

AGREEMENT

between

CITY OF FORT LAUDERDALE

and

CHEN MOORE AND ASSOCIATES, INC

for

Design and Construction Administration Services for
Galt Ocean Mile Streetscape Improvements

RFQ No. 12709-126

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

CHEN MOORE AND ASSOCIATES, INC., a Florida corporation, (hereinafter referred to as "CONSULTANT"), collectively "Parties"

WHEREAS, the City Commission of the City of Fort Lauderdale, Florida at its meeting of May 2, 2023, authorized by motion the execution of this Agreement between CONSULTANT and CITY authorizing the performance of Design and Construction Administration Services for Galt Ocean Mile Streetscape Improvement RFQ No.12709-126 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 _____, 2023, 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 CONSULTANT that by its issuance recommends that CITY pay identified amounts to the CONSULTANT for services performed by the CONSULTANT on the Project.
- 1.4 CHANGE ORDER: A written order to the CONSULTANT approved by the CITY

authorizing a revision of this Agreement between the CITY and CONSULTANT that is directly related to the original scope of work or an adjustment in the original contract price or the contract time directly related to the original scope of work, executed on or after the effective date of this Agreement.

- 1.5 CITY: The City of Fort Lauderdale, a Florida municipality.
- 1.6 CITY MANAGER: The City Manager of the City of Fort Lauderdale, Florida.
- 1.7 COMMISSION: The City Commission of the City of Fort Lauderdale, Florida, which is the governing body of the CITY government.
- 1.8 CONSTRUCTION COST: The total construction cost to CITY of all elements of the Project designed or specified by CONSULTANT.
- 1.9 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.
- 1.10 CONSULTANT: Chen Moore and Associates, Inc., the CONSULTANT selected to perform professional services pursuant to this Agreement.
- 1.11 CONTRACT ADMINISTRATOR: The director of the Public Works Department for the City of Fort Lauderdale, or his or her designee. In the administration of this Agreement, as contrasted with matters of policy, all Parties may rely upon instructions or determinations made by the Contract Administrator, made within the scope of his/her authority.
- 1.12 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.
- 1.13 DEPARTMENT DIRECTOR: The director of the Public Works Department for the City of Fort Lauderdale.
- 1.14 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.
- 1.15 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.
- 1.16 NOTICE TO PROCEED: A written Notice to Proceed with the Project issued by the Contract Administrator.

- 1.17 OMISSION: A scope of work missed by CONSULTANT that is necessary for the Project, including a quantity miscalculation, which was later discovered and added by Change Order and which is deficient from the standard of care that a professional engineer in similar circumstances, working on a similar project and location would have exercised. Also includes design that was wrong, but was corrected after award to the CONSULTANT, but before the construction process was materially affected.
- 1.18 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.
- 1.19 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.
- 1.20 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.
- 1.21 PROJECT: Design and Construction Administration Services for Galt Ocean Mile Streetscape Improvement. 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.
- 1.24 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 CONSULTANT 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: Design and Construction Administration Services as more specifically described in Exhibit "A," Scope of Services, attached hereto and incorporated herein, and shall include, but not be limited to, services as applicable and authorized by individual Task Orders for the individual projects in accordance with Article 6 herein. CONSULTANT shall provide all services set forth in Exhibit "A" including all necessary, incidental and related activities and services required by the Scope of Services and contemplated in CONSULTANT's level of effort. CONSULTANT will perform the Services in accordance with standard industry practices, with the care, knowledge and skill expected of similar 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 #12709-126.

Fifth priority: CONSULTANT's response to City of Fort Lauderdale Request for Qualifications #12709-126.

- 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 may 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 D. 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 8 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 **THREE HUNDRED AND NINETY-EIGHT THOUSAND, SEVEN HUNDRED AND SIXTY-TWO DOLLARS AND FIFTY-THREE CENTS (\$398,762.53)**. 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. Subconsultant fees must be documented by copies of invoices or receipts, which describe the nature of the expenses and contain a project number or other identifier, which clearly indicates the expense, as identifiable to the Project. Except for meals and travel expenses, it shall be deemed unacceptable for 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 subconsultant expenses are limited to the items described above when the subconsultant agreement provides for reimbursable expenses. A detailed statement of expenses must accompany any request for reimbursement. 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 using a credit card/CITY Procurement Card (P-Card).

8.4.4 Payment will be made to CONSULTANT at:

Peter Moore
Chen Moore and Associates, Inc.
500 West Cypress Creek Road
Suite 630
PH (954) 730-0707
Email: PMoore@chenmoore.com

ARTICLE 9 AMENDMENTS AND CHANGES IN SCOPE OF SERVICES

9.1 No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written Amendment prepared with the same formality as this Agreement and executed by the CITY and CONSULTANT.

9.2 CITY or CONSULTANT may request changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under a Task Order. Such changes must be contained in a written amendment, executed by the Parties hereto, with the same formality and of equal dignity herewith, prior to any deviation from the

terms of the Task Order including the initiation of any additional services. CITY shall compensate CONSULTANT for such additional services as provided in Article 8.

- 9.3 In the event a dispute between the Contract Administrator and CONSULTANT arises over whether requested services constitute additional services, and such dispute cannot be resolved by the Contract Administrator and CONSULTANT, such dispute shall be promptly presented to the City Manager for resolution. The City Manager's decision shall be final and binding on the Parties for amounts in the aggregate under \$100,000. In the event of a dispute in an amount over \$100,000, the Parties agree to use their best efforts to settle such dispute. To this effect, they shall consult and negotiate with each other, in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both Parties. If they do not reach 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 9.2 above. During the pendency of any dispute, CONSULTANT shall continue to 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 percent (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 percent (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 ten percent (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 Article 9.3. 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), 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 12.27. 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 12.27, 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 12.27, 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 12.3 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 (2022), 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 (2022), as may be amended or revised, for category two purchases for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. Violation of this section by CONSULTANT shall result in cancellation of the CITY purchase and may result in CONSULTANT debarment.

12.7 SUBCONSULTANTS

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

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

The list of subconsultants submitted is as follows:

The Valerin Group, Inc
Marlin Engineering, Inc.
Stoner & Associates, Inc.
Pan Geo Consultants, LLC
EXP U.S. Services Inc.

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 12.7.

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 CONSULTANT, at its sole expense, shall provide insurance of such types and with such terms and limits as noted below. Providing proof of and maintaining adequate insurance coverage are material obligations of the CONSULTANT. The CONSULTANT shall provide the CITY a certificate of insurance evidencing such coverage. The CONSULTANT's insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by the CONSULTANT shall not be interpreted as limiting the CONSULTANT's liability and obligations under this Agreement. All insurance policies shall be through insurers authorized or eligible to write policies in the State of Florida and possess an A.M. Best rating of A-, VII or better, subject to approval by the CITY's Risk Manager.

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

The following insurance policies and coverages are required:

Commercial General Liability

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

- \$5,000,000 each occurrence and \$5,000,000 project aggregate for Bodily Injury, Property Damage, and Personal and Advertising Injury
- \$5,000,000 each occurrence and \$5,000,000 project aggregate for Products and Completed Operations

Policy must include coverage for Contractual Liability, Independent Contractors, and contain no exclusions for explosion, collapse, or underground.

CONSULTANT must keep Completed Operations insurance in force until the third anniversary of expiration of this Agreement or the third anniversary of acceptance of work by the CITY.

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

Business Automobile Liability

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

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

Crane and Rigging Liability (if applicable)

Coverage must be afforded for any crane operations under the Commercial General or Business Automobile Liability policy as necessary, in line with the limits of the associated policy.

Workers' Compensation and Employer's Liability

Coverage must be afforded per Chapter 440, Florida Statutes (2022). Any firm performing work on behalf of the CITY must provide Workers' Compensation insurance. Exceptions and

exemptions will be allowed by the CITY's Risk Manager, if they are in accordance with Florida Statute.

The CONSULTANT and its insurance carrier waive all subrogation rights against the CITY, a political subdivision of the State of Florida, its officials, employees, and volunteers for all losses or damages. The CITY requires the policy to be endorsed with WC00 03 13 Waiver of our Right to Recover from Others or equivalent.

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

For any CONSULTANT who has exempt status as an individual, the CITY requires proof of Workers' Compensation insurance coverage for that CONSULTANT's employees, leased employees, volunteers, and any workers performing work in execution of this Agreement.

If the CONSULTANT has applied for a workers' compensation exemption, the CITY does not recognize this exemption to extend to the employees of the CONSULTANT. The CONSULTANT is required to provide proof of coverage for their employees, leased employees, volunteers and any workers performing work in execution of this Agreement. This applies to all contractors including but not limited to the construction industry.

Pollution and Remediation Legal Liability (If any Hazardous Materials)

For the purpose of this section, the term "hazardous materials" includes all materials and substances that are designated or defined as hazardous by Florida or Federal law or by the rules or regulations of Florida or any Federal Agency. If work being performed involves hazardous materials, the CONSULTANT shall procure and maintain any or all of the following coverage, which will be specifically addressed upon review of exposure.

Consultant Pollution Liability Coverage

For sudden and gradual occurrences and in an amount not less than \$1,000,000 per claim arising out of this Agreement, including but not limited to, all hazardous materials identified under the Agreement.

Insurance Certificate Requirements

- a. The CONSULTANT shall provide the CITY with valid Certificates of Insurance (binders are unacceptable) no later than ten (10) days prior to the start of work contemplated in this Agreement.
- b. The CONSULTANT shall provide to the CITY a Certificate of Insurance having a thirty (30) day notice of cancellation; ten (10) days' notice if cancellation is for nonpayment of premium.
- c. In the event that the insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of the CONSULTANT to provide the

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

- d. In the event the Agreement term or any surviving obligation of the CONSULTANT following expiration or early termination of the Agreement goes beyond the expiration date of the insurance policy, the CONSULTANT shall provide the CITY with an updated Certificate of Insurance no later than ten (10) days prior to the expiration of the insurance currently in effect. The CITY reserves the right to suspend the Agreement until this requirement is met.
- e. The Certificate of Insurance shall indicate whether coverage is provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the Certificate of Insurance must show a retroactive date, which shall be the effective date of the initial Agreement or prior.
- f. The CITY shall be named as an Additional Insured on all liability policies, with the exception of Workers' Compensation.
- g. The CITY shall be granted a Waiver of Subrogation on the CONSULTANT's Workers' Compensation insurance policy.
- h. The title of the Agreement, Bid/Contract number, event dates, or other identifying reference must be listed on the Certificate of Insurance.

The Certificate Holder should read as follows:

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

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

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

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

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

All required insurance policies must be maintained until the contract work has been accepted by the CITY, or until this Agreement is terminated, whichever is later. Any

lapse in coverage shall be considered breach of contract. In addition, CONSULTANT must provide to the CITY confirmation of coverage renewal via an updated certificate should any policies expire prior to the expiration of this Agreement. The CITY reserves the right to review, at any time, coverage forms and limits of CONSULTANT's insurance policies.

All notices of any claim/accident (occurrences) associated with this Agreement, shall be provided to the CONSULTANT's insurance company and the CITY's Risk Management office as soon as practical.

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

SPECIALIZED COVERAGES

Professional Liability and/or Errors and Omissions (if architectural or engineering services are provided)

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

CONSULTANT must keep insurance in force until the third anniversary of expiration of this Agreement or the third anniversary of acceptance of work by the CITY.

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 subconsultants, 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.**

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: Irina Tokar – Sr. Project Manager
City of Fort Lauderdale
Public Works – Engineering Division
Fort Lauderdale, FL 33301
Telephone: (954) 828-6809
Email: ITokar@fortlauderdale.gov

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: Yulet Miguel, PE
Project Manager/Senior Engineer
Chen Moore and Associates, Inc.
500 W Cypress Creek Road, Suite 630,
Fort Lauderdale, FL 33309
Email: ymiguel@chenmoore.com
Phone: (954) 730-0707

G. Benjamin Lehr, PE
Principal Engineer
Chen Moore and Associates, Inc.
500 W Cypress Creek Road, Suite 630,
Fort Lauderdale, FL 33309
Email: blehr@chenmoore.com
Phone: (813) 896-0286

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

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 CONSULTANT certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, and that it does not have business operations in Cuba or Syria, as provided in Section 287.135, Florida Statutes (2022), as may be amended or revised. The CONSULTANT certifies that it is not on the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2022), as may be amended or revised, and that it is not engaged in a boycott of Israel. The CITY may terminate this Agreement at the CITY’s option if the CONSULTANT is found to have submitted a false certification as provided under subsection (5) of Section 287.135, Florida Statutes (2022), as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2022), as may be amended or revised, or is engaged in a boycott of Israel or has been engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes (2022), as may be amended or revised.

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 AGREEMENT, 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 (2022), as may be amended or revised, or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of this Agreement if 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.

12.40 NON-DISCRIMINATION

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

1. The CONSULTANT certifies and represents that it will comply with Section 2-187, Code of Ordinances of the City of Fort Lauderdale, Florida ("Section 2-187").
2. The failure of the CONSULTANT to comply with Section 2-187 shall be deemed to be a material breach of the Agreement, entitling the CITY to pursue any remedy stated below or any remedy provided under applicable law.
3. The CITY may terminate this Agreement if the CONSULTANT fails to comply with Section 2-187.
4. The CITY may retain all monies due or to become due until the CONSULTANT complies with Section 2-187.
5. The CONSULTANT may be subject to debarment or suspension proceedings. Such proceedings will be consistent with the procedures in Section 2-183, Code of Ordinances of the City of Fort Lauderdale, Florida.

12.41 E-VERIFY

As a condition precedent to the effectiveness of this Agreement, pursuant to Section 448.095, Florida Statutes (2022), as may be amended or revised, the CONSULTANT and its subcontractors shall register with and use the E-Verify system to electronically verify the employment eligibility of newly hired employees.

1. The CONSULTANT shall require each of its subcontractors, if any, to provide the CONSULTANT with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The CONSULTANT shall

maintain a copy of the subcontractor's affidavit for the duration of this Agreement and in accordance with the public records requirements of this Agreement.

2. The CITY, the CONSULTANT, or any subcontractor who has a good faith belief that a person or entity with which it is contracting has knowingly violated Section 448.09(1), Florida Statutes (2022), as may be amended or revised, shall terminate the Agreement with the person or entity.

3. The CITY, upon good faith belief that a subcontractor knowingly violated the provisions of Section 448.095(2), Florida Statutes (2022), as may be amended or revised, but that the CONSULTANT otherwise complied with Section 448.095(2), Florida Statutes (2022), as may be amended or revised, shall promptly notify CONSULTANT and order the CONSULTANT to immediately terminate the contract with the subcontractor, and the CONSULTANT shall comply with such order.

4. An Agreement terminated under Sections 448.095(2)(c)1. or 2., Florida Statutes (2022), as may be amended or revised, is not a breach of contract and may not be considered as such. If the CITY terminates this Agreement under Section 448.095(2)(c), Florida Statutes (2022), as may be amended or revised, the CONSULTANT may not be awarded a public contract for at least one year after the date on which the Agreement was terminated. The CONSULTANT is liable for any additional costs incurred by the CITY as a result of termination of this Agreement.

5. CONSULTANT shall include in each of its subcontracts, if any, the requirements set forth in Article 11, including this subparagraph, requiring any and all subcontractors, as defined in Section 448.095(1)(j), Florida Statutes (2022), as may be amended or revised, to include all of the requirements of Article 11 in its subcontracts. CONSULTANT shall be responsible for compliance by any and all subcontractors, as defined in Section 448.095(1)(j), Florida Statutes (2022), as may be amended or revised, with the requirements of Section 448.095, Florida Statutes (2022), as may be amended or revised.

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

CITY

CITY OF FORT LAUDERDALE, a Florida municipal corporation

By: _____
GREG CHAVARRIA
City Manager

Date: _____

ATTEST:

By: _____
DAVID R. SOLOMAN
City Clerk

Approved as to Legal Form:
D'Wayne Spence, Interim City Attorney

By: _____
RHONDA MONTOYA HASAN
Assistant City Attorney

WITNESSES:

Chen Moore & Associates, Inc., a Florida corporation

By: _____
Peter Moore, President

Print Name

ATTEST:

Print Name

By: _____
Secretary

(CORPORATE SEAL)

STATE OF _____:

COUNTY OF _____:

The foregoing instrument was acknowledged before me by means of ☐ physical presence or
☐ online notarization, this _____ day of _____, 2023, by Mr. Peter Moore as
President for Chen Moore & Associates, Inc, a Florida Corporation

(Signature of Notary Public - State of Florida)

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

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

EXHIBIT A

PROJECT BACKGROUND

CONSULTANT, under a separate contract with the CITY, provided the conceptual design and planning for the development of the beautification of approximately one mile, along Galt Ocean Drive, starting 400 LF North of E Oakland Park Boulevard and ending 440 LF South of Flamingo Avenue. As a result of the conceptual planning and design, RFQ #12709-126 Design and Construction Administration Services for Galt Ocean Mile Project was developed to produce design and construction plans for the envisioned streetscape improvements.

The Project includes the design of civil drawings, engineering calculations and plans for details such as and lighting features, milling and resurfacing of roadway, bike lane striping, sidewalk widening, new landscaping, irrigation, decorative paving, raised crosswalks and intersections, site amenities, and new signing and pavement markings. Also includes utility coordination and valve adjustments.

The scope of work includes the completion of construction documents including civil, landscaping, irrigation, electrical, and traffic design. Scope of work also includes geotechnical exploration, structural support, subsurface utility exploration, utility coordination, and permitting. Final construction drawings and specifications for permitting and bidding will be produced. Limited bidding assistance and limited post-design services will be provided.

GENERAL REQUIREMENTS

Design Standards

The CONSULTANT shall be solely responsible for determining the standards the work shall meet and obtain all the requisite regulatory approvals. The design shall include, but is not limited to, the plans and specifications, which describe all systems, elements, details, components, materials, equipment, and any other information necessary for construction.

The design shall be accurate, coordinated between disciplines, and in all respects, adequate for construction, and shall be in conformity, and compliance, with all applicable laws, codes, permits, and regulations.

Quality Control

The CONSULTANT is responsible for the Quality Control (QC) of their work and of its sub consultants. The CONSULTANT shall provide the CITY the list of subconsultants which shall be used for this Project. This list shall not be changed without prior written approval of the CITY. All subconsultant documents and submittals shall be submitted directly to the CONSULTANT for their independent QC review. The CITY shall only accept submittals for

review and action from the CONSULTANT.

The CONSULTANT shall be responsible for the professional quality, technical accuracy, and coordination of all pre-design services, designs, drawings, specifications, and other services furnished by the CONSULTANT and their subconsultant(s). It is the CONSULTANT's responsibility to independently and continually QC their plans, specifications, reports, electronic files, progress payment applications, schedules, and all project deliverables required by this task order. The CONSULTANT shall provide the CITY with a marked up set of plans and/or specifications showing the CONSULTANT's QC review. Such mark-ups shall accompany the CONSULTANT's scheduled deliverables. The submittal shall include the names of the CONSULTANT's staff that performed the QC review for each component (structures, roadway, drainage, etc.).

Project Schedule

The CONSULTANT shall submit a preliminary project schedule as an exhibit of this task order. The schedule shall be prepared in Microsoft Project and shall utilize an estimated Notice-to-Proceed (NTP), based on best available information.

The CONSULTANT shall submit a final project schedule to the CITY, for approval, within ten (10) business days after receiving the NTP and prior to beginning work. No work shall commence without an approved schedule. The final schedule shall include design, permitting activities, submittal review timeframes, and other project activities as required to complete the work.

The CONSULTANT shall submit updated project schedules as required in the specific scope of services.

Permitting

The CONSULTANT shall coordinate with the City Building Services Department and the South Florida Water Management District (SFWMD) prior to verify permitting requirements prior to submittal of permit applications. The CONSULTANT shall provide an estimate of fees and duration associated with the permitting processes. Permit Applications will be prepared by the CONSULTANT on behalf of the CITY. All applicable permit fees will be paid for by the CITY.

SPECIFIC SCOPE OF SERVICES

The Scope of Services to be provided by CONSULTANT shall be as follows:

TASK 1 – Data collection and Surveying

1. The CITY shall provide all existing project data to the CONSULTANT for their review and use.
2. The CITY has provided an existing survey that was collected during the concept development phase of the Project. Additional survey may be requested by the CONSULTANT. The CITY will collect any additional survey requested by the

CONSULTANT.

3. The CONSULTANT shall perform a site review to verify existing conditions, inventory signs, signing & pavement markings, drainage features, existing lighting, and its equipment.
4. The CONSULTANT will initiate utility coordination by contacting affected utility providers and collect existing utility information.
5. The CONSULTANT will perform an existing tree assessment.

TASK 2 – 60% Design Submission

1. The CONSULTANT shall conduct a geotechnical investigation along the Project corridor for purposes of developing pavement designs and developing foundation recommendations for light poles and pedestrian signal poles. The report shall be signed and sealed by a Professional Engineer registered in the State of Florida and shall contain, at a minimum, project vicinity map, plan view showing the location of borings, basis and results of tests performed, detailed description of findings, recommendations, and an executive summary.
2. The CONSULTANT shall submit the 60% design submission for CITY review.
3. The CONSULTANT shall conduct subsurface utility exploration at select locations of proposed foundations for new signal and light poles.
4. The CONSULTANT shall update the schedule in Microsoft Project as part of this submittal package for CITY review and approval.
5. The CONSULTANT shall update the construction cost estimate and make the changes to the design if needed to maintain the proposed budget.
6. The CITY shall provide comments to the CONSULTANT within fifteen (15) business days of receiving the submittal.
7. The CONSULTANT shall attend one (1) coordination meeting with the CITY to address review comments. CONSULTANT shall prepare the agenda, record, and submit meeting minutes to the CITY.

Deliverables: The following deliverables shall be provided under Task 2:

1. One (1) electronic copy of the 60% design package (11" x 17" plan sheets).
2. One (1) electronic copy of meeting minutes of meetings held during Task 1.
3. One (1) electronic copy of the anticipated project specification listing.
4. One (1) electronic copy of Project Schedule.
5. One (1) electronic copy of the updated construction cost estimate.
6. One (1) electronic copy of the Geotechnical Report.

TASK 3 – Limited Public Involvement

1. The CONSULTANT will attend one (1) public information meeting at the CITY's request to answer questions from the public about the Project.
2. The CONSULTANT will attend one (1) CITY Commission meeting at the CITY's request.

TASK 4 – Permitting

The CONSULTANT shall obtain all required permits from the CITY, regulatory agencies, and any other authorities having jurisdiction, for this project. The CONSULTANT shall respond to all permit comments from the CITY, regulatory agencies, or other authorities having jurisdiction. The CONSULTANT shall attend permit meetings with CITY, regulatory agencies,

and other authorities having jurisdiction, record and prepare meeting minutes, and provide documentation to the CITY. CONSULTANT shall attend not more than three (3) meetings of any kind relative to any one permit.

Anticipated permits include, but are not limited to:

- Broward County's Surface Waters General License.
- Broward County Traffic Engineering Division for SPM.
- CITY's Development Services Department (Building Services) Tree Removal Permit.
- SFWMD Environmental Resource Permit (ERP).
- SFWMD General ERP 62-330.447 (for Minor Activities Within Existing Rights-of-Way or Easements).

The Project may also require a Florida Department of Environmental Protection (FDEP) National Pollutant Discharge Elimination System (NPDES) Stormwater Generic Permit for sediment and erosion control measures required for soil disturbances. However, this permit is typically obtained by the contractor and therefore is not included in CONSULTANT's scope.

TASK 5 – 100% Design Submission

1. The CONSULTANT shall incorporate the review comments from 60% design submission in the 100% design submission. The 100% design submission shall be complete.
2. The CONSULTANT shall submit the 100% design submission for CITY review. The CITY shall provide comments to the CONSULTANT within fifteen (15) business days of receiving the submittal.
3. The CONSULTANT shall attend one (1) coordination meeting with the CITY to address review comments. CONSULTANT shall prepare the agenda, record and submit meeting minutes to the CITY.
4. The CONSULTANT shall provide an updated schedule in Microsoft Project as part of this submittal package for CITY review and approval.
5. The CONSULTANT shall update the construction cost estimate and make the changes to the design if needed to maintain the proposed budget.
6. Once all comments are addressed, the CONSULTANT shall submit the Final Plans and Specifications, and any other documents required for a complete design by the CITY.
7. The CONSULTANT shall provide electronically signed and sealed sets of the Final Design Package.

Deliverables: The following deliverables shall be provided under Task 5:

1. One (1) electronic copy of the 100% design package (11" x 17" plan sheets).
2. One (1) electronic copy of the 100% project specifications package.
3. One (1) electronic copy of the meeting minutes since the 60% submittal.
4. One (1) electronic copy of updated project schedule.
5. One (1) electronic copy of updated construction cost estimate.
6. Executed Permits.
7. Electronic copies of quality control documents will be available upon request from the CITY.

TASK 6 – Bidding Services

1. The CONSULTANT shall attend one (1) pre-bid meeting. The CONSULTANT shall respond to questions from prospective bidders.
2. The CONSULTANT shall provide supplemental information to prospective bidders as required during the bidding process through the issuance of addenda.

TASK 7 – Limited Post Design Services

1. The following scope is based on a construction duration of twelve (12) months. The CONSULTANT shall be eligible for additional compensation if the construction schedule exceeds this duration.
2. The CONSULTANT shall attend the pre-construction meeting. The CITY will prepare agenda and meeting minutes.
3. The CONSULTANT shall periodically observe the progress of the construction as requested and authorized in writing by the CITY and submit report of findings to the CITY.
4. The CONSULTANT will perform up to six (6) field reviews of the construction progress for the purpose of determining general compliance with the approved project drawings, plans, and specifications. Field reviews are estimated at six (6) hours per visit.
5. The CONSULTANT shall attend up to twenty-four (24) construction progress meetings.
6. The CONSULTANT shall review all shop drawings, product data, cut sheets, and submittals within seven (7) business days of receipt of the submittal to determine compliance with the drawings and specifications, and recommend submittal action to the CITY.
7. The CONSULTANT shall provide written responses to all Requests for Information (RFI) within seven (7) business days to the CITY.
8. The CONSULTANT shall assist the CITY with reviews and technical evaluations of Contractor's request for change orders, and claims, and provide recommendations and cost evaluations to the CITY.
9. The CONSULTANT shall review as-built drawings provided by the Contractor, provide written comments, and recommend submittal action to the CITY.

PROJECT ASSUMPTIONS

1. CITY shall provide access to site.
2. CITY shall provide existing electronic CAD files, if available. It is the CONSULTANT'S responsibility to verify accuracy.
3. It is the CONSULTANT's responsibility to verify existing geometry is acceptable to all permitting agencies.
4. CONSULTANT deliverables shall include DWG, PDF, WORD, and Excel files as required/appropriate. Drawings shall comply with CITY CAD Standards.

ADDITIONAL SERVICES

If authorized in writing by the CITY, as an amendment to this Task Order, the CONSULTANT shall furnish, or obtain, Additional Services of the types listed in the MASTER AGREEMENT. The CITY, as indicated in the MASTER AGREEMENT, will pay for these services.

PROJECT FUNDING

Performance of this project is at the CITY's discretion and may be contingent upon the CITY receiving funding and work shall not begin until the CITY provides a Notice to Proceed to CONSULTANT.

TERMS OF COMPENSATION

Services will be provided for the following Not-to-Exceed amounts:

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EXHIBIT B

Task 1 – Data Collection	\$ 42,192.53
Task 2 – 60% Design Submission	\$ 132,240.00
Task 3 – Limited Public Involvement	\$ 5,550.00
Task 4 – Permitting	\$ 20,540.00
Task 5 – 100% Design Submission	\$ 113,690.00
Design Sub Total	\$ 314,212.53
Task 6 – Bidding Services	\$ 11,480.00
Task 7 – Limited Post Design Services	\$ 63,070.00
Allowance	\$10,000.00
Grand Total	\$ 398,762.53

Design and Construction Services for Galt Ocean Mile Project

Task 1- Data Collection and Survey	
Chen Moore & Associates, Inc.	\$ 18,780.00
Marlin Engineering, Inc.	\$ 2,330.00
Stoner & Associates, Inc.	\$ -
Pangeo Consultants, LLC	\$ 6,510.00
InfraMap Corp.	\$ 14,572.53
Valerin Group, Inc.	\$ -
EXP U.S. Services	\$ -
Subtotal - Task 1	\$ 42,192.53
Task 2 - 60% Design Submission	
Chen Moore & Associates, Inc.	\$ 108,760.00
Marlin Engineering, Inc.	\$ 22,570.00
Stoner & Associates, Inc.	\$ -
Pangeo Consultants, LLC	\$ 910.00
InfraMap Corp.	\$ -
EXP U.S. Services	\$ -
Valerin Group, Inc.	\$ -
Subtotal - Task 2	\$ 132,240.00
Task 3 - Limited Public Involvement	
Chen Moore & Associates, Inc.	\$ 5,550.00
Marlin Engineering, Inc.	\$ -
Stoner & Associates, Inc.	\$ -
Pangeo Consultants, LLC	\$ -
InfraMap Corp.	\$ -
EXP U.S. Services	\$ -
Valerin Group, Inc.	\$ -
Subtotal - Task 3	\$ 5,550.00
Task 4 - Permitting	
Chen Moore & Associates, Inc.	\$ 16,680.00
Marlin Engineering, Inc.	\$ 3,860.00
Stoner & Associates, Inc.	\$ -
Pangeo Consultants, LLC	\$ -
InfraMap Corp.	\$ -
EXP U.S. Services	\$ -
Valerin Group, Inc.	\$ -
Subtotal - Task 4	\$ 20,540.00
Task 5 -100% Design Submission	
Chen Moore & Associates, Inc.	\$ 91,385.00
Marlin Engineering, Inc.	\$ 22,305.00
Stoner & Associates, Inc.	\$ -
Pangeo Consultants, LLC	\$ -
InfraMap Corp.	\$ -
EXP U.S. Services	\$ -
Valerin Group, Inc.	\$ -
Subtotal - Task 5	\$ 113,690.00
Task 6 - Bidding Services	
Chen Moore & Associates, Inc.	\$ 7,000.00
Marlin Engineering, Inc.	\$ 4,480.00
Stoner & Associates, Inc.	\$ -
Pangeo Consultants, LLC	\$ -
InfraMap Corp.	\$ -
EXP U.S. Services	\$ -
Valerin Group, Inc.	\$ -
Subtotal - Task 6	\$ 11,480.00
Task 7 - Limited Post Design Services	
Chen Moore & Associates, Inc.	\$ 53,070.00
Marlin Engineering, Inc.	\$ 10,000.00
Stoner & Associates, Inc.	\$ -
Pangeo Consultants, LLC	\$ -
InfraMap Corp.	\$ -
EXP U.S. Services	\$ -
Valerin Group, Inc.	\$ -
Subtotal - Task 7	\$ 63,070.00
Total Consultant Fee	\$ 388,762.53

Design and Construction Services for Galt Ocean Mile Project	LABOR												TOTAL TASK MAN-HOURS	LABOR COST PER TASK	TASK COSTS	
	\$240	\$220	\$145	\$120	\$135	\$105	\$65	\$55	\$135	\$115	\$105	\$150				
	Number of Man-hours															
	Principal Engineer	Project Manager	Project Engineer (PE)	Staff Engineer	Senior Designer	CADD operator	Clerical	Intern	Sen. Landscape Architect	Proj. Landscape Architect	Landscape Designer	Environmental Scientist				
ACTIVITY DESCRIPTION																
Task 1 - Data Collection and Survey																
Field Inventory - roadway inventory		8	8	8						8	12			24	\$3,880	\$3,880.00
Field Inventory - landscape														20	\$2,460	\$2,460.00
Field Inventory - lighting			8	8										16	\$2,120	\$2,120.00
Utility coordination		2	12	20		12	2	8						56	\$6,410	\$6,410.00
QA/QC Plan	2	2							2					6	\$1,190	\$1,190.00
Arborist Tree Assessment						2		2				16		20	\$2,720	\$2,720.00
Task 2 - 60% Design Submission																
Prepare 60% Existing Conditions Plans		4		16		24		16						60	\$6,200	\$6,200.00
Prepare 60% Paving, Grading & Drainage Plans		8		16	20	30		16						90	\$10,410	\$10,410.00
Prepare 60% Signalization Plans		8		16	20	30		16						90	\$10,410	\$10,410.00
Prepare 60% Lighting Plans		8		16	20	30		16						90	\$10,410	\$10,410.00
Prepare 60% Landscape Plans		2						8	20	42	50			122	\$13,660	\$13,660.00
Prepare 60% Irrigation Plans		2						8	10	16	24			60	\$6,590	\$6,590.00
Prepare 60% Hardscape Plans		2						8	24	40	56			130	\$14,600	\$14,600.00
Prepare 60% Tree Disposition Plans		2						8	4	8	16			38	\$4,020	\$4,020.00
Drainage Design		2	16	16										34	\$4,680	\$4,680.00
Prepare Drainage Report		2	30	30										62	\$8,390	\$8,390.00
Utility coordination		2	10	10										22	\$3,090	\$3,090.00
Engineer's Cost Estimate		4		8		16	2		4	4	8			46	\$5,490	\$5,490.00
QA/QC	2	6	8	16					10	10				52	\$7,380	\$7,380.00
Meeting with the CITY, minutes, schedule update	2	4	2				2		2	2				14	\$2,280	\$2,280.00
Comment Responses and Acceptance		4							2					6	\$1,150	\$1,150.00
Task 3 - Limited Public Involvement																
Attend Public Workshop Hearing		8	8						8					24	\$4,000	\$4,000.00
Attend/ Participate in Comission Meeting		4					2		4					10	\$1,550	\$1,550.00
Task 4 - Permitting																
Pre Application Meetings		4					2					12		18	\$2,810	\$2,810.00
Tree Removal Permit Application (City)		1		4							4	16		25	\$3,520	\$3,520.00
Broward Co. Surface Water General License		1		4							4	8		17	\$2,320	\$2,320.00
SFWMD ERP Application		2		8							8	24		42	\$5,840	\$5,840.00
Respond to RAI and resubmit permit applications		2					2				4	8		16	\$2,190	\$2,190.00
Task 5 - 100% Design Submission																
Provide Final Permit Package	2	4					4	10				4		24	\$2,770	\$2,770.00
Prepare Final Roadway Plans		4	2	30	30	20		20						106	\$12,020	\$12,020.00
Prepare Final Signalization Plans		4	4	24	20	20		20						92	\$10,240	\$10,240.00
Prepare Final Lighting Plans		2	2	24	24	20		20						92	\$10,050	\$10,050.00
Prepare Final Landscape Plans		2	2						20	12	30			66	\$7,960	\$7,960.00
Prepare Final Irrigation Plans		2							16	12	30			60	\$7,130	\$7,130.00
Prepare Final Hardscape Plans		2	2						16	12	30			62	\$7,420	\$7,420.00
Prepare Final Tree Disposition Plans		2							16	20	24			62	\$7,420	\$7,420.00
Proiect Specifications	2	12	12						8		4			38	\$6,360	\$6,360.00
Engineer's Cost Estimate	1	8	6	6		12			4	4	8			49	\$6,690	\$6,690.00
QA/QC		10	8	8					12	12				50	\$7,320	\$7,320.00
Meeting with the CITY, minutes, schedule update		8	2						2	2				14	\$2,550	\$2,550.00
Response to 100% comments and produce final docs	1	4	4			8	2		1	2	4			26	\$3,455	\$3,455.00
Task 6 - Bidding Services																
Attend pre-bid Meeting		2					2		2	2				8	\$1,070	\$1,070.00
Provide Bid Supplemental Information		4	8	8	4	4	2		4	4	8			46	\$5,930	\$5,930.00
Task 7 - Limited Post Design Services																
Construction Progress Meetings		22	6				8		6			4		46	\$7,640	\$7,640.00
Shop Drawing Review		4	24	8			4	8	4	24	6			82	\$9,950	\$9,950.00
RFI Review		8	24	20					8	24	6			90	\$12,110	\$12,110.00
Change orders, claims		12	10				4		8	8		4		46	\$6,950	\$6,950.00
Construction Site Visit		12	10	12						18				52	\$7,600	\$7,600.00
Substitute Materials Review		4	8	8					4	8		4		36	\$5,060	\$5,060.00
Review Contractor As-builts		4	8				4		4	8				28	\$3,760	\$3,760.00
TOTALS	12	230	244	344	138	228	42	184	233	306	324	100		2385	\$301,225	\$ 301,225.00

Design and Construction Services for Galt Ocean Mile Project		LABOR										TASK COSTS
FY 23 Hourly Billing Rate Signing and Pavement Marking (MARLIN) 												

Design and Construction Services for Galt Ocean Mile Project		LABOR										EXPENSES												TASK COSTS																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																													
FY 23 Hourly Billing Rate Geotechnical (Pan Geo Consultants)		\$150	\$135	\$115	\$105	\$65	\$55							\$350.00	\$14.00	\$4.50	\$380.00	\$75.00																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																			

Design and Construction Services for Galt Ocean Mile Project		LABOR							EXPENSES			TASK COSTS
FY 23 Hourly Billing Rate SUE (InfraMap) <												

RFQ No 12709-126 Design and Construction Services for Galt Ocean Mile Project
Hourly Billing Rates for Task Orders
CHEN MOORE & ASSOCIATES

Classification	Hourly Rate
Civil Engineering Services (Roadway, Drainage, MOT, Utility Relocation, Lighting, Electrical)	Chen Moore
Principal Engineer	\$240.00
Senior Engineer / Project Manager	\$220.00
Project Engineer (PE)	\$145.00
Staff Engineer	\$120.00
Senior Designer	\$135.00
CADD Operator	\$105.00
Clerical	\$65.00
Intern	\$55.00
Civil Engineering Services (Traffic Engineering, Signalization, Signing & Pavement Marking)	Marlin Engineering
Senior Engineer / Project Manager	\$190.00
Project Engineer (PE)	\$150.00
Staff Engineer	\$125.00
Senior Designer	\$135.00
CADD Operator	\$105.00
Clerical	\$65.00
Intern	\$55.00
Landscape Architecture and Planning Services	Chen Moore
Senior Landscape Architect	\$135.00
Project Landscape Architect	\$115.00
Landscape Designer	\$105.00
Environmental Services / Permitting	Chen Moore
Environmental Scientist	\$150.00
Project Biologist	\$120.00
Staff Biologist	\$90.00
Field Technician	\$75.00
Public Outreach	Valerin Group
Senior Public Relations Consultant	\$135.00
Public Relations Consultant	\$115.00
Senior Graphics Designer	\$125.00
Multimedia Specialist/Website Designer	\$130.00
Clerical	\$75.00
Land Surveying & Mapping Services	Stoner & Associates
Principal Surveyor	\$160.00
Sr. Professional Land Surveyor	\$140.00
Professional Land Surveyor	\$125.00
Survey CADD / GIS Tech	\$80.00
Field Crew Supervisor	\$80.00
Survey Crew	\$160.00
Clerical	\$75.00

Subsurface Utility Exploration	InfraMap
Project Manager/PE/PLS PLS	\$190.10
Utility Location Manager/Party Chief	\$150.65
CADD Operator	\$118.37
Technical Locator/Instrument Op.	\$86.68
Clerical	\$86.08
1 Utility Test Hole 0-6' - per hole	\$1,000.00
2 Utility Test Holes 0-6' - per hole	\$750.00
3 or More Utility Test Holes 0-6' - per hole	\$550.00
Excess Depth (Over 6') - per foot	\$112.00
Traffic Control – Arrow Board**	\$75 / per day
Geotechnical Engineering	Pan Geo Consultants
A. FIELD SERVICES & TESTING	
Standard Penetration Test Borings (ASTM D-1586), Truck Rig (0-50 Foot Depth Interval)	\$14.00/L.F.
Grout Boreholes	\$4.50/L.F.
Truck Rig (0-50 Ft)	\$25.00/L.F.
Permeability/Percolations Test - Field (SFWMD Open Hole Method)	\$450.00
SOIL TESTING	
Field Density Tests (Nuclear, minimum of 5 tests)	\$35.00
Standard Proctor (ASTM D 698)	\$100.00
Modified Proctor (ASTM D 1557)	\$150.00
Florida Bearing Value Test	\$250.00
Limerock Bearing Value Test	\$250.00
Atterberg Limit Test	\$60.00
SAMPLING & TESTING OF FRESH CONCRETE	
Curing, capping and compressive strength testing of concrete cylinders in Consultant's Lab	\$15.00/CYL
Field Sampling Fresh Concrete (sampling, molding, slump testing, temperature)	\$65.00/HR
CONCRETE & MASONRY MATERIALS	
Concrete Compression test (Min. four [4] cylinders per trip)	\$15.00/CYL
- Prepare cylinders & slump test on site, and deliver to lab	\$65.00/HR
Additional Concrete cylinders with slump	\$15.00/CYL
Concrete Compression test only [delivered to lab]	\$15.00/CYL
Slump test	\$30.00
Stand-by (Beyond 1 hour on site)	\$65.00/HR
Grout Prism (Six [6] per set) - Includes preparation of Prism on site	\$90.00
2" x 2" - Includes preparation of Cubes on site	
AGGREGATE TESTING	
Grain size determination:	
A. Full grain size (8 sieves)	\$77.00
B. Wash through (#200)	\$77.00
Sieve Analysis – Course Aggregate	\$77.00
ASPHALT TESTING	
Asphalt Cores (obtaining core samples) (Min. 3)	\$75.00/PER
MISCELLANEUS SERVICES	
Percolation test (open hole)	\$380.00
Exfiltration Test (SFWMD)	\$380.00
Install Groundwater Monitoring Well, <25' (per PBCWUD Stds & Details)	\$380.00

Install Groundwater Monitoring Well, 25' - 50' (per PBCWUD Stds & Details)	\$500.00
DRILLING EQUIPMENT MOBILIZATION (includes drill rig mileage)	
Truck - Mounted Rig	\$350.00
FOUNDATION TESTING SERVICES	
Vibration/ Noise Monitoring Equipment - seismograph with geophone or microphone (includes mobilization, equipment and labor)	\$700.00/day
SITE PREPARATION MONITORING & TESTING	
In-situ Density Tests - Nuclear Gauge Method (ASTM D 2922)	\$35.00/test
B. PERSONNEL	
Principal Engineer	\$150.00
Senior Engineer	\$135.00
Project Engineer (PE)	\$115.00
Staff Engineer	\$105.00
Senior Inspector	\$75.00
Inspector	\$65.00
CADD Operator	\$65.00
Clerical	\$55.00
Construction Administration Services	Chen Moore
Senior Inspector	\$140.00
Construction Administration Services	EXP U.S. Services
Senior Inspector	\$140.00
Inspector	\$95.00
Clerical	\$65.00

Exhibit C – Location Map

GALT OCEAN DRIVE, FORT LAUDERDALE, FL

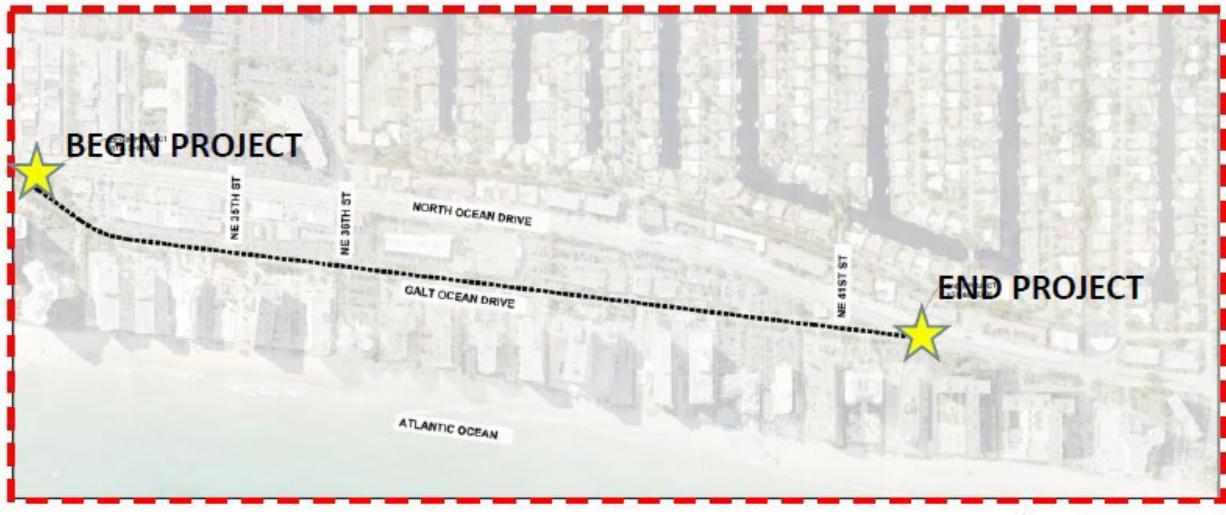


EXHIBIT D

PERFORMANCE SCHEDULE

The CONSULTANT shall perform the services identified in Tasks 1 - 6 within 240 business days of the written Notice to Proceed. Task 7 and 8 schedules shall be determined based on the bid dates and construction award period.