

## AMENDED INTERIM AGREEMENT

This Amended Interim Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the **CITY OF FORT LAUDERDALE, FLORIDA**, a Florida municipal corporation (the "CITY") and **HENSEL PHELPS CONSTRUCTION CO.**, a Delaware General Partnership authorized to transact business in the State of Florida d/b/a Hensel Phelps Construction, and its respective successors and assigns ("HENSEL PHELPS"), pursuant to Section 255.065(6), Florida Statutes:

### RECITALS

WHEREAS, the CITY holds all right, title or interest in the real property at 501 Seabreeze Boulevard and described as Fort Lauderdale Aquatic Complex located in the City of Fort Lauderdale, Florida, commonly known as the site of The Aquatic Center, and which is more legally described as follows:

PARCEL "A", INTERNATIONAL SWIMMING HALL OF FAME  
COMPLEX PLAT, ACCORDING TO THE PLAT THEREOF,  
RECORDED IN PLAT BOOK 138, PAGE 19 OF THE PUBLIC  
RECORDS OF BROWARD COUNTY, FLORIDA

WHEREAS, on October 22, 2019, the CITY received an unsolicited proposal from HENSEL PHELPS pursuant to Section 255.065(6), Florida Statutes, to design and construct a two-story South Building which contains locker rooms, weight room, administration offices, aquatic competition timing rooms, first-aid station, storage, and an outdoor viewing area on the second floor, as more particularly described in its unsolicited proposal; and

WHEREAS, pursuant to Resolution No. 19-227 the City Commission, at its meeting on November 5, 2019, determined that the unsolicited proposal submitted by HENSEL PHELPS serves a public purpose as recreational, sporting, and cultural facilities which will be used by the public at large or in support of an accepted public purpose or activity, and as proposed, constitutes a qualifying project pursuant to Section 255.065, Florida Statutes; and

WHEREAS, after the November 5, 2019 regular City Commission meeting, the CITY publicly advertised the unsolicited proposal and requested alternate proposals from November 15, 2019 through November 21, 2019, and did not receive alternate proposals by December 6, 2019, a period of twenty (21) days, in accordance with Section 255.065(5)(c), Florida Statutes, the CITY was authorized to commence negotiations for a Comprehensive Agreement with HENSEL PHELPS, encompassing therein the development, improvement, design, and construction of the Property; and

WHEREAS, the CITY and HENSEL PHELPS recognize the historical aspect of the Aquatic Center property, particularly as it relates to the use of the property for local, national, and international competitive aquatic events; and

WHEREAS, in accordance with Section 255.065(6), Florida Statutes, a responsible public entity is authorized to enter into an Interim Agreement with a private entity proposing the development or operation of a qualifying project, before or in connection with the negotiation of a Comprehensive Agreement, for purposes of authorizing the private entity to commence activities for which it can be compensated related to the proposed qualifying project, including but not limited to, project planning and development, design, environmental analysis and mitigation, survey, other activities concerning any part of the proposed qualifying project, and ascertaining the availability of financing for the proposed facility or facilities, as well as purposes related to an aspect of the development or operation of a qualifying project that the responsible public entity and the private entity deem appropriate; and

WHEREAS, before and in connection with the negotiation of a Comprehensive Agreement, the CITY and HENSEL PHELPS are desirous of commencing activities related to the qualified project and the Property, including but not limited to, permission to enter upon the Property for purposes of conducting environmental analysis and mitigation, surveys, demolition, and other activities related to the development of the qualifying project that the CITY and HENSEL PHELPS deem appropriate, under terms and conditions set forth herein;

WHEREAS, the CITY and HENSEL PHELPS entered into the Interim Agreement on August 18, 2020;

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and other good and valuable considerations, the adequacy and receipt of which are hereby acknowledged, the CITY and HENSEL PHELPS agree as follows:

**1. Recitals.** The foregoing recitals are true and correct and incorporated herein by reference.

**2. Investigation, Study, Demolition and Abatement, Preparation of Design Documents**

**2.1** In accordance with Section 255.065(6), Florida Statutes, the Parties agree that neither this Amended Interim Agreement, nor any work to be performed in accordance thereto, obligate the CITY or HENSEL PHELPS to enter into a Comprehensive Agreement.

**2.2** HENSEL PHELPS, through its agents, servants, employees and contractors, is authorized and entitled to commence activities related to the proposed qualifying project, including but not limited to, project planning and development, design and demolition and abatement. HENSEL PHELPS will perform the following original scope items listed below and be compensated via a lump sum payment for completion of each milestone for a total value of \$450,000. HENSEL PHELPS will perform the following amended scope items listed below and be compensated on a not-to-exceed basis for a total value of \$1,011,074.00. HENSEL PHELPS will also perform cost estimating

services, develop a detailed project schedule reflecting the design and construction of the project, perform value engineering, and provide bidding assistance and bid tabulations to deliver a final lump sum price within the City's amended target budget of \$9.7 Million for design and construction of the South Building. The milestones and their associated compensation are shown below:

|                                       |                       |
|---------------------------------------|-----------------------|
| - Mobilization and Site Investigation | - \$ 75,000.00        |
| - 15% Conceptual Design               | - \$ 75,000.00        |
| - 30% Schematic Design                | - \$150,000.00        |
| - <u>60% Design Development</u>       | - <u>\$150,000.00</u> |
| ORIGINAL TOTAL                        | \$450,000.00          |
| - Demolition                          | - \$150,000.00        |
| - Engineering                         | - \$267,020.00        |
| - General Conditions                  | - \$246,990.00        |
| - <u>Indirects</u>                    | - <u>\$347,064.00</u> |
| AMENDED SCOPE                         | \$1,011,074.00        |
| AMENDED TOTAL                         | \$1,461,074.00        |

The design, schedule, bidding information, and cost estimates will provide enough information for the City to evaluate and analyze the proposal in accordance with Section 255.065(5), Florida Statutes.

**2.3** HENSEL PHELPS, through its agents, servants, employees and contractors, is authorized and entitled to enter upon the Property for the purpose of conducting an investigation, discovery, inspection, and testing of the Property, including soil testing and boring, environmental studies, and surveying.

**2.4** All entries upon the Property shall be at the sole risk of HENSEL PHELPS. CITY shall have no liability for any injuries sustained by HENSEL PHELPS or any of its agents, servants, employees or contractors.

**2.5** HENSEL PHELPS, through its agents, servants, employees and contractors, is authorized and entitled to enter upon the Property for the purpose of conducting the demolition and abatement of the existing improvements thereon, including but not limited to the South Building.

**3. Investigation, Study, Demolition and Abatement, and Preparation of Design Documents Commencement Period.** The Investigation, Study, Demolition, and Preparation of Design Documents under Paragraph 2 shall be for a period ending on the earlier of eleven (11) months after the date of this Amended Interim Agreement or (ii) the date a Comprehensive Agreement is fully executed by CITY and HENSEL PHELPS.

4. Drawings, specifications, designs, models, photographs, reports, surveys and other data prepared in connection with this Amended Interim Agreement are and shall remain the property of the CITY whether the Project for which they are made is executed or not, and are subject to reuse by the CITY in accordance with Section 287.055(10) of the Florida Statutes. They are not intended or represented to be suitable for reuse by the CITY or others on extensions of this Project or on any other project without appropriate verification or adaptation. This does not, however, relieve the CONSULTANT or HENSEL PHELPS of liability or legal exposure for errors, omissions, or negligent acts made on the part of the CONSULTANT or HENSEL PHELPS in connection with the proper use of documents prepared under this Interim Agreement. 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.

5. **Effective Date.** The Effective Date of this Amended Interim Agreement shall be the date the last party executes this Amended Interim Agreement.

## 6. Indemnity

6.1 HENSEL PHELPS shall protect, defend, indemnify and hold harmless the CITY, its officials, officers, employees and agents from and against any and all claims, demands, causes of action, lawsuits, penalties, damages, settlements, judgments, decrees, costs, charges and other expenses, including reasonable attorney's fees and costs through trial and the appellate level, or liabilities of every kind, nature or degree arising out of or in connection with the rights, responsibilities and obligations of HENSEL PHELPS under this Amended Interim Agreement, or the breach or default by HENSEL PHELPS, its agents, servants, employees or contractors of any covenant or provision of this Amended Interim Agreement, the negligent acts or omission or willful misconduct of HENSEL PHELPS or its agents, servants, employees or contractors except for any occurrence arising out of or resulting from the intentional torts or gross negligence of CITY, its officers and employees. Without limiting the foregoing, any and all such claims, suits, causes of action relating to personal injury, death, damage to property, defects in construction, rehabilitation or restoration of any of the Property by HENSEL PHELPS, its agents, servants, employees or contractors, alleged infringement of any patents, trademarks, copyrights or of any other tangible or intangible personal or real property right by HENSEL PHELPS, its agents, servants, employees or contractors or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation or decree of any court by HENSEL PHELPS, its agents, servants, employees or consultants is included in the indemnity.

HENSEL PHELPS further agrees that upon proper and timely notice to investigate, handle, respond to, provide defense for, and defend any such claims at its sole expense and agrees to bear all other costs and expenses related thereto even if the claim is groundless, false or fraudulent and if called upon by CITY, HENSEL PHELPS shall assume and defend not only itself but also the CITY in connection with any claims, suits or causes of action, and any such defense shall be at no cost or expense whatsoever to the CITY,

provided that the CITY (exercisable by CITY's Attorney) shall retain the right to select counsel of its own choosing. This indemnification shall survive termination, revocation or expiration of this Amended Interim Agreement and shall cover any acts or omissions occurring during the term of the Amended Interim Agreement, including any period after termination, revocation or expiration of the Amended Interim Agreement while any curative acts are undertaken and is not limited by insurance coverage. Notwithstanding the foregoing, in no event shall the discovery by HENSEL PHELPS of contamination at the Property alone be considered damage to property, resulting from HENSEL PHELPS' or its agents, servants, employees or contractors' use of or access to the Property which is subject to the indemnity covenants of HENSEL PHELPS contained herein.

**6.2.** All construction materials, equipment, goods, signs and any other personal property of HENSEL PHELPS, its agents, servants, employees or contractors, shall be protected solely by HENSEL PHELPS. HENSEL PHELPS acknowledges and agrees that the CITY assumes no responsibility, whatsoever, for any such item and that the security and protection of any such item from theft, vandalism, the elements, acts of God, or any other cause, are strictly the responsibility of HENSEL PHELPS.

## **7. Insurance.**

**7.1** As a condition precedent to the effectiveness of this Amended Interim Agreement, HENSEL PHELPS shall cause its architect and/or engineer, construction manager, demolition and abatement contractor and any other entity performing work under this Amended Interim Agreement (collectively, "CONSULTANTS") to procure and maintain, during the term of this Amended Interim Agreement and during any renewal or extension term of this Amended Interim Agreement, at their sole expense, 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 CONSULTANTS. CONSULTANTS shall provide the CITY a certificate of insurance evidencing such coverage. CONSULTANTS' insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by CONSULTANTS shall not be interpreted as limiting HENSEL PHELPS's liability and obligations under this Amended Interim 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 required to be relied upon by HENSEL PHELPS or CONSULTANTS for assessing the extent or determining appropriate types and limits of coverage to protect HENSEL PHELPS and/or CONSULTANTS against any loss exposures, whether as a result of this Amended Interim 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 HENSEL PHELPS under this Amended Interim Agreement.

**7.2** The following insurance policies and coverages are required:

### **Commercial General Liability**

Coverage must be afforded under a Commercial General Liability policy with limits of:

- \$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 and independent contractors.

The CITY, a Florida municipal corporation, its officials, employees, and volunteers are to be covered as an additional insured with a CG 20 26 04 13 Additional Insured - Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liability assumed by HENSEL PHELPS under the indemnification provisions of this Amended Interim Agreement.

### **Professional Liability/Errors and Omissions Coverage**

Coverage must be afforded under a Professional Liability policy with limits of:

- \$1,000,000 each claim
- \$2,000,000 general aggregate limit
- \$100,000 deductible not to exceed

### **Business Automobile Liability**

Coverage must be afforded for all Owned, Hired, Scheduled, and Non-Owned vehicles for Bodily Injury and Property Damage with limits of \$1,000,000 combined single limit each accident.

If CONSULTANTS do not own vehicles, CONSULTANTS 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**

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



## **Pollution and Remediation Legal Liability (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, CONSULTANTS shall procure and maintain any or all of the following coverage, as applicable, to the extent required in a subsequent written agreement or amendment to this Amended Interim Agreement, signed by the Parties.

### **Contractors Pollution Liability Coverage**

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

### **Asbestos Liability Coverage**

For sudden and gradual occurrences and in an amount not less than \$1,000,000 per claim arising out of work performed under this Amended Interim Agreement.

### **Disposal Coverage**

CONSULTANTS shall designate the disposal site and furnish a Certificate of Insurance from the disposal facility for Environmental Impairment Liability Insurance, covering liability for sudden and accidental occurrences in an amount of \$1,000,000 per claim and shall include liability for non-sudden occurrences in an amount of \$1,000,000 per claim.

### **Hazardous Waste Transportation Coverage**

CONSULTANTS shall designate the hauler and furnish a Certificate of Insurance from the hauler for Automobile Liability insurance with Endorsement MCS90 for liability arising out of the transportation of hazardous materials in an amount of \$1,000,000 per claim limit and provide a valid EPA identification number.

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

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

CONSULTANTS waive, and CONSULTANTS shall ensure that CONSULTANTS' insurance carrier waives, all subrogation rights against the CITY and the CITY's officers,

employees, and volunteers for all losses or damages. The CITY requires the policy to be endorsed with WC 00 03 13 Waiver of our Right to Recover from Others or equivalent.

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

### **Insurance Certificate Requirements**

a. CONSULTANTS shall provide the CITY with valid Certificates of Insurance (binders are unacceptable) no later than seven (7) days prior to the start of work contemplated in this Interim Agreement.

b. CONSULTANTS 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 CONSULTANTS 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 Amended Interim Agreement term goes beyond the expiration date of the insurance policy, CONSULTANTS shall provide the CITY with an updated Certificate of Insurance prior to the expiration of the insurance currently in effect. The CITY reserves the right to suspend the Amended Interim Agreement until this requirement is met.

e. The Certificate of Insurance shall indicate whether coverage is provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the Certificate of Insurance must show a retroactive date, which shall be the effective date of the initial contract or prior.

f. The CITY shall be named as an Additional Insured on all required Commercial General Liability, Business Automobile Liability and Pollution Liability policies.

g. The CITY shall be granted a Waiver of Subrogation on CONSULTANTS' Workers' Compensation insurance policy.

The title of the Amended Interim 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 North Andrews Avenue  
Fort Lauderdale, Florida 33301

CONSULTANTS have 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. Any costs for adding the CITY as an Additional Insured shall be at CONSULTANTS' expense.

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

CONSULTANTS' 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.

All required insurance policies must be maintained until the contract work has been accepted by the CITY, or until this Amended Interim 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 Amended Interim Agreement. The CITY reserves the right to review, at any time, coverage forms and limits of CONSULTANTS' insurance policies.

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

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

**8. Joint Preparation.** Each party and its counsel have participated fully in the review and revision of this Amended Interim Agreement and acknowledge that the preparation of this Amended Interim Agreement has been their joint effort. The language in this Amended Interim Agreement expresses the mutual intent of each party and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one party than the other. The language in this Amended Interim Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

**9. Severability.** If any provision of this Amended Interim Agreement, or its application to any person or situation, is deemed invalid or unenforceable for any reason and to any extent, the remainder of this Amended Interim Agreement, or the application of the remainder of the provisions, shall not be affected. Rather, this Amended Interim Agreement is to be enforced to the extent permitted by law. The captions, headings and title of this Amended Interim Agreement are solely for convenience of reference and are not to affect its interpretation. Each covenant, term, condition, obligation or other provision of the Amended Interim Agreement is to be construed as a separate and independent covenant of the party who is bound by or who undertakes it, and each is independent of any other provision of this Amended Interim Agreement, unless otherwise expressly provided. All terms and words used in this Amended Interim Agreement, regardless of the number or gender in which they are used, are deemed to include any other number and other gender, as the context requires.

**10. No Waiver of Sovereign Immunity.** Nothing contained in this Amended Interim Agreement is intended to serve as a waiver of sovereign immunity by any agency to which sovereign immunity may be applicable.

**11. No Third-Party Beneficiaries.** The Parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Amended Interim Agreement. None of the Parties intend to directly or substantially benefit a third party by this Amended Interim Agreement. The Parties agree that there are no third-party beneficiaries to this Amended Interim Agreement and that no third party shall be entitled to assert a claim against any of the Parties based upon this Amended Interim Agreement. Nothing herein shall be construed as consent by any agency or political subdivision of the State of Florida to be sued by third parties in any manner arising out of any contract.

**12. Non-Discrimination.** HENSEL PHELPS shall not discriminate against any person in the performance of duties, responsibilities and obligations under this Amended Interim Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

**13. Termination.** In the event of emergency, the CITY may cancel this Amended Interim Agreement during the term hereof upon twenty-four (24) hours written notice to the other Party of its desire to terminate this Amended Interim Agreement. Either Party may send notice to the other Party at the addresses set forth in the preamble.

**14. Breach.** A material breach of this Amended Interim Agreement by HENSEL PHELPS shall be grounds for the CITY to terminate this Amended Interim Agreement, except that before such termination, HENSEL PHELPS shall be entitled to ten (10) days written notice and an opportunity to cure the breach within such

period. Notice of any breach may be sent as provided in Section 19, Notice, of this Amended Interim Agreement.

**15. Entire Agreement.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and 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 Amended Interim 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.

**16. Governing Law.** This Amended Interim Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Amended Interim Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be brought exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Amended Interim Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. **By entering into this Amended Interim Agreement, CITY and HENSEL PHELPS hereby expressly waive any rights either party may have to a trial by jury of any civil litigation related to this Amended Interim Agreement or any acts or omissions in relation thereto.**

**17. Scrutinized Companies.** As a condition precedent to the effectiveness of this Amended Agreement and as a condition precedent to any renewal of this Interim Agreement, HENSEL PHELPS certifies that it is not on the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2018), as may be amended or revised, and that it is not engaged in a boycott of Israel. The CITY may terminate this Interim Agreement at the CITY's option if HENSEL PHELPS is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes (2018), as may be amended or revised, or been placed on the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2018), as may be amended or revised, or is engaged in a boycott of Israel as defined in Sections 287.135 and 215.4725, Florida Statutes (2018), as may be amended or revised.

**18. Notice.** Whenever any Party desires to give notice to any other party, it must be given by written notice sent by electronic mail, followed by registered United States mail, with return receipt requested, addressed to the Party for whom it is intended at the place designated below and the place so designated shall remain such until they have been changed by written notice in compliance with the provisions of this section. For the present, the Parties designate the following as the respective places for giving notice:

**CITY:**

City of Fort Lauderdale  
100 North Andrews Avenue  
Fort Lauderdale, Florida 33301  
Attn: City Manager ([clagerbloom@fortlauderdale.gov](mailto:clagerbloom@fortlauderdale.gov))

With a copy to:

City of Fort Lauderdale  
City Attorney's Office  
100 North Andrews Avenue  
Fort Lauderdale, Florida 33301  
([aboileau@fortlauderdale.gov](mailto:aboileau@fortlauderdale.gov))

**HENSEL PHELPS:**

Hensel Phelps  
Attn: Cory M. Olson  
888 SE 3<sup>rd</sup> Avenue, Suite 200  
Fort Lauderdale, Florida 33316  
([colson@henselphelps.com](mailto:colson@henselphelps.com))

With a copy to:

Hensel Phelps  
Attn: Kirk J. Hazen  
6557 Hazeltine National Drive, Suite 001  
Orlando, Florida 32822  
([khazen@henselphelps.com](mailto:khazen@henselphelps.com))

19. Prohibition Against Contracting With Scrutinized Companies: Subject to *Odebrecht Construction, Inc., v. Prasad*, 876 F.Supp.2d 1305 (S.D. Fla. 2012), *affirmed*, *Odebrecht Construction, Inc., v. Secretary, Florida Department of Transportation*, 715 F.3d 1268 (11th Cir. 2013), with regard to the "Cuba Amendment," the Contractor certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2020), that it is not engaged in a boycott of Israel, and that it does not have business operations in Cuba or Syria, as provided in Section 287.135, Florida Statutes (2020), as may be amended or revised. The City may terminate this Agreement at the City's option if the Contractor is found to have submitted a false certification as provided under subsection (5) of Section 287.135, Florida Statutes (2020), 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 (2020), 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 (2020), as may be amended or revised.

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

## **20. 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 AMENDED INTERIM AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY CLERK'S OFFICE, 100 NORTH ANDREWS AVENUE, FORT LAUDERDALE, FLORIDA 33301, PHONE: 954-828-5002, EMAIL: [PRRCONTRACT@FORTLAUDERDALE.GOV](mailto:PRRCONTRACT@FORTLAUDERDALE.GOV).**

CONSULTANT shall:

1. Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.
2. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2020), 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 Amended Interim Agreement term and following completion of this Amended Interim Agreement if the Consultant does not transfer the records to the City.
4. Upon completion of the Amended Interim Agreement, transfer, at no cost, to the City all public records in possession of the Consultant or keep and maintain public records required by the City to perform the service. If the Consultant transfers all public records

to the City upon completion of this Agreement, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of this Agreement, the Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

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WITNESS WHEREOF, the CITY and the CONSULTANT have set their hands and seals on this Interim Agreement as above.

ATTEST:

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

\_\_\_\_\_  
JEFFREY A. MODARELLI  
City Clerk

By: \_\_\_\_\_  
CHRISTOPHER J. LAGERBLOOM  
City Manager

Date: \_\_\_\_\_

Approved as to form:  
ALAIN E. BOILEAU, City Attorney

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

WITNESSES:

HENSEL PHELPS CONSTRUCTION CO, GP,  
a Delaware General Partnership authorized to  
transact business in the State of Florida d/b/a  
HENSEL PHELPS CONSTRUCTION

\_\_\_\_\_

\_\_\_\_\_  
[Witness print/type name]

By: \_\_\_\_\_  
Kirk J. Hazen, Vice President  
Southeast District

\_\_\_\_\_

\_\_\_\_\_  
[Witness print/type name]

ATTEST:

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

CORPORATE SEAL

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

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by Kirk J. Hazen as Vice President, Southeast District of HENSEL PHELPS CONSTRUCTION CO, GP, a Delaware General Partnership authorized to transact business in the State of Florida d/b/a HENSEL PHELPS CONSTRUCTION.

(NOTARY SEAL)

\_\_\_\_\_  
(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 \_\_\_\_\_