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|  | **CITY OF MIAMI****OFFICE OF CAPITAL IMPROVEMENTS** **PROFESSIONAL SERVICES AGREEMENT** |
|  |  |
| **Service Category** | Capital Program Support Services |
| **Contract Type** |   |
| **Consultant** | (TBD) |

TABLE OF CONTENTS

**ARTICLE 1** **DEFINITIONS** 4

**ARTICLE 2** **GENERAL CONDITIONS** 7

**2.01** **TERM** 7

**2.02** **OPTIONS TO EXTEND:** 7

**2.03** **SCOPE OF SERVICES** 7

**2.04** **COMMUNITY BUSINESS ENTERPRISE (“CBE”) PARTICIPATION** 7

**2.05** **COMPENSATION** 7

**ARTICLE 3** **PERFORMANCE** 8

**3.01** **PERFORMANCE AND DELEGATION** 8

**3.02** **REMOVAL OF UNSATISFACTORY PERSONNEL** 8

**3.03** **CONSULTANT KEY STAFF** 8

**3.04** **TIME FOR PERFORMANCE** 8

**3.05** **STANDARD OF CARE** 8

**ARTICLE 4** **SUB-CONSULTANTS** 8

**4.01** **GENERAL** 8

**4.02** **SUB-CONSULTANT RELATIONSHIPS** 9

**4.03** **CHANGES TO SUB-CONSULTANTS** 9

**ARTICLE 5** **DEFAULT** 9

**5.01** **GENERAL** 9

**5.02** **CONDITIONS OF DEFAULT** 9

**5.03** **TIME TO CURE DEFAULT; FORCE MAJEURE** 9

**ARTICLE 6** **TERMINATION OF AGREEMENT** 10

**6.01** **CITY’S RIGHT TO TERMINATE** 10

**6.02** **CONSULTANT’S RIGHT TO TERMINATE** 10

**6.03** **TERMINATION DUE TO UNDISCLOSED LOBBYIST OR AGENT** 10

**ARTICLE 7** **DOCUMENTS AND RECORDS** 10

**7.01** **OWNERSHIP OF DOCUMENTS** ‘ 10

**7.02** **DELIVERY UPON REQUEST OR CANCELLATION** 10

**7.03** **RE-USE BY CITY** 10

**7.04** **NONDISCLOSURE** 11

**7.05** **MAINTENANCE OF RECORDS; PUBLIC RECORDS** 11

**ARTICLE 8** **INDEMNIFICATION** 11

**ARTICLE 9** **INSURANCE** 12

**9.01** **COMPANIES PROVIDING COVERAGE** 12

**9.02** **VERIFICATION OF INSURANCE COVERAGE** 12

**9.03** **FORMS OF COVERAGE** 12

**9.04** **MODIFICATIONS TO COVERAGE** 13

**ARTICLE 10**  **MISCELLANEOUS** 13

**10.01** **AUDIT RIGHTS; INSPECTION** 13

**10.02** **ENTIRE AGREEMENT** 13

**10.03** **SUCCESSORS AND ASSIGNS** 13

**10.04** **TRUTH-IN-NEGOTIATION CERTIFICATE** 14

**10.05** **APPLICABLE LAW AND VENUE OF LITIGATION** 14

**10.06** **NOTICES** 14

**10.07** **INTERPRETATION** 15

**10.08** **JOINT PREPARATION** 15

**10.09** **PRIORITY OF PROVISIONS** 15

**10.10** **MEDIATION - WAIVER OF JURY TRIAL** 15

**10.11** **TIME** 15

**10.12** **COMPLIANCE WITH LAWS** 15

**10.13** **NO PARTNERSHIP** 16

**10.14** **DISCRETION OF DIRECTOR** 16

**10.15** **RESOLUTION OF CONTRACT DISPUTES** 16

**10.16** **INDEPENDENT CONTRACTOR** 16

**10.17** **CONTINGENCY CLAUSE** 17

**10.18** **THIRD PARTY BENEFICIARY** 17

**10.19** **ADDITIONAL TERMS AND CONDITIONS** 17

**ATTACHMENT A - SCOPE OF WORK** 21

**ARTICLE A1** **GENERAL** 21

**A1.01** **SCOPE OF SERVICES** 21

**ARTICLE A2** **OVERVIEW OF CAPITAL PROGRAM SUPPORT SERVICES** 22

**A2.01** **PRIMARY SERVICES** 22

**A2.02** **SPECIALTY SERVICES** 22

**ARTICLE A3** **PRIMARY SERVICES** 22

**A3.01** **ADMINISTRATIVE PROGRAM MANAGEMENT** 22

**A3.02** **PRODUCTION MANAGEMENT SERVICES** 23

**A3.03** **CONSTRUCTION ADMINISTRATION** 25

**ARTICLE A4 SPECIALTY SERVICES** 25

**ARTICLE A5 STAFFING** 25

**A5.01** **PROGRAM STAFF** 25

**A5.02** **STAFFING FOR SPECIALTY SERVICES** 26

**A5.03** **STAFFING CHANGES** 26

**ARTICLE A6** **ASSIGNMENT OF WORK** 26

**SCHEDULE A1 - SubConsultants** 28

**SCHEDULE A2 – KEY STAFF** 28

**ATTACHMENT B - COMPENSATION AND PAYMENTS** 29

**ARTICLE B1** **METHOD OF COMPENSATION** 29

**B1.01** **COMPENSATION LIMITS** 29

**B1.02** **CONSULTANT NOT TO EXCEED** 29

**ARTICLE B2** **WAGE RATES** 29

**B2.01** **FEE BASIS** 29

**B2.02** **EMPLOYEES AND JOB CLASSIFICATIONS** 29

**B2.03** **MULTIPLIER** 29

**B2.04** **CALCULATION** 30

**B2.05** **EMPLOYEE BENEFITS AND OVERHEAD** 30

**B2.06** **ESCALATION** 30

**ARTICLE B3** **COMPUTATION OF FEES AND COMPENSATION** 30

**B3.01** **LUMP SUM** 30

**B3.02** **HOURLY RATE FEES** 30

**B3.03** **REIMBURSABLE EXPENSES** 31

**B3.04** **FEES for SPECIALTY SERVICES** 31

**B3.05** **PAYMENT EXCLUSIONS** 31

**B3.06** **FEES RESULTING FROM PROJECT SUSPENSION** 31

**ARTICLE B4** **PAYMENTS TO THE CONSULTANT** 31

**B4.01** **PAYMENTS GENERALLY** 31

**B4.02** **MONTHLY PROGRESS REPORT** 32

**B4.03** **BILLING – HOURLY RATE** 32

**B4.04** **PAYMENT FOR ADDITIONAL SERVICES AND REIMBURSABLE EXPENSES** 32

**B4.05** **DEDUCTIONS** 32

**ARTICLE B5** **REIMBURSABLE EXPENSES** 32

**B5.01** **GENERAL** 32

**B5.02** **TYPES OF REIMBURSABLE EXPENSES** 33

**B5.03** **AUTHORIZATION** 33

**B5.04** **DEFINITIONS and CATEGORIES** 33

**B5.05** **REIMBURSEMENTS TO THE SUB-CONSULTANTS** 33

**ARTICLE B6** **COMPENSATION FOR REUSE OF PLANS AND SPECIFICATIONS** 33

**B6.01** **GENERAL** 33

**SCHEDULE B1 – WAGE RATES SUMMARY** 35

**SCHEDULE B2 – ESTIMATE OF REIMBURSABLE EXPENSE** 36

**SCHEDULE B2 – ESTIMATE OF REIMBURSABLE EXPENSE** 37

**SCHEDULE B3 – EXPENSE VOUCHER** 38

|  |  |
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|  | **CITY OF MIAMI****OFFICE OF CAPITAL IMPROVEMENTS** **PROFESSIONAL SERVICES AGREEMENT** |
|  |  |
| **Service Category** | Capital Program Support Services(RFQ No. 15-16-032) |
| **Contract Type** |  |
| **Consultant** | TBD |
| **Consultant Office Location** | TBD |
| **City Authorization** | Resolution \_\_\_\_\_\_\_\_ |

THIS AGREEMENT made this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_ in the year 2017 by and between THE CITY OF MIAMI, FLORIDA, hereinafter called the "City," and (Consultant’s Name), hereinafter called the "Consultant.”

**RECITAL**

 A. The City issued a Request for Qualifications (“RFQ”) No. 15-16-032 on Friday, December 23, 2016 for the provision of Capital Program Support Services (“Services”) and the Consultant’s proposal (“Proposal”), in response thereto, was selected as one of the most qualified for the provision of said Services. The RFQ and the Proposal are sometimes referred to herein, collectively, as the Solicitation Documents, and are, by this reference, expressly incorporated into and made a part of this Agreement as if set forth in full.

 B. WHEREAS, the City, through action of the City Manager and/or the City Commission, as applicable, has selected the Consultant in accordance with Section 287.055, Florida Statutes, (Consultants' Competitive Negotiation Act, hereinafter referred to as “CCNA”), and the applicable provisions of the City Procurement Ordinance, to provide the professional services as described herein.

WITNESSETH, that the City and the Consultant, for the considerations herein set forth, agree as follows:

# **DEFINITIONS**

* 1. ***Additional Services*** means any Work defined as such in a Work Order, secured in compliance with Florida Statutes and City Code.
	2. ***Attachments*** means the Attachments to this Agreement are expressly incorporated by reference and made a part of this Agreement as if set forth in full.
	3. ***Base Fee*** means the amount of compensation mutually agreed upon for the completion of Basic Services.
	4. ***Basic Services*** means those services designated as such in a Work Order.\
	5. ***Capital Program Support Services*** or CPSS means Services provided by the Consultant including, without limitation, all administrative, technical, and management activities associated with supporting the City as determined by the Director in the execution and implementation of the City’s Capital Program.
	6. ***City Commission*** means the legislative body of the City of Miami.
	7. ***City Manager*** means the duly appointed chief administrative officer of the City of Miami.
	8. ***City or Owner*** means the City of Miami, Florida, a Florida municipal corporation, the public agency which is a party hereto and for which this Agreement is to be performed. In all respects hereunder, the City’s performance is pursuant to the City’s position as the Owner of the Project. In the event the City exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any rules, regulations, codes, laws and ordinances shall be deemed to have occurred pursuant to the City’s authority as a governmental body and shall not be attributable in any manner to the City as a party to this Agreement. The City of Miami shall be referred to herein as “City”. For the purposes of this Agreement, “City” without modification shall mean the City Manager.
	9. ***City Risk Manager*** shall mean the Risk Manager of the City of Miami who heads the Department of Risk Management.
	10. ***Commission*** means the legislative body of the City of Miami.
	11. **Community Business Enterprise (“CBE”)** means a firm which has been certified by Miami-Dade County who will provide architectural, landscape architectural, engineering, or surveying and mapping professional services to the prime proposer as required pursuant to City Code §18-87.
	12. ***Consultant*** means the individual, partnership, corporation, association, joint venture, or any combination thereof, of properly registered professional architects, or engineers, which has entered into the Agreement to provide professional services to the City.
	13. ***Contractor*** means an individual, partnership, corporation, association, joint venture, or any combination thereof, which has entered into a contract with the City for construction of City facilities and incidentals thereto.
	14. ***Director*** means the Director of the City Department designated herein who has the authority and responsibility for managing the specific project or projects covered under this Agreement. Unless otherwise specified herein or in a Work Order, for the purpose of this Agreement, the Director is the top administrator of the Office of Capital Improvements or designee.
	15. ***Errors*** means items in the plans, specification or other documents prepared by the Consultant that are shown incorrectly, which results in a change to the Services and results in the need for the construction contractor to perform rework or additional work or which causes a delay to the completion of construction.
	16. ***Errors and Omissions*** means design deficiencies in the plans, specification or other documents prepared by the Consultant, which must be corrected in order for the project to function or be built as intended.
	17. ***Horizontal Projects*** meanscapital Projects that generally consist of new construction, repair and/or reconstruction of roadways, rights-of-way and streetscape improvements (roads, sidewalks and swale areas) including, without limitation, street grading, pavement milling, paving, curb and gutter installation, striping, sidewalks, pavers, irrigation systems, lighting and landscaping, hardscaping and waterway improvements and maintenance, and underground storm and/or sanitary sewer systems and components such as pump stations, force mains, injection wells and disposal outfalls.
	18. ***Inspector*** means an employee of the City or of a consulting firm hired by the City and assigned by the City to make observations of Work performed by a Contractor.
	19. ***Key Personnel*** means Staff positions assigned on a full time basis to the Program by the Program Coordinator with the Director’s approval, to serve as an extension of the City’s staff typically working inside the City’s Miami Riverside Center (MRC) or other requested City facility.
	20. ***Notice to Proceed*** means same as “Authorization to Proceed.” A duly authorized written letter or directive issued by the Director or Project Manager acknowledging that all conditions precedent have been met and/or directing that the Consultant may begin work on the Project.
	21. ***Omissions*** means items the plans, specifications, or other documents prepared by the Consultant that are not shown or included which are necessary for the proper and/or safe operation of the Project or required to meet the Scope of Services.
	22. ***Primary Services*** means those Services considered by City to be fundamental to the successful management of the Program as stated in the RFQ, and in Attachment A of this Agreement.
	23. ***Project Manager*** means an employee or representative of the City assigned by the Director to manage and monitor Work to be performed under this Agreement and the construction of a project as a direct representative of the City.
	24. ***Program*** means the City’s multi-year Capital Improvements and Transportation Programs, prepared on an annual basis that details the planned financial resources and implementation schedule and strategies for the City’s capital projects over a five (5) year period.
	25. ***Project*** means the construction, alteration and/or repair, and all services and incidentals thereto, of a City facility as contemplated and budgeted by the City. The Project or Projects shall be further defined in the Scope of Services and/or Work Order issued pursuant to this Agreement.
	26. ***Professional Services*** means those services within the scope of the practice of architecture, professional engineering, or registered surveying and mapping, as applicable, as defined by the laws of the State of Florida, or those performed by any architect, professional engineer, or registered surveyor or mapper in connection with his or her professional employment or practice. These services may be abbreviated herein as “architectural/ engineering services” or “professional services”, as applicable, which are within this definition.
	27. ***Professional Services Agreement (“Agreement” or “PSA”)*** means this Agreement and all attachments and any authorized amendments thereto. In the event of a conflict between the Response to the Request for Qualifications (“RFQ”) and the Consultant’s response thereto the RFQ will control. In the event of any conflict between the Consultant’s response to the RFQ, this PSA will control. In the event of any conflict between this PSA and its attachments this PSA will control.
	28. ***Resolution*** means the document constituting the official approval of the City Commission as required for the City Manager to execute this Agreement, increase the Project Budget, among other matters.
	29. ***Risk Administrator*** means the City’s Risk Management Administrator, or designee, or the individual named by the City Manager to administer matters relating to insurance and risk of loss for the City.
	30. ***Scope of Services or Services*** meansa comprehensive description of the activities, tasks, design features, objectives, deliverables and milestones required for the completion of Project or an assignment with sufficient detail to allow a reasonably accurate estimation of resources necessary for its completion.
	31. ***Specialty Services*** meansthose Services which may not be directly tied to the overall management of the Capital Improvements Program but to some unique, critical, and/or possibly large scale, element of the Capital Improvements Program, that requires expertise that is unavailable from within the City’s personnel resources.
	32. ***Sub-consultant*** means a person or organization of properly registered professional architects, engineers, registered surveyor or mapper, and/or other professional specialty that has entered into a written agreement with the Consultant to furnish specified professional services for a Project or task.
	33. ***Vertical Projects*** means capital Projects that generally consist of new construction, repair, renovation, and/or expansion of park and recreational facilities, community and day care centers, administrative offices and facilities, fire stations and support facilities, police facilities, stadiums, exhibition center(s), other performance venues, marinas, or any other Projects identified by the Director.
	34. ***Wage Rates*** means the effective direct expense to the Consultant and/or the Sub-Consultant, on an hourly rate basis, for employees in the specified professions and job categories assigned to provide services under this Agreement that justify and form the basis for professional fees regardless of actual manner of compensation.
	35. ***Work*** means all services, materials and equipment provided by/or under this Agreement with the Consultant.
	36. ***Work Orde***r means a document internal to the City authorizing the performance of specific professional services for a defined Project or Projects.
	37. ***Work Order Proposal*** means a document prepared by the Consultant, at the request of the City for Services to be provided by the Consultant on a specific phase of a Project.

# **GENERAL CONDITIONS**

* 1. TERM

The term of this Agreement shall be for two (2)  commencing on the effective date hereof. This specified term is intended for administrative and budget control purposes and is not to be considered or interpreted as a time limitation. This Agreement shall be in place until completion of the Project.

During the term of this Agreement the Consultant is precluded from entering into any other contracts or agreements with the City to provide Services related, incidental or allied to or contained in the Capital Improvements Program. Where the Consultant has existing contracts or agreements with other agencies who operate or provide similar programs or services within the City, the Consultant shall be precluded from providing Program Management Services for such contracts or agreements as long as this Agreement is in effect.

**2.01-1 Extension of Expiration Date**

In the event the Consultant is engaged in any Project(s) on the Agreement expiration date, then this Agreement shall not expire and remain in effect until completion or termination of said Project(s).  No new Work Orders shall be issued after the expiration date.

* 1. OPTIONS TO EXTEND:

The CITY, by action of the CITY MANAGER, shall have the option to extend the term for two (2) additional period(s) of one (1) each, subject to continued satisfactory performance as determined by the Director, and to the availability and appropriation of funds. City Commission authorization of this Agreement includes delegation of authority to the CITY MANAGER to administratively approve said extensions provided that the compensation limits set forth in Article 2.05 are not exceeded.

* 1. SCOPE OF SERVICES

The Consultant agrees to provide the Services as specifically described and under the special terms and conditions set forth in Attachment “A” hereto (to be Determined), which by this reference is incorporated into and made a part of this Agreement.

* 1. **COMMUNITY BUSINESS ENTERPRISE (“CBE”) PARTICIPATION**

**REQUIREMENTS ORDINANCE 13331, codified as § 18-87(p), City Code.**

Prospective Firms must adhere to the following requirements:

1. Assign a minimum of fifteen percent (15%) of the contract value to firms currently certified by Miami-Dade County as a Community Business Enterprise (“CBE”);
2. Place a specific emphasis on utilizing local small businesses from within the City’s municipal boundaries.

For information on the City’s CBE requirements, visit the Office of Capital Improvements (OCI) website at: <http://www.miamigov.com/CITP/forms.html>

* 1. COMPENSATION
		1. **Compensation Limits**

The amount of compensation payable by the City to the Consultant shall be a lump sum or not to exceed fee, based on the rates and schedules established in **Attachment B** hereto, which by this reference is incorporated into this Agreement; provided, however, that in no event shall the amount of compensation exceed an annual maximum of **One Million** **Five Hundred Thousand Dollars ($1,500,000.00)** over the term of the Agreement and any extension(s), unless explicitly approved by action of the City Commission and put into effect by written amendment to this Agreement. The City may, at its sole discretion use other compensation methodologies. The City shall not have any liability nor will the Consultant have any recourse against the City for any compensation, payment, reimbursable expenditure, cost or charge beyond the compensation limits of this Agreement, as it may be amended from time to time. This Agreement , as amended and/or renewed, is subject to the compensation limits for continuing contracts set forth in 287.055, Florida Statutes for Continuing Contracts.

* + 1. **Payments**

Unless otherwise specifically provided in **Attachment B**, payment shall be made in accordance with Florida Statute Chapter 218, Part VII, Local Government Prompt Payment Act, after receipt of the Consultant’s invoice, which shall be accompanied by sufficient supporting documentation and contain sufficient detail, to constitute a “proper invoice” as defined by § 218.72, Fla. Stat., and to allow a proper audit of expenditures, should the City require one to be performed. If the Consultant is entitled to reimbursement of travel expenses, then all bills for travel expenses shall be submitted in accordance with Section 112.061, Florida Statutes. The Consultant shall utilize Attachment “C” for the submission of invoices.

# **PERFORMANCE**

* 1. PERFORMANCE AND DELEGATION

The services to be performed hereunder shall be performed by the Consultant's own staff, unless otherwise provided in this Agreement, or approved, in writing by the City. Said approval shall not be construed as constituting an agreement between the City and said other person or firm.

* 1. REMOVAL OF UNSATISFACTORY PERSONNEL

Director or designee may make written request to the Consultant for the prompt removal and replacement of any personnel employed or retained by the Consultant, or any Sub-Consultants or subcontractors, or any personnel of any such Sub-Consultants or sub-contractors engaged by the Consultant to provide and perform services or Work pursuant to the requirements of this Agreement. The Consultant shall respond to the City within fourteen (14) calendar days of receipt of such request with either the removal and replacement of such personnel or written justification as to why that may not occur. All decisions involving personnel will be made by the Consultant. Such request shall solely relate to said employees work under this Agreement.

* 1. CONSULTANT KEY STAFF

The parties acknowledge that the Consultant was selected by the City, in part, on the basis of qualifications of particular staff identified in the Consultant’s response to the City’s solicitation, hereinafter referred to as “Key Staff”. The Consultant shall ensure that Key Staff are available for Work upon request from the City, as long as said Key Staff is in the Consultant’s employ. The Consultant will obtain prior written acceptance of Director or designee to change Key Staff. The Consultant shall provide Director, or designee with such information as necessary to determine the suitability of proposed new Key Staff. Director will act reasonably in evaluating Key Staff qualifications. Such acceptance shall not constitute any responsibility or liability for the individual’s ability to perform.

* 1. TIME FOR PERFORMANCE

The Consultant agrees to start all Work hereunder upon receipt of a Notice to Proceed issued by the Director and to complete each assignment, task or phase within the time stipulated in the Notice to Proceed. Time is of the essence with respect to performance of this Agreement.

A reasonable extension of the time for completion of various assignments, tasks or phases may be granted by the City should there be a delay on the part of the City in fulfilling its obligations under this Agreement as stated herein. Such extension of time shall not be cause for any claim by the Consultant for extra compensation.

* 1. STANDARD OF CARE

Consultant is solely responsible for the technical accuracy and quality of their Services. Consultant shall perform all Services in compliance with Florida Administrative Code Rule 61G15-19.001(4) and Section 471.033(1) of the Florida Statutes, as amended. Consultant shall perform due diligence, in accordance with best industry practices, in gathering information and inspecting a Project site prior to the commencement of design. Consultant shall be responsible for the professional quality, technical accuracy and coordination of all design, drawings, specification, and other Services furnished by the Consultant under this Agreement. Consultant shall, without additional compensation, correct or revise any errors, omissions, and/or deficiencies in its designs, drawings, specification or other Services. Consultant shall also be liable for claims for delay costs, and any increased costs in construction, including but not limited to additional work, demolition of existing work, rework, etc., resulting from any errors, omissions, and/or deficiencies in its designs, drawings, specification or other Services.

# **SUB-CONSULTANTS**

* 1. GENERAL
		1. A Sub-Consultant, as defined in Article 1.18 is a firm that was identified as part of the consulting team in the competitive selection process by which the Consultant was chosen to perform the services under this Agreement, and as such, is identified and listed in Schedule A1 attached hereto and incorporated by reference.
		2. A Specialty Sub-Consultant is a person or organization that has, with the consent of the Director, entered into a written agreement with the Consultant to furnish unique and/or specialized professional services necessary for a project or task described under Additional Services. Such Specialty Sub-Consultant shall be in addition to those identified in Schedule A1.
	2. SUB-CONSULTANT RELATIONSHIPS
		1. All services provided by the Sub-Consultants shall be performed pursuant to appropriate written agreements between the Consultant and the Sub-Consultants, which shall contain provisions that preserve and protect the rights of the City under this Agreement.
		2. Nothing contained in this Agreement shall create any contractual or business relationship between the City and the Sub-Consultants. The Consultant acknowledges that the Sub-Consultants are entirely under his direction, control, supervision, retention and/or discharge.
	3. CHANGES TO SUB-CONSULTANTS

The Consultant shall not add or modify change any Sub-Consultant listed in Schedule A1 without prior written approval by the Director or designee, in response to a written request from the Consultant stating the reasons for any proposed substitution.

# **DEFAULT**

* 1. GENERAL

If the Consultant fails to comply with any term or condition of this Agreement, or fails to perform any of its obligations hereunder, then the Consultant shall be in default. Upon the occurrence of a default hereunder the City, in addition to all remedies available to it by law, may immediately, upon written notice to the Consultant, terminate this Agreement whereupon all payments, advances, or other compensation paid by the City to the Consultant while the Consultant was in default shall be immediately returned to the City. The Consultant understands and agrees that termination of this Agreement under this section shall not release the Consultant from any obligation accruing prior to the effective date of termination.

In the event of termination due to default, in addition to the foregoing, the Consultant shall be liable to the City for all expenses incurred by the City in preparing and negotiating this Agreement, as well as all costs and expenses incurred by the City in the re-procurement of the Services, including consequential and incidental damages. In the event of Default, the City may also suspend or withhold reimbursements from the Consultant until such time as the actions giving rise to default have been cured.

* 1. CONDITIONS OF DEFAULT

A finding of Default and subsequent termination for cause may include, without limitation, any of the following:

* + 1. The Consultant fails to obtain or maintain the professional engineering certification / licensure, insurance or bonding herein required.
		2. The Consultant fails to comply, in a substantial or material sense, with any of its duties under this Agreement, with any terms or conditions set forth in this Agreement or in any agreement it has with the City, beyond the specified period allowed to cure such default.
		3. The Consultant fails to commence the Services within the time provided or contemplated herein, or fails to complete the Work in a timely manner as required by this Agreement.
	1. TIME TO CURE DEFAULT; FORCE MAJEURE

The City through the Director or designee shall provide written notice to the Consultant as to a finding of default, and the Consultant shall take all necessary action to cure said default within time stipulated in said notice, after which time the City may terminate the Agreement. The City at its sole discretion, may allow additional days to perform any required cure if the Consultant provides written justification deemed reasonably sufficient. If the Default has not been corrected by the Consultant within the time specified the Agreement shall be automatically terminated on the last day of the time stipulated in said notice, without the necessity of any further action by the City.

Should any such failure on the part of the Consultant be due to a condition of Force Majeure as that term is interpreted under Florida law, then the City may allow an extension of time reasonably commensurate with the cause of such failure to perform or cure.

# **TERMINATION OF AGREEMENT**

* 1. CITY’S RIGHT TO TERMINATE

The City, including the Director or designee has the right to terminate this Agreement for any reason or no reason, upon ten (10) days’ written notice. Upon termination of this Agreement, all charts, sketches, studies, drawings, and other documents, including all electronic copies related to Work authorized under this Agreement, whether finished or not, must be turned over to the Director or designee. The Consultant shall be paid in accordance with provisions of Attachment B, provided that said documentation is turned over to Director or designee within ten (10) business days of termination. Failure to timely deliver the documentation shall be cause to withhold any payments due without recourse by the Consultant until all documentation is delivered to the Director or designee.

* + 1. The Consultant shall have no recourse or remedy from any termination made by the City except to retain the fees, and allowable costs or reimbursable expenses, earned compensation for the Services that was performed in complete compliance with the Agreement, as full and final settlement of any claim, action, demand, cost, charge or entitlement it may have, or will, have against the City, its officials or employees.
	1. CONSULTANT’S RIGHT TO TERMINATE

The Consultant shall have the right to terminate this agreement, in writing, following breach by the City, if breach of contract has not been corrected within sixty (60) days from the date of the City’s receipt of a written statement from the Consultant specifying its breach of its duties under this Agreement.

6.03 TERMINATION DUE TO UNDISCLOSED LOBBYIST OR AGENT

The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant to solicit or secure this Agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Consultant any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

For the breach or violation of this provision, the City shall have the right to terminate the Agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

# **DOCUMENTS AND RECORDS**

* 1. OWNERSHIP OF DOCUMENTS ‘

All tracings, plans, drawings, specifications, maps, computer files, and/or reports prepared or obtained under this Agreement, as well as all data collected, together with summaries and charts derived there from, including all electronic digital copies will be considered works made for hire and will, based on incremental transfer wherein the above shall become the property of the City upon payments made to the Consultant or termination of the Agreement without restriction or limitation on their use, and will be made available, on request, to the City at any time during the performance of such services and/or upon completion or termination of this Agreement. The Consultant shall not copyright any material and products or patent any invention developed under this Agreement. The City shall have the right to visit the site for inspection of the work and the products of the Consultant at any time. The Consultant shall be permitted to retain copies, including reproducible copies, solely for information and reference in connection with the City's use and occupancy of the Project.

* 1. DELIVERY UPON REQUEST OR CANCELLATION

Failure of the Consultant to promptly deliver all such documents, both hard copy and digital, to the Director or designee within ten (10) days of cancellation, or within ten (10) days of request by the City, shall be just cause for the City to withhold payment of any fees due the Consultant until the Consultant delivers all such documents. The Consultant shall have no recourse from these requirements.

* 1. RE-USE BY CITY

It is understood that all Consultant agreements and/or Work Orders for new work will include the provision for the re-use of plans and specifications, including construction drawings, at the City’s sole option, and by virtue of signing this agreement the Consultant agrees to such re-use in accordance with this provision without the necessity of further approvals, compensation, fees or documents being required and without recourse for such re-use. The Consultant will not be liable for re-use by the City of plans, documents, studies, or other data for any purpose other than that intended by the terms and conditions of this Agreement.

* 1. NONDISCLOSURE

To the extent allowed by law, the Consultant agrees not to divulge, furnish ,or make available to any third person, firm or organization, without Director or designee’s prior written consent, or unless incident to the proper performance of the Consultant’s obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by the Consultant hereunder, and the Consultant shall require all of its employees, agents, Sub-Consultants, and subcontractors to comply with the provisions of this paragraph.

* 1. MAINTENANCE OF RECORDS; PUBLIC RECORDS

The Consultant will keep adequate records and supporting documentation, which concern or reflect its services hereunder. Records subject to the provisions of the Public Records Law, Florida Statutes Chapter 119, shall be kept in accordance with the applicable statutes. Otherwise, the records and documentation will be retained by the Consultant for a minimum of three (3) years from the date of termination of this Agreement or the date the Project is completed, whichever is later. The City, or any duly authorized agents or representatives of the City, shall have the right to audit, inspect, and copy all such records and documentation as often as they deem necessary during the period of this Agreement and during the three (3) year period noted above; provided, however such activity shall be conducted only during normal business hours.

Consultant shall additionally comply with Section 119.0701, Florida Statutes, including without limitation: (1) keep and maintain public records that ordinarily and necessarily would be required by the City to perform this service; (2) provide the public with access to public records on the same terms and conditions as the City would at the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law; 3) ensure that public records that are exempt or confidential and exempt from disclosure are not disclosed except as authorized by law; (4) meet all requirements for retaining public records and transfer, at no cost, to the City all public records in its possession upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from disclosure requirements; and, (5) provide all electronically stored public records to the City in a format compatible with the City’s information technology systems.

**IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (305) 416-1830, VIA EMAIL AT PUBLICRECORDS@MIAMIGOV.COM, OR REGULAR EMAIL AT CITY OF MIAMI OFFICE OF THE CITY ATTORNEY, 444 SW 2ND AVENUE, 9TH FL, MIAMI, FL 33130.**

# **ARTICLE 8 INDEMNIFICATION**

The Consultant shall indemnify, hold harmless, and defend the City, its officers, agents, directors, and/or employees, from liabilities, damages, losses, judgments, and costs, including, but not limited to reasonable attorney's fees, to the extent caused by the negligence, recklessness, negligent act or omission, or intentional wrongful misconduct of Consultant and persons employed or utilized by Consultant in the performance of this Contract. Consultant shall, further, hold the City, its officials and/or employees, harmless for, and defend the City, its officials and/or employees against, any civil actions, statutory or similar claims, injuries or damages arising or resulting from the permitted work, even if it is alleged that the City, its officials and/or employees were negligent. These indemnifications shall survive the term of this Contract. In the event that any action or proceeding is brought against the City by reason of any such claim or demand, the Consultant shall, upon written notice from the City, resist and defend such action or proceeding by counsel satisfactory to the City. The Consultant expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Consultant shall in no way limit the responsibility to indemnify, keep and save harmless and defend the City or its officers, employees, agents and instrumentalities as herein provided.

The indemnification provided above shall obligate the Consultant to defend, at its own expense, to and through appellate, supplemental or bankruptcy proceeding, or to provide for such defense, at the City's option, any and all claims of liability and all suits and actions of every name and description which may be brought against the City whether performed by the Consultant, or persons employed or utilized by Consultant.

This indemnity will survive the cancellation or expiration of the Agreement. This indemnity will be interpreted under the laws of the State of Florida, including without limitation and interpretation, which conforms to the limitations of §725.06 and/or §725.08, Florida Statutes, as applicable.

The Consultant shall require all Sub-Consultant agreements to include a provision that they will indemnify the City.

The Consultant agrees and recognizes that the City shall not be held liable or responsible for any claims which may result from any actions or omissions of the CONSULTANT in which the City participated either through review or concurrence of the Consultant's actions.  In reviewing, approving or rejecting any submissions by the Consultant or other acts of the Consultant, the City in no way assumes or shares any responsibility or liability of the Consultant or Sub-Consultant under this Agreements.

Ten dollars ($10) of the payments made by the City constitute separate, distinct, and independent consideration for the granting of this Indemnification, the receipt and sufficiency of which is voluntarily and knowingly acknowledged by the Consultant.

# **ARTICLE 9 INSURANCE**

The Consultant shall not start Services under this Agreement until the Consultant has obtained all insurance required hereunder and the City’s Risk Manager or his/her authorized designee, has approved such insurance. Should the Consultant not maintain the insurance coverage required in this Agreement, the City may cancel this Agreement or, at its sole discretion, shall purchase such coverage and charge the Consultant for such coverage purchased. The City shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverage purchased or the insurance company or companies used. The decision of the City to purchase such insurance coverage shall in no way be construed to be a waiver of its rights under this Agreement.

1.
2. 1. COMPANIES PROVIDING COVERAGE

All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida and satisfactory to the Risk Administrator. All companies shall have a Florida resident agent and be rated at least A(X), as per A.M. Best Company’s Key Rating Guide, latest edition.

* 1. VERIFICATION OF INSURANCE COVERAGE

The Consultant shall furnish certificates of insurance to the Risk Administrator for review and approval prior to the execution of this Agreement. The Certificates shall clearly indicate that the Consultant has obtained insurance of the type, amount and classification required by these provisions, in excess of any pending claims at the time of contract award to the Consultant. The Consultant shall maintain coverage with equal or better rating as identified herein for the term of this contract. The Consultant shall provide written notice to the City’s Department of Risk Management of any material change, cancellation and/or notice of non-renewal of the insurance within 30 days of the change.

The Consultant shall furnish copies of insurance policies pertaining to this Agreement to Risk Administrator within ten (10) days of written request.

* 1. FORMS OF COVERAGE
		1. **Commercial General Liability and Automobile Liability**

The Consultant shall maintain commercial general liability coverage with limits of at least $1,000,000 per occurrence, $2,000,000 aggregate for bodily injury and property damage. The coverage shall include Premises and Operations, Contingent and Contractual Liability, and Products and Completed Operations, with additional endorsements as applicable. Waiver of Subrogation applies in favorite of the certificate holder.

The coverage shall be written on a primary and non-contributory basis with the City listed as an additional insured as reflected by endorsement CG 2010 11/85 or its equivalence. Notice of cancellation should read (30) days/ (10) days for nonpayment.

* + 1. **Business Automobile**

The Consultant shall provide business automobile liability coverage including coverage for all owned, hired and non-owned autos with a minimal combined single limit of $1,000,000 naming the City as an additional insured with respect to this coverage. Notice of cancellation should read (30) days/ (10) days for nonpayment.

* + 1. **Professional/pollution Liability Insurance**

The Consultant shall maintain Professional Liability Insurance including Errors and Omissions coverage in the minimum amount of $2,000,000 per claim, $2,000,000 aggregate providing for all sums which the Consultant shall be legally obligated to pay as damages for claims arising out of the services performed by the Consultant or any person employed by the Consultant in connection with this Agreement. This insurance shall be maintained for at least one year after completion of the construction and acceptance of any project covered by this Agreement. Coverage must reference the retroactive date. The coverage shall list the City as additional insured with respect to pollution liability.

* + 1. **UMBRELLA LIABILITY INSURANCE**

The Consultant shall maintain Umbrella Liability Insurance including Bodily injury and property damage liability with limits of $1,000,000.00 each occurrence and an aggregate limit of $1,000,000.00. The coverage shall include excess coverage over all applicable liability policies with the City listed as an additional insured.

* + 1. **Worker's Compensation Insurance**

The Consultant shall maintain Worker's Compensation Insurance in compliance with Florida Statutes, Chapter 440, as amended, and Employee’s Liability with a minimum limit of $500,000 each occurrence.

* + 1. **Sub-Consultant Compliance**

The Consultant shall ensure that all Sub-consultants comply with these same insurance requirements.

**9.04** MODIFICATIONS TO COVERAGE

The Risk Administrator or his/her authorized designee reserves the right to require modifications, increases, or changes in the required insurance requirements, coverage, deductibles or other insurance obligations by providing a thirty (30) day written notice to the Consultant in accordance with §10.06 herein. The Consultant shall comply with such requests unless the insurance coverage is not then readily available in the national market, and may request additional consideration from the City accompanied by justification.

# **ARTICLE 10 MISCELLANEOUS**

1. 1. AUDIT RIGHTS; INSPECTION

The City reserves the right to audit the Consultant’s accounts during the performance of this Agreement and for three (3) years after final payment under this Agreement. The Consultant agrees to furnish copies of any records necessary, in the opinion of the Director, to approve any requests for payment by the Consultant. The inspection and audit provisions provided for City contracts set forth in §18-101 and § 18-102, City Code, are applicable to this Agreement and are deemed as being incorporated by reference herein.

* 1. ENTIRE AGREEMENT

This Agreement, as it may be amended from time to time, represents the entire and integrated agreement between the City and the Consultant and supersedes all prior negotiations, representations or agreements, written or oral. This Agreement may not be amended, changed, modified, or otherwise altered in any respect, at any time after the execution hereof, except by a written document executed with the same formality and equal dignity herewith. Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach of any provision of this Agreement.

* 1. SUCCESSORS AND ASSIGNS

The performance of this Agreement shall not be transferred pledged, sold, delegated or assigned, in whole or in part, by the Consultant without the written consent of the City, acting by and through its City Commission. It is understood that a sale of the majority of the stock or partnership shares of the Consultant, a merger or bulk sale, an assignment for the benefit of creditors shall each be deemed transactions that would constitute an assignment or sale hereunder requiring prior City approval.

The Consultant’s services are unique in nature and any assignment, sale transference without City Commission approval shall be cause for the City to cancel this Agreement. The Consultant shall have no recourse from such cancellation. The City may require bonding, other security, certified financial statements and tax returns from any proposed Assignee and the execution of an Assignment/ Assumption Agreement in a form satisfactory to the City Attorney as a condition precedent to considering approval of an assignment.

The Consultant and the City each binds one another, their partners, successors, legal representatives and authorized assigns to the other party of this Agreement and to the partners, successors, legal representatives and assigns of such party in respect to all covenants of this Agreement.

* 1. TRUTH-IN-NEGOTIATION CERTIFICATE

In compliance with the Consultant’s Competitive Negotiation Act, for any Project to be compensated under the Lump Sum method, the Consultant shall certify that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of Notice to Proceed. The original Project price and any addition thereto will be adjusted to exclude any significant sums by which the City determines the project price was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs. All such price adjustments will be made within one (1) year following the end of the Project.

* 1. APPLICABLE LAW AND VENUE OF LITIGATION

This agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any suit or action brought by any party, concerning this agreement, or arising out of this agreement, shall be brought in Miami-Dade County, Florida. Each party shall bear its own attorney’s fees except in actions arising out of the Consultant's duties to indemnify the City under Article 8 herein where the Consultant shall pay the City’s reasonable attorney’s fees.

* 1. NOTICES

Whenever either party desires to give notice unto the other, such notice must be in writing, sent by registered United States mail, return receipt requested, addressed to the party for whom it is intended at the place last specified; and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice:

 **For City of Miami:**

 Annie Perez, CPPO

 Director

 Procurement Department

City of Miami

444 S.W. 2nd Avenue, 6th Floor

Miami, Florida 33130-1910

Victoria Mendez

City Attorney

Office of the City Attorney

City of Miami

444 S.W. 2nd Avenue, 9th Floor

Miami, Florida 33130-1910

 **With Copies to**:

 Jeovanny Rodriguez, P.E.

 Director

Office of Capital Improvements

City of Miami

444 S.W. 2nd Avenue, 8th Floor

Miami, Florida 33130-1910

 **For Consultant**:

 (TBD)

* 1. INTERPRETATION

The language of this Agreement has been agreed to by both parties to express their mutual intent and no rule of strict construction shall be applied against either party hereto. The headings contained in this Agreement are for reference purposes only and shall not affect in any way 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.

* 1. JOINT PREPARATION

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

* 1. PRIORITY OF PROVISIONS

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

* 1. MEDIATION - WAIVER OF JURY TRIAL

In an effort to engage in a cooperative effort to resolve conflict which may arise during the course of the design and /or construction of the subject project(s), and/or following the completion of the projects(s), the parties to this Agreement agree all disputes between them shall be submitted to non-binding mediation prior to the initiation of litigation, unless otherwise agreed in writing by the parties. A certified Mediator, who the parties find mutually acceptable, will conduct any Mediation Proceedings in Miami-Dade County, State of Florida. The parties will split the costs of a certified mediator on a 50/50 basis. The Consultant agrees to include such similar contract provisions with all Sub-Consultants and/or independent contractors and/or the Consultants retained for the project(s), thereby providing for non-binding mediation as the primary mechanism for dispute resolution. Each party will bear their own attorney’s fees.

In an effort to expedite the conclusion of any litigation the parties voluntarily waive their right to jury trial or to file permissive counterclaims in any action arising under this Agreement.

* 1. TIME

Time is of the essence in this Agreement. Consultant shall promptly perform its duties under this Agreement and Work Orders pursuant hereto, and will give the Work as much priority as is necessary to cause the Work to be completed on a timely basis in accordance with this Agreement. All Work shall be performed strictly (not substantially) within the time limitations necessary to maintain the critical path and all deadlines established in this Agreement and/or Work Orders pursuant hereto.

* 1. COMPLIANCE WITH LAWS

The Consultant shall comply with all applicable laws, codes, ordinances, rules, regulations and resolutions including, without limitation, the Americans with Disabilities Act (“ADA”), as amended, and all applicable guidelines and standards in performing its duties, responsibilities, and obligations related to this Agreement. The Consultant represents and warrants that there shall be no unlawful discrimination as provided by law in connection with the performance of this agreement.

* + 1. **NON-DISCRIMINATION**

The City warrants and represents that it does not and will not engage in discriminatory practices and that there shall be no discrimination in connection with the Consultant’s performance under this Agreement on account of race, color, sex, religion, age, handicap, marital status or national origin. The Consultant further covenants that no otherwise qualified individual shall, solely by reason of his/her race, color, sex, religion, age, handicap, marital status or national origin, be excluded from participation in, be denied services, or be subject to discrimination under any provision of this Agreement.

* + 1. **OSHA COMPLIANCE**

The Consultant warrants that it will comply with all safety precautions as required by federal, state or local laws, rules, regulations and ordinances. The City reserves the right to refuse the Consultant access to City property, including project jobsites, if the Consultant employees are not properly equipped with safety gear in accordance with OSHA regulations or if a continuing pattern of non-compliance with safety regulations is exhibited by the Consultant.

* + 1. **ADA COMPLIANCE**

The Consultant shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (“ADA”) in the course of providing any work, labor or services funded by the City, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability) and all applicable regulations, guidelines and standards. Additionallythe Consultant shall take affirmative steps toinsure nondiscrimination in employment of disabled persons.

* 1. NO PARTNERSHIP

The Consultant is an independent contractor. This Agreement does not create a joint venture, partnership or other business enterprise between the parties. The Consultant has no authority to bind the City to any promise, debt, default, or undertaking of the Consultant.

* 1. DISCRETION OF DIRECTOR

Any matter not expressly provided for herein dealing with the City or decisions of the City shall be within the exercise of the reasonable professional discretion of the Director or the Director’s authorized designee.

* 1. RESOLUTION OF CONTRACT DISPUTES

The Consultant understands and agrees that all disputes between it and the City based upon an alleged violation of the terms of this Agreement by the City shall be submitted for resolution in the following manner.

The initial step shall be for the Consultant to notify the Project Manager in writing of the dispute and submit a copy to the City of Miami personnel identified in Article 10.06, Notices.

Should the Consultant and the Project Manager fail to resolve the dispute the Consultant shall submit their dispute in writing, with all supporting documentation, to the Director of OCI, as identified in Article 10.06, Notices. Upon receipt of said notification the Director of OCI shall review the issues relative to the dispute and issue a written finding.

Should the Consultant and the Director of OCI fail to resolve the dispute the Consultant shall submit their dispute in writing within five calendar days to the Director of Procurement. Failure to submit such appeal of the written finding shall constitute acceptance of the finding by the Consultant. Upon receipt of said notification the Director shall review the issues relative to the dispute and issue a written finding.

The Consultant must submit any further appeal in writing within five calendar days to the City Manager. Failure to submit such appeal of the written finding shall constitute acceptance of the finding by the Consultant. Appeal to the City Manager for his/her resolution, is required prior to the Consultant being entitled to seek judicial relief in connection therewith. Should the amount of compensation hereunder exceed $500,000.00, the City Manager’s decision shall be approved or disapproved by City Commission. The Consultant shall not be entitled to seek judicial relief unless:

1. it has first received City Manager’s written decision, approved by City Commission if applicable, or
2. a period of sixty (60) days has expired after submitting to the City Manager a detailed statement of the dispute, accompanied by all supporting documentation, or a period of (90) days has expired where the City Manager’s decision is subject to City Commission approval; or
3. The City has waived compliance with the procedure set forth in this section by written instrument(s) signed by the City Manager.
	1. INDEPENDENT CONTRACTOR

The Consultant has been procured and is being engaged to provide services to the City as an independent contractor, and not as an agent or employee of the City. Accordingly, the Consultant shall not attain, nor be entitled to, any rights or benefits under the Civil Service or Pension Ordinances of the City, nor any rights generally afforded classified or unclassified employees. The Consultant further understands that Florida Workers’ Compensation benefits available to employees of the City are not available to the Consultant, and agrees to provide workers’ compensation insurance for any employee or agent of the Consultant rendering services to the City under this Agreement.

* 1. CONTINGENCY CLAUSE

Funding for this Agreement is contingent on the availability of funds and continued authorization for program activities and the Agreement is subject to amendment or termination due to lack of funds, reduction of funds and/or change in regulations, upon thirty (30) days' notice.

* 1. THIRD PARTY BENEFICIARY

The Consultant and the City agree that it is not intended that any provision of this Agreement establishes a third party beneficiary giving or allowing any claim or right of action whatsoever by any third party under this Agreement.

* 1. ADDITIONAL TERMS AND CONDITIONS

No additional terms and conditions included with the solicitation response shall be evaluated or considered, and any and all such additional terms and conditions shall have no force or effect and are inapplicable to this solicitation. If submitted either purposely, through intent or design, or inadvertently, appearing separately in transmittal letters, specifications, literature, price lists or warranties, it is understood and agreed that the General and Special Conditions in this solicitation are the only conditions applicable to this solicitation and that the bidder’s/proposer's authorized signature affixed to the bidder’s/proposer's acknowledgment form attests to this. If a PSA or other Agreement is provided by the City and included in this solicitation no additional terms or conditions which materially or substantially vary, modify or alter the terms or conditions of the Agreement, in the sole opinion and reasonable discretion of the City will be considered. Any and all such additional terms and conditions shall have no force or effect and are inapplicable to this PSA or other Agreement.

 IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

|  |  |
| --- | --- |
| WITNESS/ATTEST: | **Consultant, (TBD)**  |
| \_\_\_\_\_\_\_ \_\_\_*Signature**Print Name, Title* | *Signature**Print Name, Title of Authorized Officer or Official* |
|  |  |
| ATTEST: | (Corporate Seal) |
|  |  |
|  |  |
| Consultant Secretary |  |
| (Affirm Consultant Seal, if available) |  |
|  |  |
| ATTEST: | **CITY OF MIAMI**, a municipal corporation of the State of Florida |
| Todd B. Hannon, City Clerk | Daniel J. Alfonso, City Manager   |
|  |  |
| APPROVED AS TO INSURANCE REQUIREMENTS:Ann Marie Sharpe, DirectorRisk Management Department | APPROVED AS TO LEGAL FORM AND CORRECTNESS:Victoria Méndez, City Attorney |

**CERTIFICATE OF AUTHORITY**

**(IF CORPORATION OR LLC)**

 I HEREBY CERTIFY that at a meeting of the Board of Directors of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, held on the \_\_\_day of \_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_, a resolution was duly passed and adopted authorizing (Name)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_as (Title)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_of the corporation to execute agreements on behalf of the corporation and providing that his/her execution thereof, attested by the secretary of the corporation, shall be the official act and deed of the corporation.

I further certify that said resolution remains in full force and effect.

 IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_, day of \_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_.

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

Print: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**CERTIFICATE OF AUTHORITY**

**(IF PARTNERSHIP)**

 I HEREBY CERTIFY that at a meeting of the Board of Directors of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a partnership organized and existing under the laws of the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, held on the \_\_\_day of \_\_\_\_\_\_\_\_, \_\_\_\_\_, a resolution was duly passed and adopted authorizing (Name)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_as (Title)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of the partnership to execute agreements on behalf of the partnership and provides that his/her execution thereof, attested by a partner, shall be the official act and deed of the partnership.

I further certify that said partnership agreement remains in full force and effect.

 IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_, day of \_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_.

Partner: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Names and addresses of partners:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Name | Street Address | City  | State | Zip |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |

**CERTIFICATE OF AUTHORITY**

**(IF JOINT VENTURE)**

Joint ventures must submit a joint venture agreement indicating that the person signing this bid is authorized to sign bid documents on behalf of the joint venture. If there is no joint venture agreement each member of the joint venture must sign the bid and submit the appropriate Certificate of Authority (corporate, partnership, or individual).

**CERTIFICATE OF AUTHORITY**

**(IF INDIVIDUAL)**

I HEREBY CERTIFY that, I (Name)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, individually and doing business as (d/b/a) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (If Applicable) have executed and am bound by the terms of the Agreement to which this attestation is attached.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_

Signed: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**NOTARIZATION**

STATE OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

 ) SS:

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

 The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, who is personally known to me or who has produced \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as identification and who (did / did not) take an oath.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SIGNATURE OF NOTARY PUBLIC

STATE OF FLORIDA

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

PRINTED, STAMPED OR TYPED

NAME OF NOTARY PUBLIC

**ATTACHMENT A - SCOPE OF WORK**

1. **GENERAL**

Under the direction of the Director or designee, Consultant is to assist in the programmatic management and administration of the City’s Office of Capital Improvements (OCI), consisting of, but not limited to, planned capital improvements, construction Projects, and the purchase of capital goods and equipment. Additionally, the Consultant will assist in management oversight of the production, the planning, design and the construction of all vertical and horizontal construction Projects.

It is the intent and purpose of the City that Consultant shall provide Capital Program Support Services (CPSS) hereunder as an extension of OCI’s resources by providing qualified administrative, technical and professional personnel to perform the duties and responsibilities assigned under the terms of this Agreement. The Consultant shall minimize reliance on OCI’s resources for assignments and activities provided under the Agreement, as may be authorized by the Director or designee.

Consultant shall use its best effort at all times to cause the Services to be performed in the most expeditious and cost effective manner consistent with the interests of the City.

* 1. **SCOPE OF SERVICES**
		1. Consultant may be required to perform all or some of the Services presented in this Agreement, depending on the needs of the City. The Consultant shall furnish the Services specifically authorized by this Agreement, which Services may encompass one or more professional disciplines in addition to those held by the Consultant.
		2. CPSS may include, but are not limited to, research and preparation of reports, studies, coordination with community organizations, project management, production management, construction administration, cost estimating, assistance with in house design projects, value engineering, scheduling, Geographical Information System (GIS) production/management, utility coordination, document control and records management, and administrative, and financial program management for the City’s OCI. The Services may further include but are not limited to planning, programming, field investigations, observations, feasibility studies, alternative analysis studies, and other activities that may be required to complete approved Work Orders.
		3. Consultant will not be responsible to assist with the purchase of capital goods and/or equipment, but shall assist with the fiscal monitoring of those capital Projects and including them in the annual Capital Improvements Programs.
		4. The City, at its option, may elect to expand, reduce or delete the extent of Work elements described in the Scope of Services, provided such action does not alter the intent of the Agreement. The Director or designee will request Consultant Services on an as-needed basis. There is no guarantee that any or all of the Services described in this Agreement will be assigned during the term of this Agreement.
	2. **COOPERATIVE WORK**

The Consultant will be responsible to Work in cooperation with OCI, City administration, officials of the City, client departments and agencies, community and other stakeholders, with consulting engineers and/or architects, and contractors to administer the planning, design and construction of OCI Projects, and as well as overall Program Management.

* 1. **NON-EXCLUSIVE RIGHT**

It is understood that any Work Order and Notice to Proceed will be issued under this Agreement at the sole discretion of the Director or designee and that the Consultant has no expectation, entitlement, right to or privilege to receive a Work Order or Notice to Proceed for any Project or Work. The City reserves at all times the right to perform any and all Services in-house, or with other private professional consultants, architects or engineers consistent with applicable law, including Section 287.055, Florida Statutes, (Consultants’ Competitive Negotiation Act) if required, or to discontinue or withdraw any or all Projects or Work or to exercise every other choice allowed by law.

This Agreement does not confer on the Consultant any particular, exclusive or special rights to any Work required by the City.

1. 1. **PAYMENTS**

The City will pay the Consultant in accordance with provisions and limitations of Attachment “B”. No payment will be made for the Consultant's time or services in connection with the preparation of any Work Order proposal or for any Work done in the absence of an executed Work Order, Notice to Proceed and /or Purchase Order.

# **ARTICLE A2 OVERVIEW** **OF CAPITAL PROGRAM SUPPORT SERVICES**

* 1. **PRIMARY SERVICES**

Where Director or designee, in his/her sole discretion, identifies the need for Services, Consultant shall provide a Work Order Proposal for the performance of said Services. The Services may include, but are not necessarily limited to the following:

* Overall assistance with **Administrative Program Management** Services for the Capital Improvements Program
* **Production Management**: Assistance with Programmatic management of capital Project Production, that is, the feasibility and other pre-design studies, financial and other analyses, scheduling, planning, review of construction and/or design delivery method, design, engineering.
* **Assistance with Construction Program** for Projects undergoing construction, activities may include, without limitation, monitoring the overall construction schedule of the Capital Improvements Program, coordinating schedules among Projects, estimating, work order development, assisting with community outreach, and providing regular construction-associated reports.

The award and execution of a Work Order or Notice to Proceed for said Services shall be solely at the City’s discretion and submittal of a proposal is no guarantee or assurance that the Consultant will be authorized to perform the Work.

Compensation for any Services shall be separately negotiated and may be lump sum, hourly rate-based or other method as deemed appropriate by the parties.

* 1. **SPECIALTY SERVICES**

Where Director or designee, in his/her sole discretion, identifies the need for Services related to a unique, and possibly large scale element, activity, sub-program or Project within the Program and such Services are unavailable from within the City’s personnel resources, hereinafter Specialty Services, Consultant shall provide a Work Order Proposal for the performance of said Services. Said proposal shall identify, in such detail as deemed appropriate by the Director or designee, the nature of the proposed Services, the extent of manpower and other resources required for such Specialty Services, and the individual(s), firm(s) and/or team that has qualifications and expertise in the field of the subject endeavor. The assignment of Work as Specialty Services shall be made solely at the discretion of the Director, and will be accomplished by a Work Order issued pursuant to this Agreement.

The award and execution of a Work Order or Notice to Proceed for said Specialty Services shall be solely at the City’s discretion and submittal of a proposal is no guarantee or assurance that the Consultant will be authorized to perform the Work as Specialty Services

Compensation for any Specialty Services shall be separately negotiated and may be lump sum, hourly rate-based or other method as deemed appropriate by the parties.

1. **PRIMARY SERVICES**

Those Services considered by the City to be fundamental to the successful management of the overall Capital Improvements Program shall be considered Primary Services and shall consist, generally of the following areas:

* 1. **ADMINISTRATIVE PROGRAM MANAGEMENT**

The Consultant, in its capacity as Program Manager, will **assist,** where/when Director or designee, in his/her sole discretion, identifies the need, in the comprehensive coordination, development, and management, including, but not limited to, the following Services and/or activities:

* + 1. **Program Implementation Strategies:** Research and recommend the most effective methods to implement all aspects of the overall Program.
		2. **Program Coordination**: Coordination and schedule management for Project design, procurement, contract negotiation and contract administration activities.
		3. **Program Logistics**: Develop comprehensive Program Work plans, schedules and budgets. Manage OCI’s “letting” plan for Projects, including the updating, revision, conflicts, deviation, and analyses to determine the impact of potential changes to the “letting” plan.
		4. **Facility Assessment**: Conduct an assessment of all City owned facilities to develop a plan for correcting deficiencies and a deferred maintenance program.
		5. **Information Systems**: Provide guidance in the implementation of a new in-house database information system.
		6. **Fiscal Management Assistance**: Develop financial projections, monitor and track Program funds, financing and cash flows. Assist with the development of program and financial data for potential financing options, including investment bonds, which may be utilized to implement the Program.
		7. **Reporting**: Furnish regular progress and status reports on the Program at intervals determined by the Director or as significant issues become known to the Consultant.
		8. **Staffing**: Maintain staffing efficiencies within the Consultant’s Team.
		9. **Procedure and Process Improvements:** Development of procedures and procedure manuals for various Program activities and processes. Develop or assist with the development of standard documents and/or forms.
		10. **Document Control and Records Management:** Development of a document management system for the Program; maintain documentation and correspondence relating to the Program that is accessible and will be owned by the City.
		11. **Annual Capital Plan**: Preparation of the annual Capital and Transportation Improvement Plan.
		12. **Inter-Agency Coordination:** Overall coordination of the City’s Program with other governmental agencies, such as the Florida Department of Transportation (FDOT), Miami-Dade County Public Works and Water and Sewer Departments, utility companies, regulatory agencies and with private developers.
		13. **ADA Compliance**: Provide regular and systematic reviews of all projects, during critical phases of project implementation (planning, design and construction) to assist in compliance with the Americans with Disabilities Act.
		14. Prepare official minutes of meetings for the Director or designee’s approval and dissemination.
	1. **PRODUCTION MANAGEMENT SERVICES**

The Consultant, in its capacity as Program Manager, will **assist,** where/when Director or designee, in his/her sole discretion, identifies the need, in the following Services and/or activities:

* + 1. **General Project Administration and Fiscal Activities**
			1. **Cost Control**: Provide value engineering throughout Project life cycles as requested, and verify constructability of plans and specifications.
			2. **Financial**: Prepare monthly cash draw projections, monitor monthly Project expenditures. Review, monitor and advise the City regarding the disposition of contractors and/or consultants payment requisitions. Assist with timely submission of payment requisitions to meet cash flow commitments. Monitor Project funding, and prepare financial projections as required.
			3. **Reporting**: Provide progress reports and status information on assigned Project(s) to City designees at frequencies identified by Director or designee.
			4. **Communication and Outreach**: At the direction of the Director or designee attend and address meetings with City officials, neighborhood groups, and private citizens concerning Projects, respond to questions and concerns about the Project at City Commission meetings, assist the City with public information, notifications and public meetings required in relation to assigned design construction projects.
			5. **Information Management**, Document Control: Maintain files of all documentation and correspondence relating to the Program and specific Projects in an orderly system which will be submitted to the City upon completion of the Project and/or Program.
			6. **Legal and Other Services**: Should legal issues arise relating to a Project, provide records, depositions and testimony about affected Projects. Provide consulting Services on other matters relating to the Projects and/or Program.
		2. **Design and Production Activities**

The Consultant, in its capacity as Program Manager, will **assist,** where/when Director or designee, in his/her sole discretion, identifies the need, in the following Services and/or activities:

* + - 1. **Project Scoping**: Devise and/or confirm detailed Project scopes with staff and client departments commensurate with funding. Verify the accuracy of Architect’s/engineer’s budget and design estimates against cash flow commitments. Consultant shall consider prioritization and design alternates as contingency measures to verify that cash flow commitments are achieved.
			2. **Schedules and Budgets**: Develop Work plans, schedules and budgets for the overall Program and for assigned Projects. Coordinate the design, preparation of construction documents, procurement/bidding and establishment of construction schedules with City staff.
			3. **Reviews**: Provide design and constructability reviews of plans and specifications at progress intervals. Such reviews shall not relieve the designer of record of liability associated with any errors or omissions in the plans and specifications, the responsibility of which shall remain solely with the designer of record.
			4. **ADA Compliance**: Review compliance with handicapped accessibility requirements and maintain documentation/justification when full compliance cannot be achieved. Such review shall not relieve the designer of record of liability associated with any errors or omissions in the plans and specifications, the responsibility of which shall remain solely with the designer of record.
			5. **Permits and Approvals**: Facilitate and/or assist the City in obtaining all Federal, State and local permits or approvals (from agencies such as Miami-Dade Water and Sewer, Department of Environmental Resource Management (DERM), Environmental, and Department of Health), etc. Review such permits for consistency with City approved plans and for special requirements or conditions, if any. It is the responsibility of the designer of record to file for and obtain all permits.
			6. **Utility Coordination**: Facilitate comprehensive utility coordination to assist with conflict resolution and coordination among City, designers of record, and various utility capital plans and owners.
			7. **Design Criteria Standards**: Development and revision of existing design criteria, standard and directive drawings, and construction specifications, design drawing standards, Computer-aided design and drafting (CADD) and other similar standards and criteria to ensure best business practices are utilized.
			8. **Public Outreach**: Assist in coordinating and hosting of periodic meetings at frequencies determined by the Director or designee, to promote best practices by City and industry.
		1. **Bids and Contracts**
			1. Review appropriateness of architectural and engineering consultant and contractor fee proposals with OCI personnel as appropriate.
			2. Provide input and assist with the selection and evaluation of consultants, contractors, and other service providers.
			3. Assist with preparation of award documents, grant applications, and assist with the administration of grants.
			4. Manage and oversee the selection, monitoring and oversight of Job Order Contracts in use by the City; assist in the preparation, evaluation and award of new Job Order Contracts if deemed necessary by Director.
			5. Assist in negotiations with architectural and engineering consultants and/or contractors regarding price proposals and/or adjustments in time for performance of Services.
			6. Assist in the review and analysis of contractor claims as well as claims by the City against contractors and consultants.
	1. **CONSTRUCTION ADMINISTRATION**

The City of Miami has contracted separately with various firms providing construction engineering and observation (CEO) services. The Program Manager will assist the City, where/when Director or designee, in his/her sole discretion, identifies the need, in the management of the CEO services, including the following tasks:

* + 1. Provide administrative coordination between active construction projects in the same or adjacent areas.
		2. Visit the jobsites periodically and as needed to monitor construction progress.
		3. Review and recommend approval of requests for change orders.
		4. Verify that Contractors have filed safety and affirmative action policies. However, Program Manager shall not be responsible for jobsite safety or for contractor’s failure to comply with affirmative action and safety policies.
		5. Administer construction contracts.
		6. Devise and implement initiatives and proactively assist contractors in methods intended to minimize potential disturbances to public during construction.
		7. Coordinate special inspections including major trades, as requested by the Director or designee.
		8. Review, monitor and recommend approval of payment requisitions from the Contractor and other Program Managers.
		9. Monitor monthly construction related expenditures by the City.
		10. Coordinate and assist in hosting of periodic meetings at frequencies determined by the Director or Designee with contractors to promote best practices by City and industry.

**ARTICLE A4 SPECIALTY SERVICES**

The specific Scope of Services required as Specialty Services shall vary depending on nature of the specific endeavor, and may encompass any or all of the tasks described under Primary Services. The required Work shall be described in a Work Order Proposal that shall form the basis for a Work Order to be approved by the Director or designee.

**ARTICLE A5 STAFFING**

The Director or designee has the right to approve and regulate the Consultant’s workforce and approve specific Consultant’s employees. The Consultant will perform all Services described in this Scope of Services where/when Director or designee, in his/her sole discretion, identifies the need, by use of the Program Staff, as described below. The Director’s input regarding staff and Work assigned to Key Personnel and/or Staff for Specialty Services shall be duly considered by Consultant in preparing any individual Work Order proposal and failure to adequately address such concerns regarding staff assignments may be cause for Director’s rejection of same.

All staff shall be duly qualified, trained and/or licensed to perform the Work assigned to them.

The Consultant shall designate a Program Coordinator to manage this Agreement who shall be located at an office maintained by the Consultant. This Program Coordinator shall be responsible for all administrative functions associated with the Agreement. This individual and any other employees of the Consultant performing administrative functions, which are not located at the MRC, shall be part of the Consultant’s overhead and not direct billable charges under this Agreement. The Program Coordinator shall be eligible for billable charge when performing specific, technical functions when so requested by the Director or designee.

* 1. **PROGRAM STAFF**

A portion of the Primary Services shall be performed by the Consultant’s Key Personnel assigned on a full-time basis and housed at the MRC building. Such personnel shall be billed to the City on a monthly lump sum basis.

Any modification in the Scope of Work assigned to the Key Personnel should trigger a corresponding modification in the Lump Sum Compensation, as provided in Article B3.01-2.

Upon award of an Agreement the Director or designee shall issue a Work Order covering the initial Key Personnel which shall reflect the monthly levels of compensation and Services and a separate Work Order covering those individuals assigned to perform what would be considered Specialty Services, which shall reflect the methods and levels of compensation.

* 1. **STAFFING FOR SPECIALTY SERVICES**

The Work assignments performed by these staff will be requested in writing by the Director or designee for individual or short term tasks, or for long-term and continuing service tasks, associated with any element of the Scope of Services. The level of effort anticipated for these staff members and their assignments will be analyzed by the Director or his/her designee on an as needed basis and the progress will be measured through the Monthly Progress Report to accompany the monthly invoicing.

Staff shall be assigned via Work Order to a given scope of Services. Individual Work Orders shall depict staff and/or activities as being offered on a lump sum, performance basis or hourly-rate, limiting amount basis.

* 1. **STAFFING CHANGES**

If additional staff is warranted in the opinion of the Consultant due to workload issues, a written request will be made by Consultant to the Director or designee whose written approval is required as described below.

* + 1. **Changes due to Absence or Termination:** If there are changes in the staff depicted in an authorized Work Order, particularly with Key Personnel as identified in the Proposers’ RFQ submittal, be absent due to voluntary or involuntary termination, that position will be replaced within five (5) business days of the date of separation, or as requested by the Director or designee. Should an individual staff, particularly Key Personnel as identified in the Proposers’ RFQ submittal be absent for more than 15 consecutive business days due to vacation, illness or other matter, Consultant shall provide a qualified replacement that is acceptable to the Director or designee. Director or designee in Director or designee’s sole discretion may additionally request qualified replacement staff due to absences of less than 15 business days if warranted by the nature of the Work handled by that staff. The Director or designee may request one or more resumes for any personnel to be assigned and may also request to interview the proposed personnel and select the most qualified person (s), in the City’s sole opinion. Selection of such a person to work on the Program does not change the Consultant’s sole responsibility and liability for the performance and actions of said person. Such changes shall be noted and approved in writing.
		2. **Changes due to Work Requirements:** Director or designee’s approval shall be in writing for all additional or replacement Program Staff not included in the Proposal/Work Order and estimated to work in excess of 20 hours per month in total. Consultant shall provide a written proposal to Director detailing anticipated man-hour and related requirements for the task or activity to be assigned to additional Key Personnel or Staff assigned for Specialty Services. The Director or designee may request one or more resume for any personnel to be assigned and may also request to interview the proposed personnel and select the most qualified person, in the City’s sole opinion. Selection of such a person to work on the Program does not change the Consultant’s sole responsibility and liability for the performance and actions of said person.

**ARTICLE A6** **ASSIGNMENT OF WORK**

It is the intent and purpose of the City that Consultant shall provide the Primary Services hereunder as an extension of OCI’s resources as may be authorized by the Director. It is envisioned that areas of responsibilities and specified tasks will be assigned by the Director or designee.

1.

### **A6.01-1 Work Orders:** When a specific task is above and beyond the scope of the initial Work Order assigned to Key Personnel Program Support Staff or Program Support Staff assigned to Specialty Services Work Order, the Director or designee will request a Work Order Proposal from the Consultant for Services based on a proposed Scope of Services provided by the Director or designee. The Consultant and Director or designee, and others if appropriate, may have preliminary meetings, if warranted, to further define the Scope of Work and to resolve any questions regarding the proposed Project. The Consultant shall then prepare a written “Work Order Proposal” for the required Services generally following the guidelines provided by OCI, indicating the proposed Scope of Services, time of performance, proposed fees, Sub consultants if warranted, deliverable items and/or documents, and timeframe to complete the Work. The Work Order Proposal shall depict detailed staffing commitments for the proposed Services and the method of compensation, either Lump Sum or Hourly Rate/Limiting Amount. The Consultant shall not be compensated for the preparation or Work Order Proposals.

When consensus is reached, the Consultant shall prepare a revised and final Work Order Proposal which will be attached and incorporated to the Work Order authorized by the Director or designee. Upon acceptance of the Work Order Proposal a “Notice to Proceed” will be issued by the Director or designee.

 No guarantee is made as to how many and the extent of Work Orders issued to the Consultant.

# **SCHEDULE A1 - SubConsultants**

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| **FIRM NAME** | **CONSULTING FIELD** |
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**SCHEDULE A2 – KEY STAFF**

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| **NAME** | **JOB CLASSIFICATION** |
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# **ATTACHMENT B - COMPENSATION AND PAYMENTS**

**ARTICLE B1 METHOD OF COMPENSATION**

The fees for Professional Services for each Work Order shall be determined by one of the following methods or a combination thereof, at the option of the Director or designee, with the consent of the Consultant.

1. A Lump Sum as defined in Section B3.01.
2. An Hourly Rate as defined in Section B3.02 and at the rates set forth pursuant to the same.
	1. **COMPENSATION LIMITS**

The aggregate sum of all payments for fees and costs, including reimbursable expenses, to the Consultant payable by the City under this Agreement shall be limited to the amount specified in Article 2, Section 2.05-1 Compensation Limits, as the maximum compensation limit for cumulative expenditures under this Agreement. Under no circumstances will the City have any liability for work performed, or as otherwise may be alleged or claimed by the Consultant, beyond the cumulative amount provided herein, except where specifically approved in accordance with the City Code by the City Manager or City Commission as applicable as an increase to the Agreement and put into effect via an Amendment to this Agreement.

* 1. **CONSULTANT NOT TO EXCEED**

Absent an amendment to the Agreement or to any specific Work Order, any maximum dollar or percentage amounts stated for compensation shall not be exceeded. In the event they are so exceeded, the City shall have no liability or responsibility for paying any amount of such excess, which will be at the Consultant’s own cost and expense.

1. **WAGE RATES**
	1. **FEE BASIS**

All fees and compensation payable under this Agreement shall be formulated and based upon the averages of the certified Wage Rates that have been received and approved by the Director. The averages of said certified Wage Rates are summarized in Schedule B1 incorporated herein by reference. Said Wage Rates are the effective direct hourly rates, as approved by the City, of the Consultant and Sub-Consultant employees in the specified professions and job categories that are to be utilized to provide the services under this Agreement, regardless of manner of compensation.

* 1. **EMPLOYEES AND JOB CLASSIFICATIONS**

Schedule B1 identifies the professions, job categories and/or employees expected to be used during the term of this Agreement. These include architects, engineers, landscape architects, professional interns, designers, CADD technicians, project managers, GIS and environmental specialists, specification writers, clerical/administrative support, and others engaged in the Work. In determining compensation for a given Scope of Work, the City reserves the right to recommend the use of the Consultant employees at particular Wage Rate levels.

* 1. **MULTIPLIER**

For Work assigned under this Agreement, a maximum multiplier of 2.9 for home office and 2.4 for field office shall apply to Consultant’s hourly Wage Rates in calculating compensation payable by the City. The field office multiplier will be utilized for full time staff assigned to the City of Miami and housed at a City facility. Should the Consultant have an approved multiplier with the State of Florida or Miami Dade County the City may elect to utilize of these multipliers should they be less than above stipulated rates. Said multiplier is intended to cover Consultant employee benefits and Consultant’s profit and overhead, including, without limitation, office rent, local telephone and utility charges, office and drafting supplies, depreciation of equipment, professional dues, subscriptions, stenographic, administrative and clerical support, other employee time or travel and subsistence not directly related to a project. Failure to comply with this section shall be cause for cancellation of this Agreement. The Consultant and all Sub Consultants shall provide to the City current certified audit statements reflecting their overhead at the request of the City.

* 1. **CALCULATION**

Said Wage Rates are to be utilized by the Consultant in calculating compensation payable for specific assignments and Work Orders as requested by the City. The Consultant shall identify job classifications, available staff and projected man-hours required for the proper completion of tasks and/or groups of tasks, milestones and deliverables identified under the Scope of Work as exemplified in Schedule A2, Key Staff.

* 1. **EMPLOYEE BENEFITS AND OVERHEAD**

Regardless of the method of compensation elected herein, compensation paid by the City shall, via the Multiplier, cover all the Consultant costs including, without limitation, employee fringe benefits (e.g. sick leave, vacation, holiday, unemployment taxes, retirement, medical, insurance and unemployment benefits) and an overhead factor. Failure to comply with this section shall be cause for cancellation of this Agreement.

* 1. **ESCALATION**

There shall be no escalation clause as part of this Agreement.

1. **COMPUTATION OF FEES AND COMPENSATION**

The City agrees to pay the Consultant, and the Consultant agrees to accept for services rendered pursuant to this Agreement, fees computed by one or a combination of the methods outlined above, as applicable, in the following manner:

* 1. LUMP SUM

Compensation for a Scope of Work can be a Lump Sum and must be mutually agreed upon in writing by the City and the Consultant and stated in a Work Order. Lump Sum compensation is the preferred method of compensation.

### **B3.01-1 Lump Sum**: shall be the total amount of compensation where all aspects of Work are clearly defined, quantified and calculated.

### **B3.01-2 Modifications to Lump Sum:** If the City authorizes a substantial or material change in the Scope of Services or level of staffing, the Lump Sum compensation for that portion of the Services may be equitably and proportionately adjusted by mutual consent of the Director or designee and Consultant, subject to such additional approvals as may be required by legislation or ordinance.

### **B3.01-3** Lump Sum compensation shall be calculated by Consultant, utilizing the Wage Rates established herein including multiplier, and reimbursable expenses as attached in Schedule B2. Prior to issuing a Work Order, the City may require Consultant, to verify or justify its requested Lump Sum compensation. Such verification shall present sufficient information as depicted in Schedule A2.

* 1. **HOURLY RATE FEES**

**B3.02-1** Hourly Rate Fees shall be those rates for Consultant and Sub consultant employees identified in Schedule B1 Wage Rates. All hourly rate fees will include a maximum not to exceed figure, inclusive of all costs expressed in the contract documents. The City shall have no liability for any fee, cost or expense above this figure. Consultant shall maintain timesheets for all individuals compensated on an hourly basis. Said timesheets are to reflect the name and title of the individual, work week, all Work performed during the work week, and the hours associated with each task performed. Timesheets must account for the total number of authorized work hours in the work week.

**B3.02-2 CONDITIONS FOR USE**

Hourly Rate Fees shall be used only in those instances where the parties agree that it is not possible to determine, define, quantify and/or calculate the complete nature, and/or aspects, tasks, man-hours, or milestones for a particular Project or portion thereof at the time of Work Order issuance. Hourly Rate Fees may be utilized for Additional Work that is similarly indeterminate. In such cases, the City will establish an Allowance in the Work Order that shall serve as a Not to Exceed Fee for the Work to be performed on an Hourly Rate Basis.

 **B3.02-3** **OVERTIME**

For Staff, whose services are paid based on hours Work is performed Consultant shall provide written justification for use of overtime in advance of occurring such overtime and, must obtain advance written approval of the Director or designee before the use of overtime. Failure to obtain prior written approval shall result in the City denying any request for compensation for the incurred overtime. The Director may authorize the use of overtime, subject to the following limitations that the overtime may only be used for Staff who is performing Specialty Services and such Staff shall not be exempt employees as defined under the Federal Fair Labor Standards Act. Further, overtime compensation shall not exceed one and one half (1-1/2) times the employee’s regular hourly rate, as provided in Schedule B1. The regular repeated use of overtime is discouraged and may be denied by Director or designee.

* 1. **REIMBURSABLE EXPENSES**

Any fees for authorized reimbursable expenses shall not include charges for the Consultant handling, office rent or overhead expenses of any kind, including local telephone and utility charges, office and drafting supplies, depreciation of equipment, professional dues, subscriptions, etc., reproduction of drawings and specifications (above the quantities set forth in this Agreement), mailing, stenographic, clerical, or other employees time or travel and subsistence not directly related to a project. All reimbursable services shall be billed to the City at direct cost expended by the Consultant. City authorized reproductions in excess of sets required at each phase of the Work will be a Reimbursable Expense.

The City will reimburse the Consultant for authorized Reimbursable Expenses pursuant to the limitations of this Agreement as verified by supporting documentation deemed appropriate by Director or designee including, without limitation, detailed bills, itemized invoices and/or copies of cancelled checks.

B3.04 F**EES for SPECIALTY SERVICES**

The Consultant may be authorized to perform Specialty Services for which additional compensation and/or Reimbursable Expenses, as provided in this Agreement.

**B3.04-1 Determination of Fee**

The compensation for such services will be one of the methods described herein: mutually agreed upon Lump Sum or Hourly Rate with a Not to Exceed Limit.

* + 1. **Procedure and Compliance**

An independent and detailed Notice to Proceed, and an Amendment to a specific Work Order, shall be required to be issued and signed by the Director for each additional service requested by the City. The Notice to Proceed will specify the fee for such service and upper limit of the fee, which shall not be exceeded, and shall comply with the City of Miami regulations, including the Purchasing Ordinance, the Consultant’s Competitive Negotiation Act, and other applicable laws.

* + 1. **Fee Limitations**

For all Specialty Services to be provided by Sub Consultants, the Consultant shall not apply any mark-up or multiplier. For all reimbursable services the Consultant will be reimbursed based on actual costs.

**B3.05 PAYMENT EXCLUSIONS**

The Consultant shall not be compensated by the City for revisions and/or modifications to drawings and specifications, for extended construction administration, or for other work when such work is due to errors or omissions of the Consultant as determined by the City.

**B3.06 FEES RESULTING FROM PROJECT SUSPENSION**

If a project is suspended for the convenience of the City for more than three months or terminated without any cause in whole or in part, during any Phase, the Consultant shall be paid for services duly authorized, performed prior to such suspension or termination, together with the cost of authorized reimbursable services and expenses then due, and all appropriate, applicable, and documented expenses resulting from such suspension or termination. If the Project is resumed after having been suspended for more than three months, the Consultant’s further compensation shall be subject to renegotiations.

1. **PAYMENTS TO THE CONSULTANT**
	1. **PAYMENTS GENERALLY**

Payments for Basic Services may be requested monthly in proportion to Services performed during the prior month. For the Lump Sum portion of this Agreement, payments shall be made monthly in an amount equal to 1/12th the annual Lump Sum total compensation. Hourly Rate payments shall be made on the basis of actual hours worked based on the Hourly Rate Fee, accompanied by a duly certified invoice, giving names, classification, salary rate per hour (not to exceed the values depicted in Schedule B1), hours and associated tasks worked and total charge for all personnel directly engaged Services.

Recurring Reimbursement Expenses established at an annual lump sum as shown in Schedule B3 may be invoiced monthly, and paid as noted above for the Lump Sum portion of the Agreement. Other, pre-approved Variable Reimbursement Expenses are to be invoiced within 120 days of the Consultant’s expenditure thereof.

Sub Consultant’s fees and Reimbursable Expenses shall be billed to the City in the actual amount paid by Consultant.

Consultant shall utilize the City standard Consultant Invoice Form available on the OCI website <http://www.miamigov.com/CITP/forms.html>. Failure to submit invoice(s) within 60 days following the provision of Services contained in such invoice may be cause for a finding of default.

* 1. **MONTHLY PROGRESS REPORT**

In addition to the invoice, the Consultant shall submit a Monthly Progress Report (Report) detailing the Services provided and activities undertaken by Consultant’s staff, inclusive of all Staff assigned to Specialty Services. The Report shall also provide details as to the status of all assignments, tasks, activities and deliverables and associated hours as may be applicable. The Report shall also provide an anticipated date of completion for each item included in the Report.

City shall reject any invoice not accompanied by a Monthly Progress report. The format and content of the Monthly Progress Report shall be subject to the approval of the Director or designee.

* 1. **BILLING – HOURLY RATE**

Invoices submitted by the Consultant shall be sufficiently detailed and accompanied by supporting documentation to allow for proper audit of expenditures. When services are authorized on an Hourly Rate basis, the Consultant shall submit for approval by the Director, a duly certified invoice, giving names, classification, salary rate per hour, hours worked and total charge for all personnel directly engaged on a project or task. To the sum thus obtained, any authorized Reimbursable Services Cost may be added. The Consultant shall attach to the invoice all supporting data for payments made to and incurred by the Sub-Consultants engaged on the Project. In addition to the invoice, the Consultant shall, for Hourly Rate authorizations, submit a progress report giving the percentage of completion of the Project development and the total estimated fee to completion.

* 1. **PAYMENT FOR ADDITIONAL SERVICES AND REIMBURSABLE EXPENSES**

Payment for Additional Services may be requested monthly in proportion to the services performed. When such services are authorized on an Hourly Rate basis, the Consultant shall submit for approval by the Director, a duly certified invoice, giving names, classification, salary rate per hour, hours worked and total charge for all personnel directly engaged on a project or task. To the sum thus obtained, any authorized Reimbursable Services Cost may be added. The Consultant shall attach to the invoice all supporting data for payments made to or costs incurred by the Sub-Consultants engaged on the project or task.

In addition to the invoice, the Consultant shall, for Hourly Rate authorizations, submit a progress report giving the percentage of completion of the Project development and the total estimated fee to completion.

* 1. **DEDUCTIONS**

No deductions shall be made from the Consultant’s compensation on account of liquidated damages assessed against contractors or other sums withheld from payments to contractors.

1. **REIMBURSABLE EXPENSES**
	1. **GENERAL**

Any fees for authorized reimbursable expenses shall not include charges for Consultant’s handling, office rent or overhead expenses of any kind, including depreciation of equipment, professional dues, subscriptions, etc., or employee’s time or travel and subsistence not directly related to the Program or a Project(s). Reimbursable expenses shall be billed to the City at direct cost expended by the Consultant.

The City will reimburse the Consultant for authorized Reimbursable Expenses pursuant to the limitations of this Agreement as verified by supporting documentation deemed appropriate by Director or designee including, without limitation, detailed bills, itemized invoices and/or copies of cancelled checks. Documentation shall be submitted with invoices for Variable Reimbursement Expenses. For Recurring Reimbursement expenses, the supporting documentation for the annual lump sum amount shall be included in the Proposal/Work Order and no further supporting documentation will be required.

Reimbursable Expenses shall be identified and quantified, to the extent possible, in each Work Order.

Reimbursable Expenses are those items authorized by the City outside of or in addition to the Scope of Work as identified in the Work Order (as Basic Services and/or Additional Services) and consist of actual expenditures made by the Consultant and the Consultant’s employees, Sub consultants, and Special Sub consultants in the interest of the Work for the purposes identified below:

* 1. **TYPES OF REIMBURSABLE EXPENSES**

As depicted in **Schedule B2**, Reimbursable Expenses are to be set as a Monthly Lump Sum amount or as Variable Reimbursement given as a limiting amount primarily attributable to Key Personnel or allowance, subject to the advance approval of the Director or designee for direct expenses.

Reimbursable Expenses are shown in **Schedule B2**. Actual direct costs paid by Consultant for Variable Reimbursement Expenses shall be the basis of invoice to City, subject to the advance approval of the Director or designee as provided below.

* 1. **AUTHORIZATION**

Both Recurring Reimbursements and estimates of Variable Reimbursements, as shown in Schedule B2, are to be identified Variable Reimbursement Expenses for all travel and per diem, miscellaneous items and any other item or category shall be subject to specific written advance approval of the Director or designee using forms provided to the Consultant subsequent to award of the Agreement.

* 1. **DEFINITIONS and CATEGORIES**

Reimbursable Expenses are those items authorized by the City outside of or in addition to professional fees as identified in the Work Order and consist of actual expenditures made by the Consultant and the Consultant’s employees, or Sub consultant, in the interest of the Work for the purposes identified below:

### **B5.04-1**

* + 1. **Travel And Per Diem**

Identifiable per diem, meals and lodging, lodging, taxi fares and miscellaneous travel-connected expenses for Consultant’s personnel subject to the limitations of Section 112.061 Florida Statutes as amended. Meals for class C travel inside Miami-Dade or Broward County will not be reimbursed. Meals and lodging expenses will not be reimbursed for temporarily relocating Consultant’s employees from one of Consultant’s offices to another office if the employee is relocated for more than ten (10) consecutive Working days. Lodging will be reimbursed only for room rates equivalent to Holiday Inn, Howard Johnson or Ramada Inn. Governmental lodging or meals will not be reimbursed that result from travel within Miami-Dade, Broward or Palm Beach Counties.

**B5.04-2 Permit Fees**

All Permit fees paid to regulatory agencies for approvals directly attributable to the Project. These permit fees do not include those permits required to be paid by the construction Contractor.

**B5.04-3 Miscellaneous Reimbursable Expenses**

All other expenses as included in **Schedule B2** or those otherwise requested in advance and approved in writing by the Director or designee are eligible for reimbursement as Variable Reimbursements.

* 1. **REIMBURSEMENTS TO THE SUB-CONSULTANTS**

Reimbursable Sub-Consultant’s expenses are limited to the items described above when the Sub-Consultant agreement provides for reimbursable expenses and when such agreement has been previously approved in writing by the Director and subject to all budgetary limitations of the City and requirements of ARTICLE B5 herein.

1. **COMPENSATION FOR REUSE OF PLANS AND SPECIFICATIONS**
	1. **GENERAL**

It is understood that all Consultant agreements and/or work Orders for new work will include the provision for the re-use of plans and specifications, including construction drawings, at the City’s sole option, by virtue of signing this agreement they agree to a re-use in accordance with this provision without the necessity of further approvals, compensation, fees or documents being required and without recourse for such re-use.

**ATTACHMENT B - COMPENSATION**

**SCHEDULE B1 – WAGE RATES SUMMARY**

|  |  |  |
| --- | --- | --- |
| **JOB CLASSIFICATION** | **NEGOTIATED HOURLY RATE** | **ADJUSTED****AVERAGE HOURLY RATE** **(Multiplier Applied)** |
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**SCHEDULE B2 – ESTIMATE OF REIMBURSABLE EXPENSE**

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| --- |
| **PRIMARY SERVICES** |
| **VARIABLE REIMBURSEMENT EXPENSES - MAXIMUM ANNUAL TOTALS** |
| **Description** | **YEAR 1** | **YEAR 2** | **YEAR 3** | **YEAR 4** | **Notes** |
| Travel and Per Diem |  |  |  |  |  |
| Permit Fees |  |  |  |  |  |
| Miscellaneous |  |  |  |  |  |
| **SUBTOTAL** |  |  |  |  |  |
| **RECURRING REIMBURSEMENT EXPENSES - MAXIMUM ANNUAL TOTALS** |
| **Description** | **YEAR 1** | **YEAR 2** | **YEAR 3** | **YEAR 4** | **Notes** |
| Travel and Per Diem |  |  |  |  |  |
| Permit Fees |  |  |  |  |  |
| Miscellaneous |  |  |  |  |  |
| **SUBTOTAL** |  |  |  |  |  |
| **SUB CONSULTANTS (VARIABLE REIMBURSABLE)** |
| (Name) |  |  |  |  |  |  |
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| **SUBTOTAL** |  |  |  |  |  |  |
| **TOTAL PRIMARY** |  |  |  |  |  |  |

**SCHEDULE B2 – ESTIMATE OF REIMBURSABLE EXPENSE**

|  |
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| **SPECIALTY SERVICES**  |
| **VARIABLE REIMBURSEMENT EXPENSES - MAXIMUM ANNUAL TOTALS** |
| **Description** | **YEAR 1** | **YEAR 2** | **YEAR 3** | **YEAR 4** | **Notes** |
| Travel and Per Diem  |  |  |  |  |  |
|  Permit fees |  |  |  |  |  |
| Miscellaneous |  |  |  |  |  |
| **SUB-TOTAL** |  |  |  |  |  |
| **RECURRING REIMBURSEMENT EXPENSES - MAXIMUM ANNUAL TOTALS** |
| **Description** | **YEAR 1** | **YEAR 2** | **YEAR 3** | **YEAR 4** | **Notes** |
| Travel and Per Diem |  |  |  |  |  |
| Permit Fees |  |  |  |  |  |
| Miscellaneous |  |  |  |  |  |
| **SUB-TOTAL**  |  |  |  |  |  |
| **SUB CONSULTANTS (VARIABLE REIMBURSABLE)** |
| (Name) |  |  |  |  |  |  |
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| **SUB-TOTAL** |  |  |  |  |  |  |
| **TOTAL SPECIALTY** |  |  |  |  |  |  |
| **TOTAL****REIMBURSEMENT** |  |  |  |  |  |  |

**SCHEDULE B3 – EXPENSE VOUCHER**

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| **CAPITAL IMPROVEMENTS PROGRAM MANAGEMENT** |
| **VARIABLE REIMBURSEMENT** |
|  **ADVANCE APPROVAL** |
| (For expense items other than travel) |
|  |  |  |  |  |  |
| **Consultant:** |   |   |  |  |  |
|  |  |  |  |  |  |
| **Item Description** | **Purpose** | **Location** | **Estimated** |
| **□ Home Office** | **Unit** | **Qty** | **Amt** |
| **□ Field Office (MRC)** |
| **□ Other office**  |
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