" for total compensation in the amount of or less than that stated above. Compensation to be in accordance with the Cost Schedule and hourly billing rate schedule shown in Exhibit "B."

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

A Not-to-Exceed proposal shall be accompanied by 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 and profit, or as required by individual Task Order.

8.2 METHOD OF BILLING

8.2.1 Not-To-Exceed Amount Compensation

CONSULTANT shall submit billings, which are identified by the specific project number in a timely manner for all salary costs 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. Sub-consultant 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 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 sub-consultant fees on a task basis, so that total hours and costs by task may be determined.

8.3 REIMBURSABLES

8.3.1 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 the CONSULTANT and the 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 particular Task Order previously billed, exceeds the amount allocated for such Task Order shall be the responsibility of the CONSULTANT unless otherwise agreed to in writing by the Contract Administrator. Travel and subsistence expenses for the CONSULTANT, 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 the CONSULTANT. Reimbursable printing and photocopying expenses shall include only those prints or photocopies of original documents which are (i) exchanged among CONSULTANT, CITY and other third parties retained or employed by any of them or (ii) submitted to CITY for review, approval or further distribution. Documents, which are reproduced for CONSULTANT's internal drafts, reviews, or other purposes, are not eligible for reimbursement.

- B. Identifiable testing costs and special inspections approved by Contract Administrator.
- C. All permit fees paid to regulatory agencies for approvals directly attributable to the Project. These permit fees do not include those permits required for the construction Contractor.
- D. Overnight Delivery/Courier Charges (when CITY requires/requests this service).

8.3.2 Reimbursable sub-consultant expenses are limited to the items described above when the subconsultant agreement provides for reimbursable expenses. A detailed statement of expenses must accompany any request for reimbursement. Local travel to and from the Project site or within the Tri-County Area will not be reimbursed.

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

8.4 METHOD OF PAYMENT

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

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

8.4.3 Payments are scheduled to be made by CITY to CONSULTANT by check.

8.4.4 Payment will be made to CONSULTANT at:

(CONSULTANT'S ADDRESS)

ARTICLE 9
AMENDMENTS AND CHANGES IN SCOPE OF SERVICES

- 9.1 No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written Amendment prepared with the same formality as this Agreement and executed by the CITY and CONSULTANT.
- 9.2 CITY or CONSULTANT may request changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under a Task Order. Such changes must be contained in a written amendment, executed by the Parties hereto, with the same formality and of equal dignity herewith, prior to any deviation from the terms of the Task Order including the initiation of any additional services. CITY shall compensate CONSULTANT for such additional services as provided in Article 7.
- 9.3 In the event a dispute between the Contract Administrator and CONSULTANT arises over whether requested services constitute additional services, and such dispute cannot be resolved by the Contract Administrator and CONSULTANT, such dispute shall be promptly presented to the City Manager for resolution. The City Manager's decision shall be final and binding on the Parties for amounts in the aggregate under \$100,000. In the event of a dispute in an amount over \$100,000, the Parties agree to use their best efforts to settle such dispute. To this effect, they shall consult and negotiate with each other, in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both Parties. If they do not reach 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. Any resolution shall be set forth in a written document in accordance with Section 8.2 above. During the pendency of any dispute, CONSULTANT shall promptly perform the disputed services.

ARTICLE 10
CONSULTANT'S RESPONSIBILITIES

- 10.1 The CONSULTANT, following the CITY's approval of the Construction Documents and of the Final Statement of Probable Construction Costs, shall, when so directed and authorized by the CITY, assist the CITY in estimating construction costs, reviewing proposals, and assist in awarding contracts for construction. If requested, CONSULTANT shall review and analyze the proposals received by the CITY and shall make a recommendation for any award based on the City of Fort Lauderdale Procurement Ordinance.

- 10.2 Estimates, opinions of probable construction or implementation costs, financial evaluations, feasibility studies or economic analyses prepared by CONSULTANT will represent its best judgment based on its experience and available information. The CITY recognizes that CONSULTANT has no control over costs of labor, materials, equipment or services furnished by others or over market conditions or CONSULTANT's methods of determining prices, and that any evaluation of a facility to be constructed or work to be performed is speculative. Accordingly, CONSULTANT does not guarantee that proposals, bids or actual costs will not vary from opinions, evaluations or studies submitted by CONSULTANT.
- 10.3 In the event that the lowest "best value" bid, as such term is used in the City of Fort Lauderdale Procurement Code, excluding any alternate bid items ("base bid"), exceeds the Estimated Construction Cost for a project by more than ten percent (10%), CONSULTANT shall explain, in writing, the reasons why the bids or proposals exceeded the ten percent (10%) factor following the analysis of all base bids. In such a circumstance, the CITY may at its sole discretion, exercise any one or more of the following options:
- CONSULTANT shall be required to amend at the sole cost and expense of CONSULTANT, the Construction Drawings, Technical Specifications and Supplemental Conditions to enable the project to conform to a maximum of ten (10%) above the Estimated Construction Costs of the project, such amendments to be subject to the written final acceptance and approval of same by the CITY;
 - CONSULTANT shall be required to provide at the cost and expense of CONSULTANT re-bidding services and related items (including costs associated with regulatory review and approval of revised documents) as many times as requested by the CITY until the base bid of at least one "best value" bid falls within the factor of ten (10%) of the Estimated Construction Cost of the project;
 - The CITY may approve an increase in the Estimated Construction Cost of the Project;
 - The CITY may reject all bids or proposals and may authorize re-bidding;
 - The CITY may if permitted, approve a renegotiation of the Project within a reasonable time;
 - The CITY may abandon the project and terminate CONSULTANT's work authorization and Services for the Project; or
 - The CITY may select as many deductive alternatives as may be necessary to bring the award within ten percent (10%) of the Estimated Construction Costs of the Project.

It is expressly understood and agreed that the redesigning services required to keep the Project within 10% of the Estimated Construction Cost shall not be

considered additional services and CONSULTANT agrees that it shall not seek compensation from the CITY for such Services.

- 10.4 The CONSULTANT may be requested to provide the CITY with a list of recommended, prospective proposers.
- 10.5 The CONSULTANT may be asked to attend all pre-bid/proposal conferences.
- 10.6 The CONSULTANT shall recommend any addenda, through the Contract Administrator, as appropriate to clarify, correct, or change proposal/bid documents.
- 10.7 If pre-qualification of proposers is required as set forth in the request for proposal, CONSULTANT shall assist the CITY, if requested, in developing qualification criteria, review qualifications and recommend acceptance or rejection of the proposers. If requested, CONSULTANT shall evaluate proposals and proposers, and make recommendations regarding any award by the CITY.
- 10.8 The CITY shall make decisions on claims regarding interpretation of the Construction Documents, and on other matters relating to the execution and progress of the work after receiving a recommendation from CONSULTANT. CONSULTANT may also assist in approving progress payments to the Contractor based on each Project Schedule of Values and the percentage of work completed.
- 10.9 The CITY shall maintain a record of all Change Orders which shall be categorized according to the various types, causes, etc. that it may be determined are useful or necessary for its purpose. Among those shall be Change Orders identified as architectural/engineering Errors or Omissions.
 - 10.9.1 Unless otherwise agreed by both Parties in writing, it is specifically agreed that any change to the work identified as an Error on the part of CONSULTANT shall be considered for purposes of this Agreement to be an additional cost to the CITY which would not be incurred without the Error.
 - 10.9.2 Unless otherwise agreed by both Parties in writing, it is further specifically agreed for purposes of this Agreement that fifteen percent (15%) of the cost of Change Orders for any item categorized as an Omission shall be considered an additional cost to the CITY which would not be incurred without the Omission. So long as the total of those two numbers (Change Order costs of Errors plus fifteen percent (15%) of Omissions) remains less than two percent (2%) of the total Construction Cost of the Project, the CITY shall not look to CONSULTANT for reimbursement for Errors and Omissions.

- 10.9.3 Should the sum of the two as defined above (cost of Errors plus fifteen percent (15%) of the cost of Omissions) exceed two percent (2%) of the Construction Cost, the CITY shall recover the full and total additional cost to the CITY as a result of CONSULTANT's Errors and Omissions from CONSULTANT, that being defined as the cost of Errors plus fifteen percent (15%) of the cost of Omissions above two percent (2%) of the Construction Cost.
- 10.9.4 To obtain such recovery, the CITY shall deduct from CONSULTANT's fee a sufficient amount to recover all such additional cost to the CITY.
- 10.9.5 In executing this Agreement, CONSULTANT acknowledges acceptance of these calculations and to the CITY's right to recover same as stated above. The recovery of additional costs to the CITY under this paragraph shall not limit or preclude recovery for other separate and/or additional damages which the CITY may otherwise incur.
- 10.9.6 The Contract Administrator's decision as to whether a Change Order is caused by an Error or caused by an Omission, taking into consideration industry standards, shall be final and binding on both Parties for amounts in the aggregate under \$100,000 per project, subject to Section 8.3. In the event of a dispute in an amount over \$100,000, the Parties agree to use their best efforts to settle such dispute. To this effect, they shall consult and negotiate with each other, in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both Parties. If they do not reach 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.

ARTICLE 11
CITY'S RESPONSIBILITIES

- 11.1 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.
- 11.2 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.
- 11.3 CITY shall review the itemized deliverables/documents identified per Task Order.
- 11.4 CITY shall give prompt written notice to CONSULTANT whenever CITY observes or otherwise becomes aware of any development that affects the scope or timing

of CONSULTANT's services or any defect in the work of the Contractor.

ARTICLE 12
MISCELLANEOUS

12.1 OWNERSHIP OF DOCUMENTS

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

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

12.2 TERMINATION

12.2.1 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 11.27. In the case of termination by the CITY for cause, the CONSULTANT shall be first granted a 10-working day cure period after receipt of written notice from the CITY. In the event that the Agreement is terminated, the CONSULTANT shall be entitled to be compensated for the services rendered and accepted by the CITY from the date of execution of the Agreement up to the time of termination. Such compensation shall be based on the fee as set forth above, wherever possible. For those portions of services rendered to which

the applicable fee cannot be applied, payment shall be based upon the appropriate rates for the actual time spent on the 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 and all loss pertaining to this termination.

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

12.2.2 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.

12.2.3 Notice of termination shall be provided in accordance with Section 11.27, 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 11.27, NOTICES.

12.2.4 Termination for Convenience. In the event this Agreement is terminated for convenience, CONSULTANT shall be paid for any services performed and accepted by the CITY to the date the Agreement is terminated. Compensation shall be withheld until all documents specified in Section 11.3 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.

12.2.5 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.

12.3 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 and upon prior written notice for examination and audit by CITY all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by CITY to be applicable to CONSULTANT's records, CONSULTANT shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by CONSULTANT. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for CITY's disallowance and recovery of any payment upon such entry.

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

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

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

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

apprenticeship), and accessibility.

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

12.5 MINORITY PARTICIPATION

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

12.6 PUBLIC ENTITY CRIMES ACT

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 Contractor shall result in cancellation of the City purchase and may result in Contractor debarment.

12.7 SUB-CONSULTANTS

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

12.7.2 CONSULTANT shall utilize the sub-consultants 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 the Contract Administrator prior to changing or modifying the list of sub-consultants submitted by CONSULTANT.

The list of sub-consultants submitted is as follows:

(NAME ALL SUB-CONSULTANTS HERE)

12.8 ASSIGNMENT AND PERFORMANCE

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

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

CONSULTANT shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of CONSULTANT's performance and all interim and final product(s) provided to or on behalf of CITY shall meet or exceed all professional standards of the State of Florida.

12.9 INDEMNIFICATION OF CITY

12.9.1 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 intentional misconduct of CONSULTANT and persons employed or utilized by CONSULTANT in the performance of this Agreement. These indemnifications shall survive the term of this Agreement. In the event that any action or proceeding is brought against CITY by reason of any such claim or demand, CONSULTANT shall, upon written notice from CITY, resist and defend such action or proceeding by counsel approved by the CITY.

12.9.2 To the extent considered necessary by Contract Administrator and CITY, any sums due the CONSULTANT under this Agreement may be retained by CITY until all of the CITY's claims for indemnification pursuant to this

Agreement have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by CITY.

12.10 LIMITATION OF CITY'S LIABILITY

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

12.11 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 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 the Contractor. The Contractor shall provide the City a certificate of insurance evidencing such coverage. The Contractor's insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the 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

the Contractor for assessing the extent or determining appropriate types and limits of coverage to protect the 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 the 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 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 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 \$1,000,000 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.

Watercraft Liability

Coverage must be afforded in an amount not less than \$1,000,000 per occurrence and must cover the utilization of watercraft, including Bodily Injury and Property Damage arising out of ownership, maintenance, or use of any watercraft, including owned, non-owned, and hired.

Coverage may be provided in the form of an endorsement to the Commercial General Liability policy, or in the form of a separate policy covering Watercraft Liability or Protection and Indemnity for Bodily Injury and Property Damage.

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 Contractor does not own vehicles, the 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.

The Contractor waives, and the Contractor shall ensure that the 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.

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

The 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 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 Contractor's expense.

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

The Contractor'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 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 shall be considered breach of contract. In addition, Contractor 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 Contractor's insurance policies.

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

It is the Contractor's responsibility to ensure that any and all of the 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 the 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.

12.12 REPRESENTATIVE OF CITY AND CONSULTANT

12.12.1 The Parties recognize that questions in the day-to-day conduct of the Project will arise. The Contract Administrator, upon CONSULTANT's request, shall advise CONSULTANT in writing of one (1) or more CITY employees to whom all communications pertaining to the day-to-day conduct of the Project shall be addressed.

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

12.13 ALL PRIOR AGREEMENTS SUPERSEDED

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

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

12.14 CONSULTANT'S STAFF

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

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

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

12.15 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.

12.16 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.

12.17 CONFLICTS

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

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

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

12.18 CONTINGENCY FEE

CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement and that it has not paid or agreed to pay any

person, company, corporation, individual or firm, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For a breach or violation of this provision, the CITY shall have the right to terminate this Agreement without liability at its discretion, or to deduct from the Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

12.19 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.

12.20 COMPLIANCE WITH LAWS

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

12.21 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.

12.22 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.

12.23 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.

12.24 APPLICABLE LAW AND VENUE AND WAIVER OF JURY TRIAL

The Agreement shall be interpreted and construed in accordance with, and governed by, the laws of the state of Florida. The Parties agree that the exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claims arising from, related to, or in connection with this Agreement must be litigated in federal court, the Parties agree that the exclusive venue for any such lawsuit shall be in the 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.**

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 CONSULTANT. 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.

12.25 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.

12.26 ONE ORIGINAL AGREEMENT

This Agreement shall be executed in one (1) signed Agreement, treated as an original.

12.27 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: (Department director)
City of Fort Lauderdale
address
Fort Lauderdale, FL [REDACTED]
Telephone: (954) 828-[REDACTED]

With a copy to: City Manager
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, FL 33301
Telephone: (954) 828-5364

City Attorney
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, FL 33301
Telephone: (954) 828-5037

CONSULTANT: NAME
COMPANY NAME
ADDRESS
STATE AND ZIP
[REDACTED]
Telephone [REDACTED]
Email: [REDACTED]

12.28 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.

12.29 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.

12.30 ENVIRONMENTAL, HEALTH AND SAFETY

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

12.31 STANDARD OF CARE

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

12.32 TRUTH-IN-NEGOTIATION CERTIFICATE

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

12.33 EVALUATION

The CITY maintains the right to periodically review the performance of the CONSULTANT. This review will take into account the timely execution of Task Orders, the quality of the work performed, the cost to the CITY and the good faith efforts made by the CONSULTANT to maintain MBE/WBE participation in CITY

projects. Any deficiencies in performance will be described in writing and an opportunity afforded, where practicable, for the CONSULTANT to address and/or remedy such deficiencies.

12.34 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.

12.35 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 (2021), 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 (2021), 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 (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.

12.36 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 CONTRACT, CONTACT THE CUSTODIAN OF
PUBLIC RECORDS AT
PRRCONTRACT@FORTLAUDERDALE.GOV, 954-828-5002, CITY
CLERK'S OFFICE, 100 NORTH ANDREWS AVENUE, FORT
LAUDERDALE, FLORIDA, 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 (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 Agreement if CONSULTANT does not transfer the records to the City.
4. Upon completion of the Agreement, transfer, at no cost to the City, all public records in possession of CONSULTANT or keep and maintain public records required by the City to perform the service. If CONSULTANT transfers all public records to the City upon completion of this Agreement, CONSULTANT shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If CONSULTANT keeps and maintains public records upon completion of this Agreement, CONSULTANT shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

12.37 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.

12.38 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.

12.39 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]

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

CITY

CITY OF FORT LAUDERDALE, a Florida
municipal corporation

By: _____
CHRISTOPHER J. LAGERBLOOM
City Manager

Date: _____

ATTEST:

By: _____
DAVID R. SOLOMAN
City Clerk

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

By: _____
RHONDA MONTOYA HASAN
Assistant City Attorney

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WITNESSES:

COMPANY NAME), a _____
 company/corporation authorized to conduct
 business in the State of Florida,

Print Name

By: _____, Director

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 _____, 202__, by (NAME OF
 AUTHORIZED OFFICER) as _____ (TITLE OF AUTHORIZED OFFICER) for
 _____ (NAME OF COMPANY), a Florida _____ (TYPE OF COMPANY)
 authorized to conduct business in the State of Florida.

 (Signature of Notary Public - State of Florida)

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

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

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EXHIBIT "B"

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EXHIBIT "C"

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Exhibit 2



CITY OF FORT LAUDERDALE

PUBLIC WATER SYSTEM CONSENT ORDER PROGRAM

WATER DISTRIBUTION MAPPING PLAN

OGC No. 19-1637

City Contract No. 12233-196

September 22, 2020

Prepared By:



EXHIBIT B
Exhibit 2

City of Fort Lauderdale
Water Distribution Mapping Plan

September 17, 2020

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City of Fort Lauderdale
Water Distribution Mapping Plan

September 17, 2020

1.0 Introduction and Background

As of September 3, 2020, the City of Fort Lauderdale's (City) Water Distribution System (WDS) consists of approximately 18 miles of active raw water mains, 762 miles of active potable water distribution mains, 106 source water valves, 12,972 distribution system valves, 6,220 fire hydrant isolation valves, and 201 water air release valves.

The City maintains and operates a potable water system consisting of the following three main components: two (2) water treatment plants (WTPs): Fiveash WTP and the Peele-Dixie WTP; two (2) remote storage and repump facilities: Poinciana Park Water Tank & Pump Station and the Northwest 2nd Avenue Water Tank & Pump Station; and approximately 750 miles of water distribution pipeline. The City withdraws groundwater from the surficial Biscayne Aquifer from two active wellfields, the Dixie Wellfield (serving Peele-Dixie WTP) and the Prospect Wellfield (serving Fiveash WTP). The WTPs treat the raw groundwater to meet all water quality regulations and pump the finished water through the City's distribution system to its customers either directly or via the remote storage and repump facilities.

The City voluntarily entered into Consent Order (CO) Number 19-1637 with the Florida Department of Environmental Protection (FDEP) on July 24, 2020. The CO identifies corrective actions, with completion deadlines, to improve the water main distribution system within the City. The City has requested that WGI Inc. (WGI), create a water distribution mapping plan for developing a map of the existing water supply network in order to comply with sub-paragraph 5(d) of the CO. This mapping plan shall outline the development of a complete map of the existing water supply network for the City (Appendix 6.1) including all existing source and distribution mains, control valves, hydrants, air release valves (ARVs), water meters, inactive mains, and directional flow routes (being performed under a separate Task Order by others in coordination with the City).

The plan must be submitted by the City to FDEP for review and comment, within 60 days of the effective date of the CO, by September 22nd, 2020. The map showing the City's water supply network is included in Appendix 6.3

2.0 Public Water System Existing Data Review

WGI has acquired and reviewed information regarding the City's water distribution system to develop the Mapping Plan. The City has existing datasets for all existing source and distribution mains, control valves, hydrants, ARVs, water meters, inactive mains, and directional flow route features with attributes of related information, such as pipe size and material. The data is managed in the City's geographic information system (GIS) and was acquired through field data collection and as-built plans. Not all of the existing data available has been field verified for spatial accuracy and is being used in the water distribution mapping plan solely for reference information and relative locations to guide the field verifications and survey-grade adjustments of the appurtenances. The inventory method is identified via an "Inventory Flag" field in each feature class. The attributes of existing layers will be reviewed for accuracy and completeness and information will be updated accordingly.

3.0 Water Distribution Mapping Plan Methodology

The plan to map the City's water distribution system will be comprised of two main steps as outlined below. Utilizing the City's Water Distribution Atlas Map, consisting of 63 grids, 10 data collection zones (Appendix 6.2) were created to facilitate the best allocation of resources for field collection and

City of Fort Lauderdale
Water Distribution Mapping Plan

September 17, 2020

coordination with City staff, maintenance of schedule with delivery milestones and public outreach done by the City on an as needed basis. During the course of the mapping, newly installed assets resulting in new developments, annexations, or other means of acquisition will be spatially located through field verification using Subsurface Utility Engineering (SUE) performed by WGI. Resulting as-builts or onsite construction inspections/permitting will be incorporated into the Water Distribution Map and geodatabase by the City.

3.1 Water Distribution Mapping Plan Data Collection and Processing

Mapping of the water distribution and source mains will be done in accordance with Florida Statutes 472 and Chapter 5J-17 as well as ASCE 38-02 "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data." (Figure 1) This includes direct induction of toneable subsurface utility facilities from surface accessible features. Toneable subsurface utilities will be designated using passive frequencies (60Hz, 60 Hz x 5, 60Hz x 9+4 KHz), low (4KHz – 15KHz) and high (15 KHz – 38KHz) radio frequencies and generally prescribed geophysical prospecting techniques. Non-toneable utilities will be designated using multichannel Ground Penetrating Radar (GPR). Detected facilities will be marked with American Public Works Association (APWA) compliant colors, flags on soft ground and washable chalk on hard surfaces.

ASCE 38-02 Quality Level B (QLB) designates of the source and water distribution mains, marked with American Public Works Association (APWA) compliant colors; flags and water-based paint on soft ground and washable chalk/water-based paint on hard surfaces, along with roadway level features located in dense urban areas or other areas obstructed from GNSS satellite systems will be spatially located using mobile LIDAR, maintaining survey-grade accuracy. Leveraging the City's existing GIS datasets and geodatabase schema design, WGI will utilize Esri's Collector for ArcGIS (Collector). Collector is a configurable mobile field data acquisition application that will be accessible on a tablet and will allow the data to sync to a cloud server, ArcGIS Online (AGOL) and Portal for Enterprise for real-time access.

Attributes of the pipes will be collected during the ASCE 38-02 Quality Level A (QLA) Investigation (test hole) phase using the GIS Collector application. Survey-grade GPS receivers will be connected to the tablet to ensure accurate spatial locations. The schema will provide the requirements for the attributes collected to reduce human error during acquisition with dropdown choices, data types, and character lengths. Following feature extraction from point cloud LiDAR data, the attribute information will be synced with the survey location through a spatial join. Conventional surveying methods will be utilized in areas where GPS or LiDAR collection is not feasible.

Verification of pipe attributes, such as size and material and confirmation of both horizontal and vertical locations will be done via vacuum excavation (test holes) in accordance with the ASCE 38-02 Standards for collecting and mapping Quality Level A data. Survey and collection of the test holes will be performed using same data collection methods as mentioned above for Quality Level B data. This test hole data will be included in the utility basemap provided to the City. WGI recommends that test holes also be performed at water main bore crossings of waterways, where accessible to accurately depict the horizontal alignment of the bores. Existing bore information provided by the City will be utilized to supplement this field collection effort.

City of Fort Lauderdale
Water Distribution Mapping Plan

September 17, 2020

Per the CO, mapping of the service lines will be accomplished through mapping of the meters/meter boxes. The spatial location of these meters, including raw water and distribution system mains, valves, hydrants, ARVs, water meters, inactive mains, and directional flow routes and related appurtenances with shut-off valves, will be collected using a survey grade Trimble GPS receiver. The receiver will be attached to a mobile device using Collector application via Bluetooth. The integration of the receiver and GIS application will allow for efficient processing with reduction in human error.

All spatial data collection will be supervised by a Florida Professional Land Surveyor in accordance with Florida Statutes 472 and Chapter 5J-17 and ASCE 38-02 with a corresponding Surveyor's Report. The GIS data collection and processing will be managed by a certified Geographic Information System Professional (GISP).

3.2 Water Distribution Mapping Plan Data Deliverable

The City's public water system features (existing source and distribution mains, control valves, hydrants, ARVs, water meters, inactive mains, and directional flow routes) will be mapped and datasets will be delivered in a geodatabase preserving the facility IDs for seamless integration into the City's existing GIS, meeting the requirements for Cityworks®, the asset management system the City anticipates implementing in May 2021 (see Appendix 6.5-6.8). The geodatabase will be accompanied by Federal Geographic Data Committee (FGDC) compliant metadata.

4.0 Water Distribution Mapping Plan Schedule and Milestones

As per the CO sub-paragraph 5(d), executed July 24, 2020, the City has 36 months to complete all mapping. WGI has assigned dedicated resources to conduct the field data collection and GIS/CAD technicians to process the data and create the final GIS geodatabase deliverable. A GIS geodatabase and corresponding AutoCAD utility basemap with supporting datasets will be delivered to the City as a preliminary geodatabase and/or an interactive operations dashboard throughout the duration of the project. Delivery milestones will be set for every six months for the duration of the project to assess timeliness of data collection, processing, and provide additional QC opportunities (see Figure 2).

WGI purposes to submit to the City a preliminary geodatabase, end of June 2021, with Zones 1 and 2 completed. This milestone will coincide with the First Annual Report submitted to the FDEP per the CO subparagraph 5(a). Subsequent geodatabase deliverables are anticipated on a bi-annual basis to the City and will be governed by zone completion schedule with a possibility of zone-specific submittals.

The overall schedule to complete the water distribution mapping of all public water system features to be delivered to the City will be approximately 32 months. Commencing November 2020 through June 2023 (see Appendix 6.4), with the assumption that all subsequent task orders will be issued by the City in a timely manner. Data will be submitted to the City for a written certification of compliance with the CO sub-paragraph 5(d).

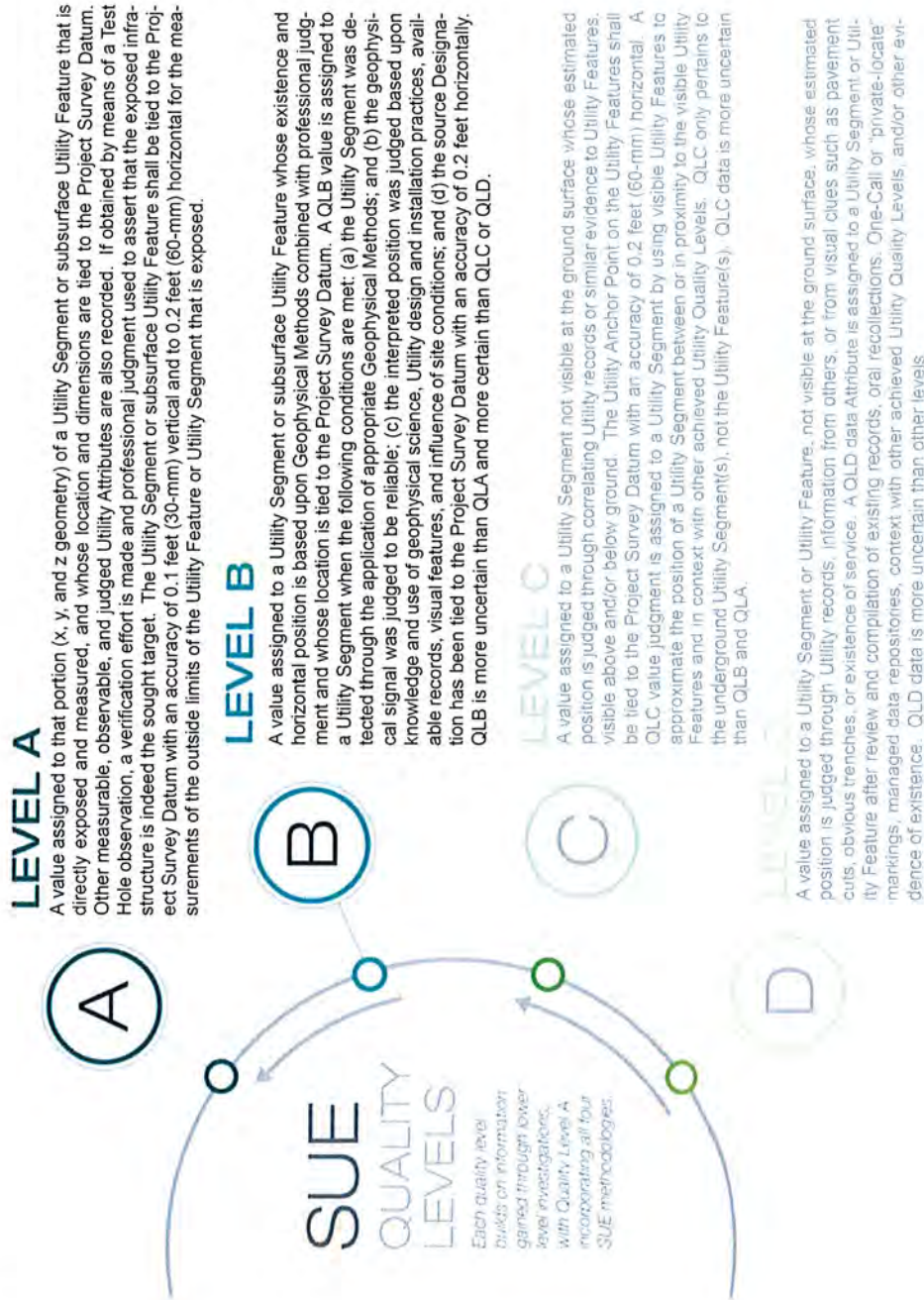


Figure 1. ASCE 38-02 Quality Levels

September 17, 2020

City of Fort Lauderdale
Water Distribution Mapping Plan[illegible]

Figure 2. Water Distribution Mapping Plan Schedule

5.0 Maintenance of Water Distribution Map

Throughout the 3-year duration of the water distribution mapping plan project, during routine maintenance activities by City staff, new developments, annexations, or other means of acquisition and as new construction is completed, the City will incorporate as-built drawings of the new components into the Water Distribution Map and geodatabase. Conversion and geodatabase input of as-built plans from previous City projects, dating back four years, will be performed by the City. The mode of mapping will be documented in the geodatabase.

6.0 Appendix

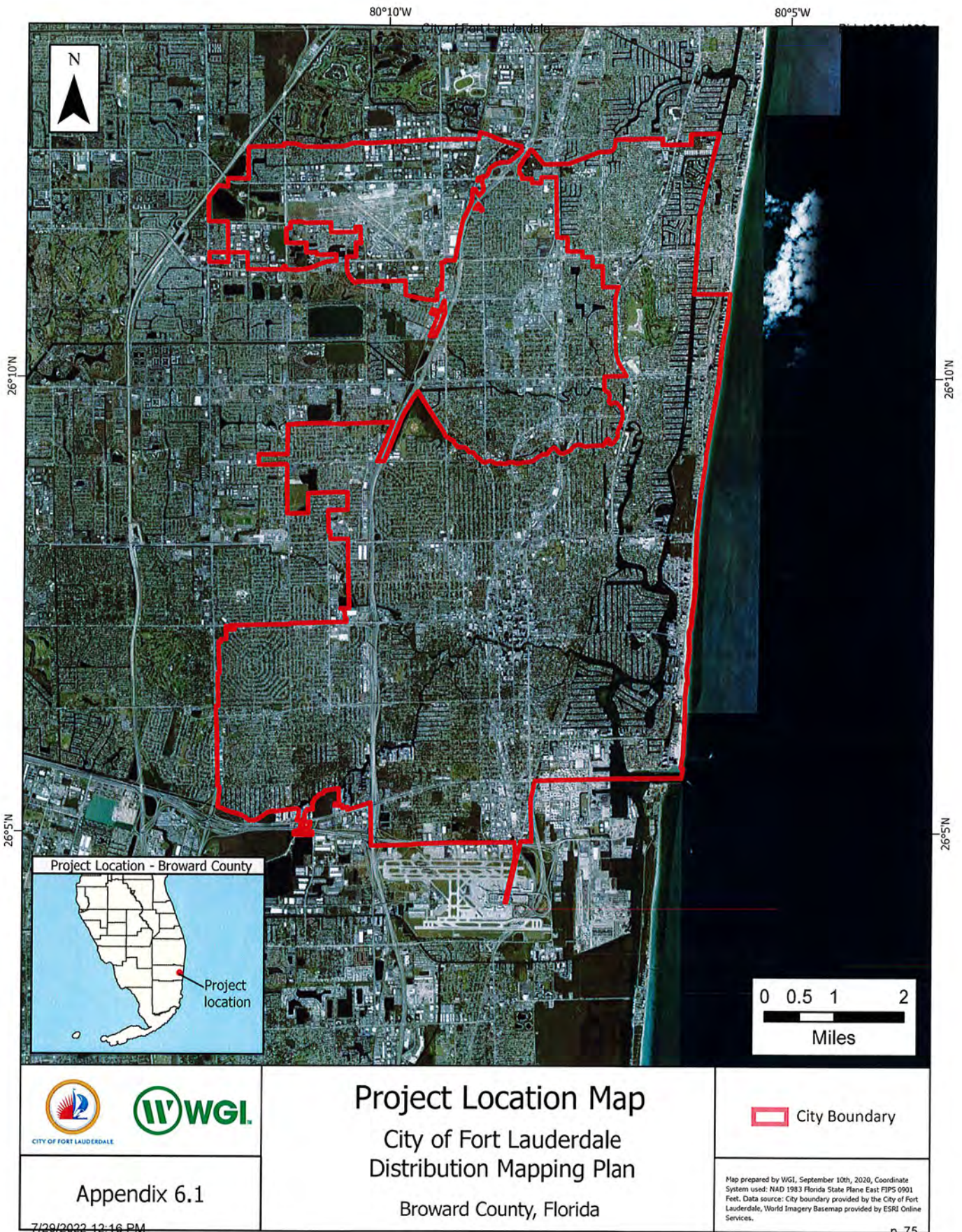
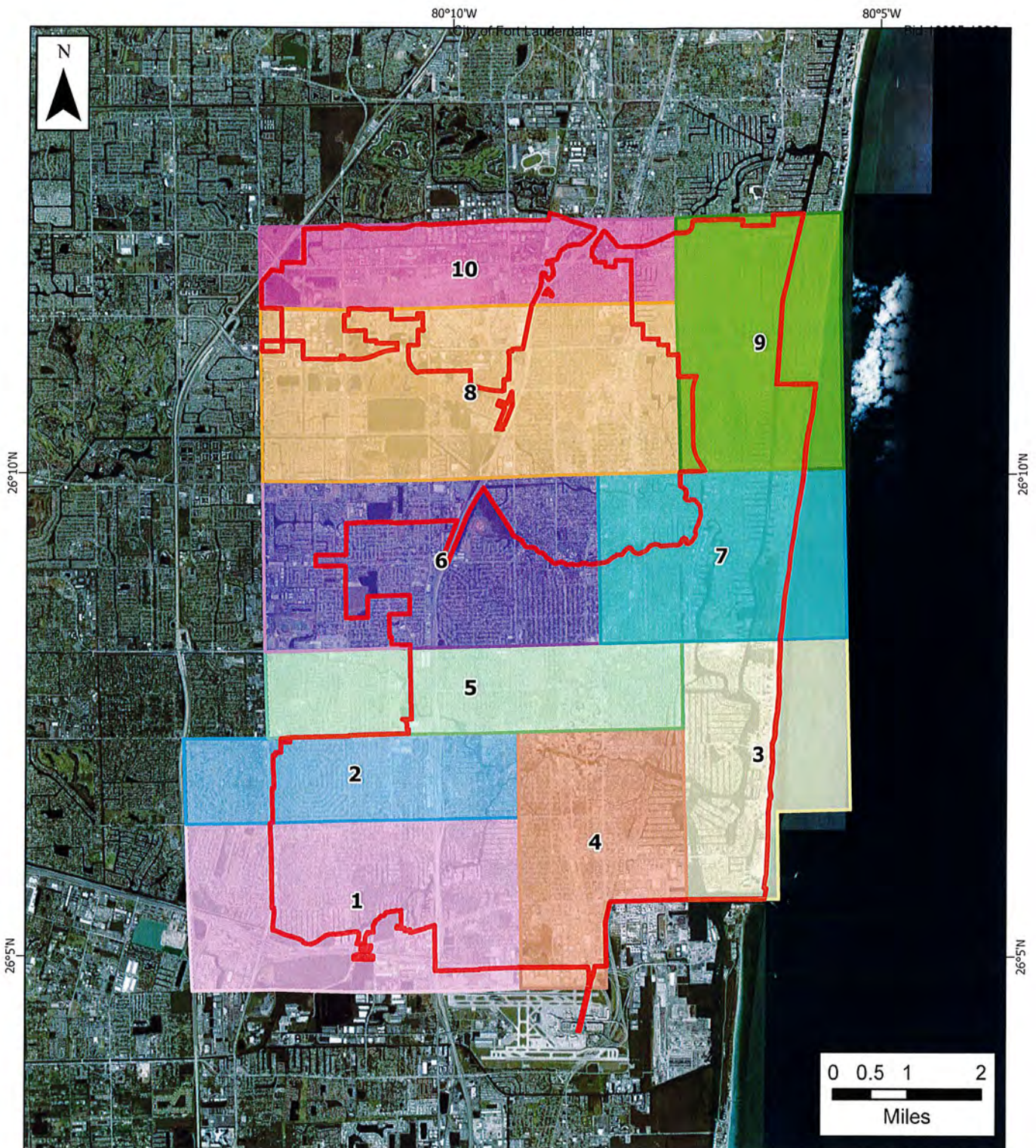


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Appendix 6.2

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Zone Key Map City of Fort Lauderdale Distribution Mapping Plan Broward County, Florida

Legend for Zones:

- Zone 1: Light Pink
- Zone 2: Blue
- Zone 3: Yellow
- Zone 4: Brown
- Zone 5: Teal
- Zone 6: Purple
- Zone 7: Light Blue
- Zone 8: Orange
- Zone 9: Green
- Zone 10: Pink
- City Boundary: Red

Map prepared by WGI, September 10th, 2020, Coordinate System used: NAD 1983 Florida State Plane East FIPS 0901 Feet. Data source: City boundary provided by the City of Fort Lauderdale, Zones created from Grids provided by the City of Fort Lauderdale, World Imagery Basemap provided by ESRI Online Services.

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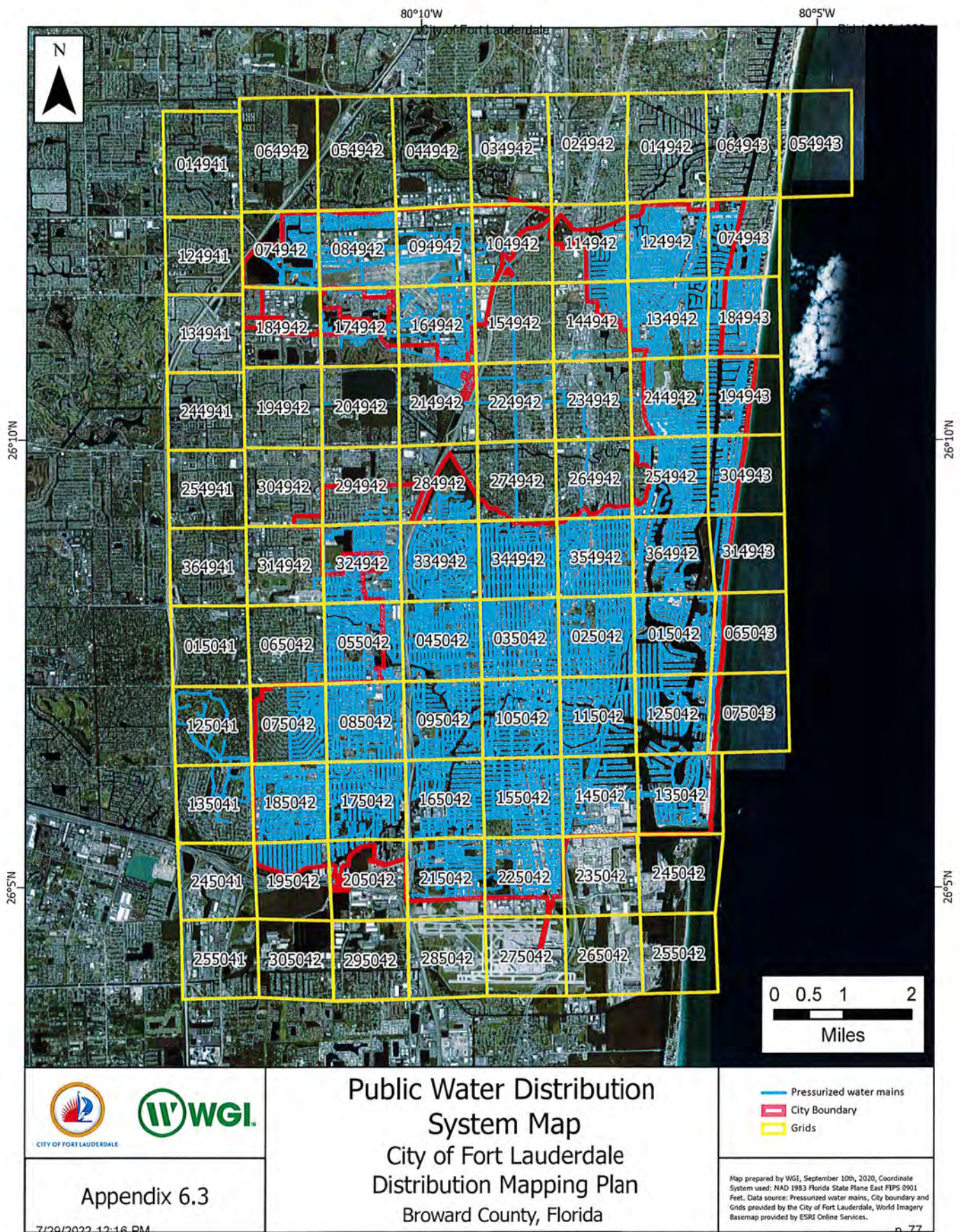


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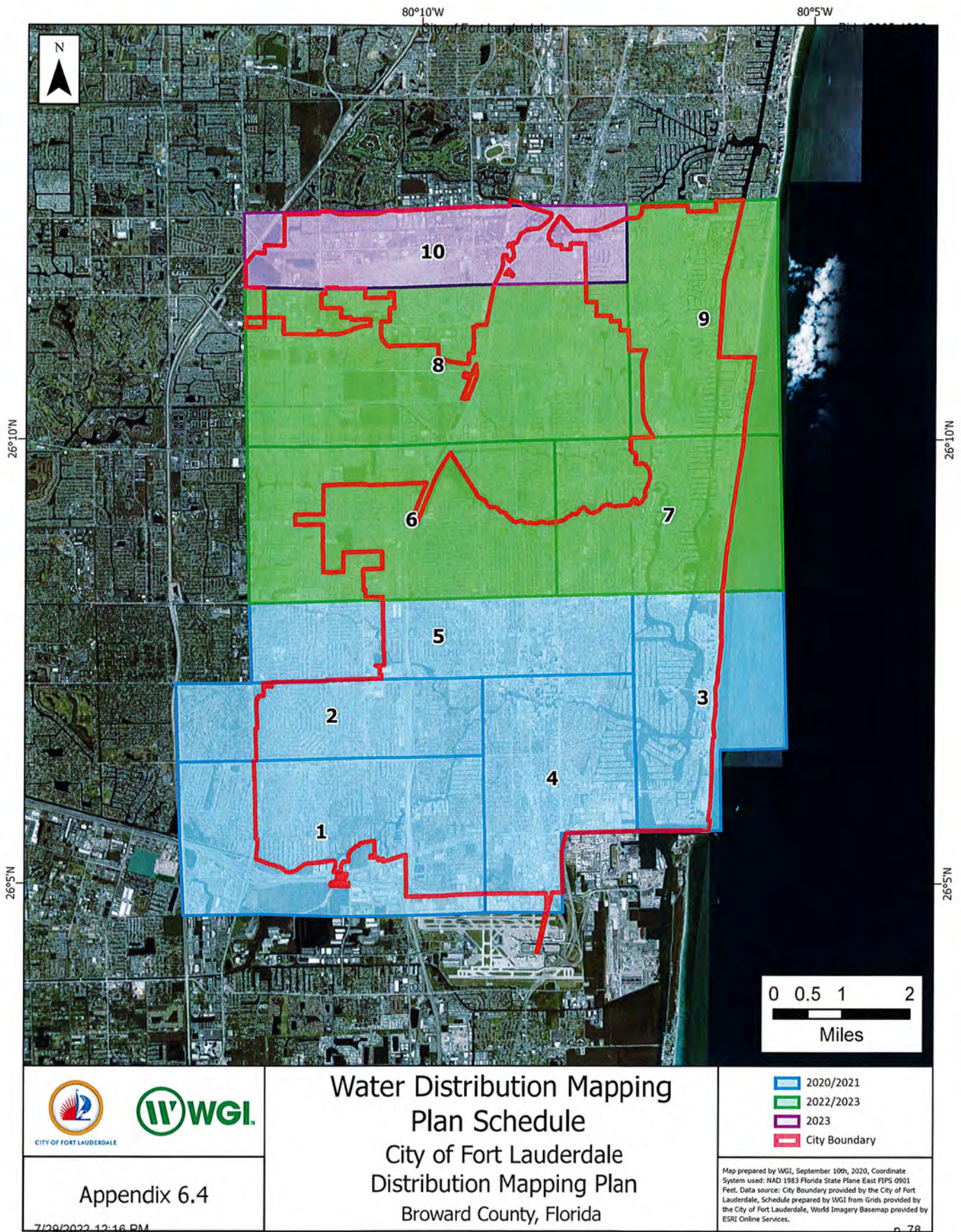


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