

AGREEMENT

between

CITY OF FORT LAUDERDALE

and

CDM SMITH INC.

for

**CONTINUING PROFESSIONAL SERVICES FOR
CONSTRUCTION ENGINEERING AND INSPECTION
(CEI) FOR GT LOHMEYER WASTEWATER
TREATMENT PLANT REPLACEMENT OF OXYGEN
SYSTEM**

RFQ No. 12401-116

THIS IS AN AGREEMENT, made and entered into this ____ day of _____,
2021, by and between:

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

and
CDM Smith Inc., a Florida corporation (hereinafter
referred to as “CONSULTANT”), or collectively
referred to as “Party or Parties”)

WHEREAS, the City Commission of the City of Fort Lauderdale, Florida at its meeting of _____, 2021, authorized the proper officials by motion to execute an Agreement between CONSULTANT and CITY authorizing the performance of services in connection with CCNA – Construction Engineer and Inspection (“CEI”) Services for GT Lohmeyer Wastewater Treatment Plant Replacement of Oxygen System; and

WHEREAS, the CITY issued a request for qualifications (“RFQ”) No. 12401-116 for continuing Construction and Engineering and Inspection (“CEI”) Services for the GT Lohmeyer Wastewater Treatment Plant Replacement of Oxygen System; and

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

WHEREAS, the CONSULTANT is experienced in providing professional services set forth in Exhibit A, Scope of Services, for Construction Engineering and Inspection (CEI) Services and is willing and able to render services for such project for the compensation and on the terms hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual covenants, agreements, terms and conditions contained herein, the Parties agree as follows:

ARTICLE 1. DEFINITIONS

- 1.1 **Additional Services** means services performed by the CONSULTANT authorized by Task Order and supplemental to the basic services described in this Agreement and listed in Exhibit A, Scope of Services.
- 1.2 **Agreement** means this document between the CITY and CONSULTANT dated _____, 2021, and any duly authorized and executed Amendments to the Agreement.
- 1.3 **City** means the City of Fort Lauderdale, a municipal corporation of the state of Florida.
- 1.4. **City Commission** means the governing body of the CITY government.
- 1.5 **CONSULTANT** means CDM Smith Inc., the CONSULTANT selected to perform professional services pursuant to this Agreement.
- 1.3 **Contract Administrator** means the Public Works Director, or his or her designee. In administration of this Agreement, as contrasted with matters of policy, all Parties may rely on instructions or determinations made by the Contract Administrator within the defined parameters of this Agreement.
- 1.4 **Contractor** means the person, firm, corporation, or other entity who enters into an agreement with CITY to perform the construction work for a project.
- 1.5 **City Manager** means the administrative head of the CITY appointed by the City Commission.
- 1.6 **City Attorney** means the chief legal counsel for CITY appointed by the City Commission.
- 1.7 **Notice to Proceed** means a written authorization to proceed with a project, phase, or task thereof, issued by the Contract Administrator.
- 1.11 **Services** consists of the work and phases set forth in Exhibit A, Scope of Services including all professional engineering, landscape architecture, registered surveying and mapping, and other professional design services, as described in each Work Authorization applicable to a project.
- 1.12 **Subconsultant** means an entity or individual providing services to CITY through CONSULTANT for all or any portion of the work under this Agreement. The term "Subconsultant" shall include all subcontractors.
- 1.13 **Task Order** means a document setting forth a negotiated detailed scope of services to be performed by the CONSULTANT at fixed contract prices in accordance with this Agreement between the CITY and CONSULTANT.

ARTICLE 2. EXHIBITS

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

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

ARTICLE 3. SCOPE OF SERVICES

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

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

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

3.4 CITY shall assist CONSULTANT by placing at CONSULTANT's disposal all information CITY has available pertinent to a project, including previous reports and any other data relative to a project. CITY shall arrange for access to, and make all provisions for, CONSULTANT to enter upon public and private property as required for CONSULTANT to perform its Services. CITY shall review any itemized deliverables and documents required to be submitted by CONSULTANT and respond in writing with any comments within the time set forth in the

applicable Task Order. CITY shall give prompt written notice to CONSULTANT whenever CITY observes or otherwise becomes aware of any material defect in the work of CONSULTANT or Subconsultants, or other material development that affects the scope or timing of Consultant's Services.

ARTICLE 4. TASK ORDERS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

with Article 6 for all Services rendered by CONSULTANT beyond the substantial completion date.

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

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

ARTICLE 6. COMPENSATION AND METHOD OF PAYMENT

6.1 Amount and Method of Compensation. The total annual cumulative amount authorized for all Task Orders issued under this Agreement shall not exceed **Six Hundred Forty-Three Thousand Dollars (\$643,000)**. It is agreed that the method of compensation is that of "Maximum Amount Not-to-Exceed" which means that CONSULTANT shall perform all services set forth in all Task Orders combined for total compensation amount of or less than the total stated. The hourly rate billing schedule to be used in negotiating each Task Order is attached as Exhibit C to this Agreement.

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

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

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

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

6.1.5 Phased Amounts. Payments for Services shall be paid out in accordance with the project's phasing specified in the Task Order and shall not exceed the amount set forth in

the Task Order. The invoiced fee amount for each phase will be subject to retainage as set forth in Section 6.5.

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

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

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

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

6.3.1 Direct non-salary expenses, entitled Reimbursable, directly attributable to the Project will be charged at actual cost. Reimbursable expenses are in addition to the compensation for basic services and include actual expenditures made by CONSULTANT and CONSULTANT's employees directly attributable to the Project and will be charged at actual cost, without reference to the professional service fees above. CITY shall not withhold retainage from payments for Reimbursable Expenses. CONSULTANT shall be compensated for Reimbursables associated with a particular Task Order only up to the amount allocated for such Task Order. Any reimbursable or portion thereof which, when added to the Reimbursables related to a Task Order previously billed, exceeds the amount allocated for such Task Order shall be the responsibility of CONSULTANT unless otherwise agreed to in writing by the Contract Administrator. Travel and subsistence expenses for CONSULTANT, its staff and Subconsultants and communication expenses, long distance telephone, courier and express mail between CONSULTANT's and Subconsultants' various offices are not reimbursable under this Agreement.

6.4 Method of Billing.

6.4.1 For Maximum Amount Not-To-Exceed Compensation. CONSULTANT shall submit billings, which are identified by the specific project number on a monthly basis in a timely manner for all Salary Costs and Reimbursable Expenses attributable to the Task Order. These billings shall identify the nature of the work performed, the total hours of work performed, and the employee category of the individuals performing same. The statement shall itemize and summarize Reimbursable Expenses by category and identify the personnel incurring the expense and the nature of the work with which such expense was associated. Where prior written approval by Contract Administrator is required for Reimbursable Expenses, a copy of said approval shall accompany the billing for such reimbursable. The statement shall show a summary of Salary Costs and Reimbursable Expenses with accrual of the total and credits for portions paid previously. External Reimbursable Expenses and Subconsultant fees must be documented by copies of invoices or receipts that describe the nature of the expenses and contain a project number or other identifier that clearly indicates the expense is identifiable to the Services authorized by the operative Task Order. Internal expenses must be documented by appropriate CONSULTANT's cost accounting forms with a summary of charges by category. When requested, CONSULTANT shall provide backup for past and current invoices that records hours and Salary Costs by employee category, Reimbursable Expenses by category, and Subconsultant fees on a task basis, so that total hours and costs by task may be determined.

6.5 Payment Procedure.

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

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

6.5.3 Upon CONSULTANT's completion of each phase to the satisfaction of the Contract Administrator, CITY shall remit to CONSULTANT any amounts withheld as retainage for that phase. Final payment under each Task Order must be approved by the Chief Purchasing Officer.

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

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

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

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

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

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

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

ARTICLE 8. REPRESENTATIONS AND WARRANTIES

8.1 Representation of Authority. CONSULTANT represents and warrants that this Agreement constitutes the legal, valid, binding, and enforceable obligation of CONSULTANT, and that neither the execution nor performance of this Agreement constitutes a breach of any agreement that CONSULTANT has with any third party or violates any law, rule, regulation, or duty arising in law or equity applicable to CONSULTANT. CONSULTANT further represents and warrants that execution of this Agreement is within CONSULTANT's legal powers, and each individual executing this Agreement on behalf of CONSULTANT is duly authorized by all necessary and appropriate action to do so on behalf of CONSULTANT and does so with full legal authority.

8.2 Solicitation Representations. CONSULTANT represents and warrants that all statements and representations made in CONSULTANT's proposal, bid, or other supporting documents

submitted to CITY in connection with the solicitation, negotiation, or award of this Agreement, including during the procurement or evaluation process, were true and correct when made and are true and correct as of the date CONSULTANT executes this Agreement, unless otherwise expressly disclosed in writing by CONSULTANT.

8.3 Contingency Fee. CONSULTANT represents that it has not paid or agreed to pay any person or entity, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. If this Agreement is subject to Section 287.055, Florida Statutes, the Parties agree and stipulate that the statutory language stated in Section 287.055(6)(a) is deemed included and fully incorporated herein.

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

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

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

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

CONSULTANT violates this section, County may immediately terminate this Agreement for cause and CONSULTANT shall be liable for all costs incurred by County due to the termination.

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

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

ARTICLE 9. TERMINATION

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

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

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

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

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

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

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

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

ARTICLE 10. INSURANCE

10..1 Insurance

As a condition precedent to the effectiveness of this Agreement, during the term of this Agreement and during any renewal or extension term of this Agreement, the CONSULTANT, at the CONSULTANT's 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. 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 possess an A.M. Best rating of "A-" VII or better, subject to approval by the CITY's Risk Manager.

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

The following insurance policies and coverages are required:

Commercial General Liability

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

- \$1,000,000 each occurrence and \$2,000,000 aggregate for Bodily Injury, Property Damage, and Personal and Advertising Injury
- \$1,000,000 each occurrence and \$2,000,000 aggregate for Products and Completed Operations

Policy must include coverage for Contractual Liability and Independent Consultants.

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

Business Automobile Liability

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

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

Professional Liability and/or Errors and Omissions

Coverage must be afforded for Wrongful Acts in an amount not less than \$1,000,000 each claim and \$2,000,000 aggregate.

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

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.

CONSULTANT waives, and CONSULTANT shall ensure that the CONSULTANT's 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.

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

10.1.1 Insurance Certificate Requirements

- a. CONSULTANT shall provide the CITY with valid Certificates of Insurance (binders are unacceptable) no later than ten (10) days prior to the start of work contemplated in this Agreement.
- b. CONSULTANT shall provide to the CITY a Certificate of Insurance having a thirty (30) day notice of cancellation; ten (10) day notice if cancellation is for nonpayment of premium.
- c. In the event that the insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of CONSULTANT to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested, and addressed to the certificate holder.
- d. In the event the Agreement term goes beyond the expiration date of the insurance policy, CONSULTANT shall provide the CITY with an updated Certificate of Insurance no later than ten (10) days prior to the expiration of the insurance currently in effect. The CITY reserves the right to suspend the Agreement until this requirement is met.
- e. The Certificate of Insurance shall indicate whether coverage is provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the Certificate of Insurance must show a retroactive date, which shall be the effective date of the initial contract or prior.
- f. The CITY shall be 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 CONSULTANT's Workers' Compensation insurance policy.
- h. The title of the Agreement, Proposal/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
Procurement Services Division
100 North Andrews Avenue
Fort Lauderdale, FL 33301

CONSULTANT has the sole responsibility for all insurance premiums and shall be fully and solely

responsible for any costs or expenses as a result of a coverage deductible, co-insurance penalty, or self-insured retention; including any loss not covered because of the 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 CONSULTANT's expense.

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

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

Any exclusion or provision in any insurance policy maintained by CONSULTANT that excludes coverage required in this Agreement shall be 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.

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

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

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

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

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

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

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

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

ARTICLE 12. MISCELLANEOUS

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

12.2 Rights in Documents and Work. Any and all reports, photographs, surveys, and documents created by CONSULTANT in connection with performing Services under this Agreement or any Work Authorization shall be owned by CITY and shall be deemed works for hire by

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

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

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

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

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

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

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

A request for public records regarding this Agreement must be made directly to CITY, who will be responsible for responding to any such public records requests. CONSULTANT will provide any requested records to CITY to enable CITY to respond to the public records request. Any material submitted to CITY that CONSULTANT contends constitutes or contains trade secrets or

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

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

12.5 Audit Rights and Retention of Records. CONSULTANT shall preserve all Contract Records (as defined below) for a minimum period of three (3) years after expiration or termination of this Agreement, any Work Authorization, or until resolution of any audit findings, whichever is longer. Contract Records shall, upon reasonable notice, be open to CITY inspection and subject to audit and reproduction during normal business hours. CITY audits and inspections pursuant to this section may be performed by any CITY representative (including any outside representative engaged by CITY). CITY may conduct audits or inspections at any time during the term of this Agreement and for a period of three (3) years after the expiration or termination of this Agreement (or longer if required by law). CITY may, without limitation, verify information, payroll distribution, and amounts through interviews, written affirmations, and on- site inspection with CONSULTANT's employees, subconsultants, vendors, or other labor.

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

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

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

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

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

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

12.8 Indemnification of County. CONSULTANT shall indemnify and hold harmless CITY, its officers and employees from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness or intentionally wrongful conduct of CONSULTANT or other persons employed or utilized by CONSULTANT in the performance of this Agreement. The provisions of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by Contract Administrator and City Attorney, any sums due CONSULTANT under this Agreement may be retained by CITY until all of CITY's claims subject to this indemnification obligation have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by CITY.

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

12.10 Amendments. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

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

FOR CITY:

Contract Administrator
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, Florida 33301

with copies to:

City Manager
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, Florida 33301

City Attorney
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, Florida 33301

FOR CONSULTANT:

Timothy J. O'Neil
CDM Smith Inc.
621 NW 53rd Street, Suite 265
Boca Raton, Florida 33847

12.12 Interpretation. The titles and headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All

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

12.13 Consultant’s Staff. CONSULTANT will provide the key staff identified in its proposal for each Work Authorization as long as said key staff are in CONSULTANT’s employment. CONSULTANT will obtain prior written approval of Contract Administrator to change key staff. CONSULTANT shall provide Contract Administrator with such information as necessary to determine the suitability of proposed new key staff. Contract Administrator will be reasonable in evaluating key staff qualifications. If Contract Administrator desires to request removal of any of CONSULTANT’s staff, Contract Administrator shall first meet with CONSULTANT and provide reasonable justification for said removal; upon such reasonable justification, CONSULTANT shall use good faith efforts to remove or reassign the staff at issue.

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

12.15 Independent Contractor. CONSULTANT is an independent contractor under this Agreement, and nothing in this Agreement shall constitute or create a partnership, joint venture, or any other relationship between the Parties. In providing Services under this Agreement, neither CONSULTANT nor its agents shall act as officers, employees, or agents of CITY, except as authorized by the Contract Administrator for permitting, licensing, or other regulatory requirements. CONSULTANT shall not have the right to bind CITY to any obligation not expressly undertaken by CITY under this Agreement.

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

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

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

12.19 Conflicts. Neither CONSULTANT nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with CONSULTANT's loyal and conscientious exercise of judgment and care related to its performance under this Agreement. During the term of this Agreement, none of CONSULTANT's officers or employees shall serve as an expert witness against CITY in any legal or administrative proceeding in which he, she, or CONSULTANT is not a party, unless compelled by court process. Further, such persons shall not give sworn testimony or issue a report or writing, as an expression of such person's expert opinion that is adverse or prejudicial to the interests of CITY in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude CONSULTANT or any persons in any way from representing themselves, including giving expert testimony in support of such representation, in any action or in any administrative or legal proceeding. If CONSULTANT is permitted under this Agreement to utilize Subconsultants to perform any Services required by this Agreement, CONSULTANT shall require such Subconsultants, by written contract, to comply with the provisions of this section to the same extent as CONSULTANT.

12.20 Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth in this Agreement was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth in this Agreement is substantial and important to the formation of this Agreement, and each is, therefore, a material term of this Agreement. CITY's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement. To be effective, any waiver must be in writing signed by an authorized signatory of the waiving party.

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

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

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

12.24 Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached to, referenced by, or incorporated

in this Agreement and any provision of Articles 1 through 12 of this Agreement, the provisions contained in Articles 1 through 12 shall prevail and be given effect.

12.25 Law, Jurisdiction, Venue, Waiver of Jury Trial. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, CONSULTANT AND CITY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

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

12.26 Reuse of Deliverables. CITY may, at its option, reuse (in whole or in part) the resulting end-product or deliverables resulting from CONSULTANT's Services (including, but not limited to, drawings, specifications, other documents, and services as described herein and in Exhibit A or any Work Authorizations); and CONSULTANT agrees to such reuse in accordance with this provision. If the Contract Administrator elects to reuse the services, drawings, specifications, and other documents, in whole or in part, prepared for any services rendered under this Agreement for other projects on other sites, CONSULTANT will be paid a reuse fee to be negotiated between CONSULTANT and CITY, subject to approval by the proper awarding authority. Each reuse shall include all Services and modifications to the drawings, specifications, and other documents normally required to adapt the design documents to a new site. This reuse may include preparation of reverse plans, changes to the program, provision for exceptional site conditions, preparation of documents for off-site improvements, provisions for revised solar orientation, provisions for revised vehicular and pedestrian access, and modifications to building elevations, ornament, or other aesthetic features. In all reuse assignments, the design documents shall be revised to comply with building codes and other jurisdictional requirements current at the time of reuse for the new site location. The terms and conditions of this Agreement shall remain in force for each reuse project, unless otherwise agreed by the Parties in writing.

12.27 Payable Interest.

12.27.1 Payment of Interest. CITY shall not be liable to pay any interest to CONSULTANT for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof CONSULTANT waives, rejects, disclaims, and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or

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

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

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

[THIS SPACE WAS INTENTIONALLY LEFT BLANK]

CITY

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

CITY OF FORT LAUDERDALE, a Florida
municipal corporation

By: _____
CHRISTOPHER J LAGERBLOOM
ICMA-CM, City Manager

Date: _____

(CORPORATE SEAL)

ATTEST:

By: _____
JEFFREY A. MODARELLI
City Clerk

APPROVED AS TO LEGAL FORM:
Alain E. Boileau, City Attorney

By: _____
RHONDA MONTOYA HASAN
Assistant City Attorney

CONSULTANT

WITNESSES:

CDM SMTH INC., a Florida corporation

By: _____

Print Name

ATTEST:

Print Name

By: _____

Secretary

(CORPORATE SEAL)

STATE OF _____:

COUNTY OF _____:

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

(Signature of Notary Public – State of
_____)

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

Personally Known _____ OR Produced Identification _____

Type of Identification Produced: _____

EXHIBIT A

SCOPE OF SERVICES

SCOPE OF SERVICES

3.1 Purpose

The City of Fort Lauderdale is seeking the services of a qualified consulting firm to provide Construction Engineering and Inspection (CEI) Services related to the GT Lohmeyer WWTP Replacement of Oxygen System. Section 3.3 contains a list of services that may be required. This list shall not be construed as an exclusive list of activities that successful firm(s) may be engaged in. City shall have the right, in its sole and absolute discretion, to require additional services that are consistent with the scope of services and those activities typically performed by CEI consultants, and for which the firm(s) are experienced, qualified, and able to perform.

3.1.1 George T. Lohmeyer Wastewater Treatment Plant

The GTL WWTP was constructed in the late 1970s. The facility includes pretreatment (screening and grit removal), 2 biological reactors (four trains), 11 secondary clarifiers, 2 chlorine contact chambers, an effluent screen, 2 sludge holding tanks, and 7 belt filter presses for dewatering of solids. Solids are hauled to an offsite facility or to a landfill and treated effluent is pumped by an effluent pump station to five deep injection wells. The site is constrained in an urban environment with development on all sides of the facility which requires compliance with strict noise and vibration abatement requirements.

3.2 Scope of Services

The City of Fort Lauderdale is seeking Statements of Qualifications from qualified CEI firms in response to this Request for Qualifications for the purpose of managing the construction of the following project: GT Lohmeyer WWTP Replacement of Oxygen System (Project No. P11781 & P11917). It is incumbent upon the awarded CEI firm to coordinate the Scope of Services in this solicitation, with the awarded Design Build Firm (DBF).

3.3 Consultant CEI Firm's Requirements, Responsibilities & Services

The Construction Engineering Inspection (CEI) Services firm will be required to perform services as requested in assisting the City with implementing the combined project.

3.3.1 General:

The CEI Services (CEI) for the GT Lohmeyer WWTP Replacement of Oxygen System Project will consist of those services performed by the CEI firm and sub consultants enumerated in the Agreement between the City and the CEI Firm. Duties may include, but will not necessarily be limited to:

- A. Acting as the City's representative and agent relative to the entire project.
- B. Providing sufficient organization, personnel and management to carry out the requirements of the Agreement in an expeditious and economical manner consistent with the interests of the City.
- C. Possessing credentials from the State of Florida, certifying that both the firm and the key individuals are currently in good standing as a licensed Architect or Engineer throughout the duration of this contract.
- D. Employees on site need to have a picture badge by their employer, be able to read and write English, and wear appropriate safety gear (PPE).
- E. If the work is conducted during a COVID-19 period rules and protocols about protection and distancing must be followed.

- F. CEI team to be trained in ISO 9001 and ISO 14001 in order to comply with the requirements the City has put in place.

3.3.2 Pre-Construction Phase:

The pre-construction phase will commence upon issuance of the Notice to Proceed from the City to the CEI firm and will end upon DBF final payment of the work shown in the project documents, excluding mobilization and establishment of site offices. The Construction Engineering and Inspection Services firm duties during this phase may include but will not be limited to:

- A. Evaluation of the DBF's bid to determine its adequacy with regard to completing the project.
- B. Providing and establishing a temporary construction site office and coordinate with the City and DBF for location of such office, allocation for private vehicles needs to be made due to the limited parking space on site. The CEI firm shall be responsible for all permits, utility hook ups and coordination necessary to establish the construction site office. If a site office is not feasible, the CEI firm shall rent office space off site and near the GT Lohmeyer WWTP Replacement of Oxygen System; however, the CEI firm must maintain adequate staffing levels on site any time the DBF is conducting work or other major activities.
- C. Providing recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction, and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, and possible economies.
- D. Reviewing the project schedule provided by the DBF and providing comments to the City as to its reasonableness. The CEI firm shall highlight the City's and DBF's responsibilities and critical and long-lead-time items. In concert with the DBF's schedule, the CEI firm shall provide and periodically update their staffing plan to adequately handle the workload created by meeting the project requirements and attending to the DBF's work items.
- E. Consulting with the City regarding the construction documents and making recommendations whenever design details adversely affect constructability, cost or schedules.
- F. Providing recommendations and information to the City regarding the allocation of responsibilities for safety programs with the DBF.
- G. Selecting, retaining and coordinating the professional services of surveyors, special consultants and testing laboratories required for the project.
- H. Providing an analysis of the types and quantities of labor required for the project and reviewing the availability of appropriate categories of labor required for critical phases. As part of this task, the CEI firm shall make recommendations for actions designed to minimize adverse effects of labor shortages.
- I. Reviewing and advising the City on the acceptability of subcontractors and material suppliers proposed by DBF.
- J. Assisting the City in obtaining special permits for permanent improvements, except for permits required to be obtained directly by the DBF. The CEI firm shall verify that the City has paid applicable fees and assessments. The CEI firm shall file documents required for the approvals of governmental authorities having jurisdiction over the project.

3.3.3 Construction Phase - Administration of the Construction Contract:

The construction phase will commence with the DBF beginning the work shown in the contract documents with the exception of mobilization and establishing site offices, and will end 60 days after final payment is received by the DBF. The CEI firm shall provide administrative, management and related services to coordinate scheduled activities and responsibilities of the DBF with those of the CEI firm and the City to endeavor to manage the project in accordance with the latest approved estimate of construction cost, the project schedule and the contract documents. Construction Engineering and Inspection Services (CEI) firm responsibilities during this phase may include but will not be limited to the following items:

- A. Scheduling and chairing construction progress meetings including the pre-construction meeting. This includes providing agendas and minutes for meetings. The CEI firm shall schedule and conduct meetings to discuss such matters as procedures, progress and scheduling. The CEI firm shall prepare and promptly distribute minutes to the City and DBF by the following week.
- B. Creating, maintaining and distributing logs for permits, RFIs, submittals, shop drawings, samples, action items, tests, claims, change orders, errors/omissions and unforeseen conditions issues.
- C. Maintaining and distributing all project related documentation including overall Project files, including digital (PDF) and hard copies of all relative correspondence.
- D. Reviewing and tracking DBF schedule updates and updating the CEI firm staffing plan. If an update indicates that the previously approved project construction schedule may not be met, the CEI firm shall recommend corrective action to the City.
- E. Advising the City if it appears that the construction cost may exceed the latest approved project budget and make recommendations for corrective action.
- F. Providing advice to obtain satisfactory performance from the DBF and recommending courses of action to the City when requirements of the contract are not being fulfilled.
- G. Monitoring construction cost and showing actual costs for activities in progress and estimates for uncompleted tasks.
- H. Developing cash flow reports and forecasts for the project and advising the City as to variances between actual and budgeted or estimated costs.
- I. Maintaining accounting records on authorized work performed under unit costs, additional work performed on the basis of actual costs of labor and materials, and other work requiring accounting records.
- J. Developing and implementing procedures for the review and processing of applications by the DBF for progress and final payments.
- K. Tracking DBF's Applications for Payment through City's Finance and Procurement staff as necessary to ensure timely and accurate payment.
- L. Monitoring the development of "As-Built" documents and confirming that updates are made prior to recommending approval for DBF's Applications for Payment.
- M. The CEI firm shall determine in general that the work of the DBF is being performed in accordance with the requirements of the contract documents, endeavoring to guard the City against defects and deficiencies in the work. As appropriate, the CEI firm shall have authority, upon written authorization from the City, to require additional inspection or testing of the work in accordance with the provisions of the contract documents, whether or not such work is fabricated,

installed or completed. The CEI firm, in consultation with the City, may reject work which does not conform to the requirements of the contract documents.

- N. Establishing and implementing procedures for expediting the processing and approval of shop drawings, product data, samples and other submittals. The CEI firm shall review all shop drawings, product data, samples, testing results and other submittals from the DBF. The CEI firm shall coordinate submittals with information contained in related documents and transmit to the City those which have been approved by the CEI firm. The CEI firm's actions shall be taken with such reasonable promptness as to cause no delay in the work or in the activities of the City or DBF.
- O. Providing recommendations and information to the City regarding the assignment of responsibilities for temporary project facilities and equipment, materials and services for use of the DBF. The CEI firm shall verify that such requirements and assignment of responsibilities are included in the contract documents.
- P. Providing general construction inspection services documented in pictures and video recordings in addition to written reports.
- Q. Providing special building inspection services for engineering specialties as required.
- R. Providing supplementary design and/or drafting services if so, requested by the City.
- S. Monitoring and documenting the DBF's compliance with applicable laws and standards.
- T. Reviewing DBF redlines and maintaining and keeping track of such records.
- U. Keeping the visitor log for the project site.
- V. Creating and maintain a log of Notice to Owner documents and liens.
- W. Conducting safety training in addition to DBF provided training required by the construction contract. Any visitor/worker at GTL must attend both the Risk Management Training as well as ISO 14001 training.
- X. Reviewing the DBF's access control plan and DBF's adherence to their plan.
- Y. Reviewing and approving the DBF's risk management plan to ensure it is adequate and addresses all necessary items, including medium voltage (5kV) power and equipment.
- Z. Ensuring compliance with material storage rules and monitoring hazardous material storage practices.
- AA. Scheduling, observing and startup and testing of utilities, operational systems and equipment with the City's maintenance personnel.
- BB. Providing witness services for offsite tests.
- CC. Reviewing and tracking DBF work progress, value, quality and conformance.
- DD. Recording the progress of the Project. The CEI firm shall submit written progress reports to the City including information on DBF's work, as well as the entire Project, showing percentages of completion. The CEI firm shall keep a daily log containing a record of weather, each DBF's work on the site, number of workers, identification of equipment, work accomplished, problems encountered, and other similar relevant data as the City may require.
- EE. Checking the DBF's pay applications and providing opinions on the accuracy compared to work completed and certifying the amounts due the DBF. The CEI firm's certification for payment shall constitute a representation to the City, based on the CEI firm's determinations at the site, and on the data comprising the DBFs'

Applications for Payment, that, to the best of the CEI firm's knowledge, information and belief, the work has progressed to the point indicated and the quality of the work is in accordance with the contract documents. The foregoing representations are subject to an evaluation of the work for conformance with the contract documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the contract documents correctable prior to completion and to specific qualifications expressed by the CEI firm. The issuance of a Certificate for Payment shall further constitute a representation that the DBF is entitled to payment in the amount certified.

- FF. Coordinating DBF activities with the City's required activities necessary to operate and maintain the active water treatment facility and advising on potential conflicts or impacts.
- GG. Providing responses to DBF requests for information.
- HH. Coordinating use of work/staging/storage areas.
- II. Arranging for delivery, storage, protection and security of City-purchased materials, systems and equipment that are a part of the Project until such items are incorporated into the project and coordinating installation of all City-purchased materials, systems, and equipment that are part of the project.
- JJ. Relaying and documenting receipt of City policy or requirements to the DBF and tracking the DBF's adherence to policies and requirements.
- KK. Reviewing and providing opinions on DBF claims and negotiating DBF's proposals, submitting recommendations to the City and if they are accepted, preparing change orders and construction change directives which incorporate the modifications to the contract documents for City approval.
- LL. Providing interpretations of the construction contract documents and assisting in the resolution of questions that may arise. The CEI firm shall assist the City in the review, evaluation and documentation of claims.
- MM. Maintaining project files (permits, licenses, insurance inspection reports, correspondence, meeting agenda and minutes, etc.) at the project site, available for City inspection. The CEI firm shall maintain at the project site for the City one record copy of all Contracts, Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition, approved shop drawings, product data, samples and similar required submittals. The CEI firm shall maintain records in duplicate, of principal building layout lines, elevations of the bottom of footings, floor levels and key site elevations certified by a qualified surveyor or professional engineer. The CEI firm shall make all such records available to the City and upon completion of the project shall deliver them to the City.
- NN. Reviewing DBF designs and make recommendations.
- OO. The CEI firm shall assist the City in the review, evaluation and documentation of Claims.
- PP. Coordinating and scheduling testing services in concert with construction work.
- QQ. Monitoring, ensuring and documenting that the DBF obtains all required governmental and regulatory inspections and approvals.
- RR. Issuing project correspondence (field directive, cure letter, notice of noncompliance, rejected pay application, etc.).
- SS. Preparing cost estimates for alternate proposed work or change order work.
- TT. Tracking inspections for City building permits.

- UU. Conducting inspections with the City to determine whether the work or designated portion thereof is substantially complete and preparing certificate(s) of substantial completion for portions or components of facilities as they are completed and placed in useful service. When the CEI firm considers DBF's work or a designated portion thereof substantially complete, the CEI firm shall, jointly with the DBF, prepare for the City a list of incomplete or unsatisfactory items and a schedule for their completion.
- VV. Coordinating the correction and completion of the work. Following issuance of a Certificate of Substantial Completion of the work or a designated portion thereof, the CEI firm shall prepare project punch lists as portions of the project are finished and track and document completion of punch list items. The CEI firm shall evaluate the completion of the DBF's work and make recommendations to the City when work is ready for final inspection. The CEI firm shall assist the City in conducting final inspections and issuing Final Completion notices to the DBF.
- WW. Securing and transmitting to the City warranties and similar submittals required by the contract documents for delivery to the City and delivering all keys, manuals, record drawings and maintenance stocks to the City. The CEI firm shall forward to the City a final project application for payment upon compliance with the requirements of the contract documents.
- XX. Scheduling, observing and documenting control system commissioning testing and startup.
- YY. Providing specialists experienced in plant startups to oversee commissioning startup activities of the new facilities described in the contract documents.
- ZZ. Coordinating preparation/collection/review of operation and maintenance manuals and incorporating such documents into an organized library to be provided to the City's plant manager. Coordinating with the City's plant manager for required format and storage location of such library.
- AAA. Scheduling and documenting DBF provided training for City staff.
- BBB. Applying for permit closeouts, certifications etc. not applied for by the DBF and tracking permit closeouts, certifications, etc. that are the DBF's responsibility.

3.3.4 Post Construction phase:

Construction Engineering and Inspection Services (CEI) for the GT Lohmeyer WWTP Replacement of Oxygen System Project firm, shall assist the City in closing out the project and performing warranty inspections. The closeout tasks shall include but not be limited to:

- A. Securing and transmitting all project related files to the City. The Organization of all final files shall be established in coordination with City Project Manager and CEI firm and then be disseminated amongst all interested parties.
- B. Preparing project record drawings that are compliant with the City's CADD standards.
- C. Conducting Warranty Inspections, noting' deficiencies and tacking DBF and subcontractor progress in correcting deficient items.
- D. Assisting the City with the submittal of any warranty claims.
- E. Upon completion of the project, issuing a report identifying any issues which may need to be corrected on future projects.

3.4 Deliverables

CEI firm deliverables will include a variety of agendas, minutes, logs, documented opinions, correspondence, reviewed shop drawings, redlined drawings, photos, videos, approved items,

etc. throughout the construction and one-year warranty period.

3.5 Schedule

The selected DBF is expected to complete the PROJECT as expeditiously as possible. The estimated project duration is 808 calendar days.

3.6 Project Description

3.6.1 The project is located at 1765 SE 18th Street, Fort Lauderdale, Florida 33316.

3.6.2 The City desires to continue the GTL WWTP operation as a high purity oxygen activated sludge (HPOAS) process, but the WWTP requires replacement of the existing cryogenic oxygen production process with a new VPSA oxygen production process.

3.6.3 The WWTP utilizes a high purity oxygen activated sludge (HPOAS) process that generates pure oxygen onsite using a cryogenic oxygen production plant. The generated oxygen is stored as liquid oxygen (LOX) and fed to the oxygenation trains as a gas. The existing oxygen production facility dates to the original construction and is at the end of its useful service life, inefficient, and difficult to maintain.

3.6.4 The VPSA facility shall be constructed west of the pretreatment building (headworks) on a total footprint of (139 feet by 46 feet) including the control and electrical rooms. The VPSA building shall be sufficient to house two 40-TPD trains. The VPSA building shall be constructed a minimum of 5 feet away from the property fence. Section V, Exhibits include the Design Criteria Package Drawings for more details and shows an aerial view for the selected location of the new VPSA building, switchgear, and control rooms. The buffer tank for Train 1 will be located outside adjacent to the VPSA building. Additional space for a second buffer tank shall be allocated to accommodate future expansion and installation of a second 40-TPD train.

3.6.5 The DBF will hold complete responsibility for the design, permitting, and construction of all aspects of the PROJECT. Completed construction documents are to be developed by the selected DBF and follow all criteria outlined in this document. Additionally, the selected DBF will carry out all aspects of construction following the requirements set forth in this document and as regulated by all permits for the PROJECT.

3.6.6 In addition to the need to replace the existing cryogenic oxygen production system due to its age, energy savings is a major driver for the project. The City has established a goal to reduce the overall utility operation energy consumption by 20 percent by 2020. Because the GTL WWTP is the City's largest energy consumer and one of the largest energy consuming processes at the WWTP is the cryogenic system, this project is expected to provide the major portion of that goal as determined by the Master Plan (Reiss, 2017).

The existing cryogenic oxygen generation system shall continue in normal operation during the construction of the new VPSA facility. Construction activities shall not, under any circumstance, interrupt the daily operation of the cryogenic oxygen generation system.

3.6.7 The DBF's work components of the GT Lohmeyer WWTP Replacement of Oxygen System project are listed below:

1. One new VPSA building capable of housing 2 - 40 ton per day (TPD) VPSA units with an electrical room, control room, and associated appurtenances. One unit to be installed as part of this project.
2. Modifications to the existing plant electrical and supervisory control and data

- acquisition (SCADA) systems to power and control the VPSA unit.
3. Modifications to the plant utilities to provide water and sewer to the VPSA Building.
 4. A new electrical building with MCCs to operate the existing liquid oxygen tanks, vaporizers, and associated equipment.
 5. Demolition and disposal of the existing liquid oxygen system to the limits shown.
 6. Modifications to the gaseous oxygen control and monitoring system for the two reactor basins (four trains).
 7. The site is constrained in an urban environment with development on all sides of the facility which requires compliance with strict noise and vibration abatement requirements. The noise decibel (dB) level at 1 foot outside the building cannot exceed 80 dB but must be reduced to a maximum of 60 dB at the property line. Since the property line is proposed to be 5 feet 0 inches from the building wall, sound attenuation must be accomplished by the design of the building.
 8. Refer to the attached Design Criteria Package in the Exhibits for additional requirements.

EXHIBIT B
SCHEDULE OF SUBCONSULTANTS



Hourly Rates

Principal	\$ 210.00
Expert Witness	\$ 275.00
Senior Project Manager	\$ 180.00
Project Manager	\$ 130.00
Administrative Assistant	\$ 55.00
Senior Traffic Engineer	\$ 150.00
Traffic Engineer	\$ 110.00
Senior Construction Manager	\$ 180.00
Construction Manager	\$ 150.00
Engineering Inspector III	\$ 115.00
Engineering Inspector II	\$ 90.00



<u>Personnel Category</u>	<u>Propose Rate</u>
Vice President (Expert Witness)	\$275.00
Principal Engineer (PE)	\$210.00
Senior Engineer (PE)	\$180.00
Engineer II (PE)	\$130.00
Engineer I (PE)	\$120.00
Construction Manager	\$150.00
Construction Associate	\$120.00
Senior Field Coordinator	\$105.00
Field Coordinator	\$85.00

EXHIBIT C
RATES

CDM Positions	Horly Rates	City Approved Total Hrs	City Approved Total Amount
Principal Engineer	\$ 210.00	234	\$ 49,140.00
Senior Engineer	\$ 180.00	12	\$ 2,160.00
Engineer II	\$ 130.00	12	\$ 1,560.00
Engineer II	\$ 120.00	12	\$ 1,440.00
Senior Construction Manager	\$ 180.00	120	\$ 21,600.00
Construction Manager	\$ 150.00	585	\$ 87,750.00
Control Specialist	\$ 110.00	780	\$ 85,800.00
Project Administrator	\$ 115.00	60	\$ 6,900.00
Senior Inspector	\$ 105.00	2730	\$ 286,650.00
	Sub-consultants		\$ 50,000.00
	Reimb/Allowance		\$ 50,000.00
	Total	4,545	\$ 643,000.00