

AGREEMENT
between
CITY OF COCONUT CREEK
and
KIMLEY-HORN AND ASSOCIATES, INC.
for
GENERAL PROFESSIONAL ENGINEERING SERVICES
RFQ NO. 07-09-25-11

This Agreement is made and entered into this _____ day of _____, 2025, by and between **CITY OF COCONUT CREEK**, a political subdivision of the State of Florida, its successors and assigns, hereinafter referred to as “**CITY**,”

AND

KIMLEY-HORN AND ASSOCIATES, INC., a Florida Corporation, its successors and assigns, hereinafter referred to as “**CONSULTANT**.”

WITNESSETH, in consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, **CITY** and **CONSULTANT** agree as follows:

ARTICLE I

DEFINITIONS AND IDENTIFICATIONS

For the purposes of this Agreement and the various covenants, conditions, terms and provisions which follow, the definitions and identifications set forth below are assumed to be true and correct and are therefore agreed upon by the parties.

1.1 CONTRACT ADMINISTRATOR

Whenever the term “**CONTRACT ADMINISTRATOR**” is used herein, it is intended to mean the City Manager or designee. In the administration of this Agreement, all parties may rely upon instructions or determinations made by the **CONTRACT ADMINISTRATOR**.

1.2 CONSTRUCTION CONTRACTOR

The person(s), firm(s), corporation(s) or other entity who enters into an agreement with CITY to perform the construction work desired by CITY relating to PROJECTS.

1.3 CONSULTANT

CONSULTANT, which is the professional organization with whom **CITY** has contracted for the performance of services pursuant to this Agreement.

1.4 CITY

City of Coconut Creek, Florida, a body corporate and politic and a political subdivision of the State of Florida.

1.5 PROJECT

The nature of the **PROJECT** is to provide Professional Engineering Services pursuant to RFQ No. 07-09-25-11, General Professional Engineering Services, Statement of Qualifications and EXHIBIT "A" – Negotiated Fee Schedule.

1.6 NOTICE TO PROCEED

A written statement issued by the CONTRACT ADMINISTRATOR directing CONSULTANT to begin work.

1.7 REIMBURSABLES

Whenever the term **REIMBURSABLES** is used herein, it is intended to mean actual expenses directly related to the performance of the services as set forth in this Agreement. **REIMBURSABLES** are limited to:

- a. Identifiable expenses of transportation in connection with the **PROJECT** subject to the provisions and limitations for public agencies established in Chapter 112, Florida Statutes as amended from time to time. Automobile travel inside Broward, Dade and Palm Beach Counties will be considered reimbursable expenses. Surface travel outside Florida and all air travel will be reimbursed only when prior written approval for such expense has been given by **CONTRACT ADMINISTRATOR**. Rental cars shall be mid-sized or smaller.
- b. Identifiable per diem, meals and lodgings, taxi fares and miscellaneous travel connected expenses for **CONSULTANT'S** personnel subject to the limitations of Chapter 112, Florida Statutes, as amended from time to time.
- c. Identifiable communication expenses for express mail charges.
- d. Identifiable cost of printing reproduction and aerial photography.
- e. Identifiable testing costs.
- f. Permit application fees. All fees paid to regulatory agencies for approvals directly attributable to the **PROJECT**. These permit fees do not include those permits required for the **CONSTRUCTION CONTRACTOR**.

1.8 BILLING RATE

Whenever the term **BILLING RATE** is used herein, it is intended to mean average base salaries and wages paid to personnel by employee category engaged directly on the **PROJECT**, including all fringe benefits, overhead and profit. **BILLING RATES** by the employee category are shown on **EXHIBIT "A" – NEGOTIATED FEE SCHEDULE**.

1.9 PROFESSIONAL SERVICES

Whenever the term **PROFESSIONAL SERVICES** is used herein, it is intended to mean those professional services provided to **CITY** on a day-to-day basis for specific tasks provided the estimated engineering costs for the specific tasks do not exceed Forty-Nine Thousand Nine Hundred Ninety-Nine Dollars and 99/100 (\$49,999.99). Typical tasks include response to field or engineering problems, attendance at meetings, review of bids and providing day-to-day assistance as required to respond to engineering issues, utility operations or field problems. The Aggregate of **PROFESSIONAL SERVICES** tasks may exceed \$49,999.99.

- a. **CITY** shall describe the task to be undertaken by **CONSULTANT**.

- b. **CONSULTANT** shall agree upon a level of effort and position category to be assigned to the specific task, and provide **CITY** with a proposal for the work.
- c. **CITY** shall authorize **CONSULTANT**, in writing, to provide professional services requested for the specific task.
- d. **CONSULTANT** shall be reimbursed by **CITY** at the **BILLING RATE** payable for each **CONSULTANT'S** employee category shown on **EXHIBIT "A."**

1.10 **TERM OF AGREEMENT**

This **AGREEMENT** shall be a continuing contract as defined by the Consultant's Competitive Negotiation Act (CCNA), as set forth in Section 287.055, Florida Statutes as amended from time to time and shall have an initial term of three (3) years beginning on the date first written on page 1 of this Agreement, with the right to extend the contract for two (2) additional one (1) year periods.

Costs for all services purchased under this Contract shall remain firm for the initial contract period. Costs for subsequent years and any extension term years shall be subject to an adjustment only if increases occur in the industry. However, unless very unusual and significant changes have occurred in the industry, such increases shall not exceed five percent (5%) per year or the latest yearly percentage increase in the Employment Cost Index (ECI), Total Compensation, Private Industry, Professional, Scientific, and Technical Services, Not Seasonally Adjusted as published by the Bureau of Labor Statistics, U.S. Department of Labor, whichever is less. The yearly increase or decrease in the ECI shall be the latest index published and available ninety (90) days prior to the end of the contract year then in effect compared to the index for the same quarter one (1) year prior. Any requested price increase shall be fully documented and submitted to the **CITY** at least ninety (90) days prior to the contract anniversary date. Any approved cost adjustments shall become effective upon the anniversary date of the contract. In the event the ECI or industry costs decline, the **CITY** shall have the right to receive from the **CONSULTANT** a reasonable reduction in costs that reflect such cost changes in the industry.

The **CITY** may, after examination, refuse to accept the adjusted costs if they are not properly documented, increases are considered to be excessive, or any decreases are considered to be insufficient. In the event the **CITY** does not wish to accept the adjusted prices and the matter cannot be resolved to the satisfaction of the **CITY**, the contract can be cancelled by the **CITY** upon giving thirty (30) days written notice to the **CONSULTANT**.

1.11 **TERMINATION**

a. **Termination for Cause: Immediate**

In the event the **CONSULTANT** defaults in or violates any of the terms, obligations, restrictions or conditions of this contract, the **CITY** may, upon written notice to the **CONSULTANT**, terminate this contract effective immediately upon receipt of notice as provided in this Agreement. The notice for immediate termination must state the date of termination and **CONSULTANT** must discontinue all work under this Agreement on that date. In the event of immediate termination, the **CITY** will have all legal and equitable remedies available to it, and may hold the **CONSULTANT** liable for any and all damages sustained by the **CITY** arising out of such default, including but not limited to costs of procurement and cover.

b. **Termination for Cause: Time to Correct**

In the event the **CONSULTANT** defaults in or violates any of the terms, obligations, restrictions or conditions of this contract, the **CITY** may, upon written notice to the **CONSULTANT** consistent with the "Notice" provisions of this Agreement, set forth the reason(s) for said termination and state a reasonable time-frame, not to exceed seven (7) business days, for the **CONSULTANT** to correct the conditions to the satisfaction of the **CITY**. In the event the **CONSULTANT** has failed to correct the condition(s) of the default or the default is not remedied to the satisfaction and approval of the **CITY** within the time-frame prescribed, the **CITY** may terminate the contract effective immediately as provided above. If **CONSULTANT** requests a hearing before the City Manager within the time-frame prescribed for correction, the City Manager may extend such time for correction to accommodate such hearing. Notwithstanding the above, the **CITY** will have all legal and equitable remedies available to it, including, but not limited to termination of the Agreement in which case the **CONSULTANT** will be liable for any and all damages arising from the default and breach of the Agreement.

c. **Termination for Convenience of City**

Upon thirty (30) calendar days written notice to the **CONSULTANT** as provided in the "Notice" provisions of this Agreement, the **CITY** may without cause and without prejudice to any other right or remedy, terminate the contract for the **CITY'S** convenience whenever the **CITY** determines that such termination is in the best interest of the **CITY**. Where the contract is terminated for the convenience of the **CITY** the notice of termination to the **CONSULTANT** must state that the contract is being terminated for the convenience of the **CITY** under the termination clause and the extent of termination. The **CONSULTANT** must discontinue all work on the appointed last day of service.

1.12 AGREEMENT SUBJECT TO FUNDING

This Agreement shall remain in full force and effect only as long as the expenditures provided for in the Agreement have been appropriated by the City Commission of the **CITY** of Coconut Creek in the annual budget for each fiscal year of this Agreement, and is subject to termination without any penalty due to lack of funding.

ARTICLE 2

PREAMBLE

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

2.1 **CITY** has met the requirements of the Consultants' Competitive Negotiation Act, as set forth in Section 287.055, Florida Statutes, and has selected **CONSULTANT** to perform the work of the specified nature as outlined in this Agreement.

2.2 Negotiations pertaining to the services to be performed by **CONSULTANT** were undertaken between **CONSULTANT** and **CITY**, and this Agreement incorporates the results of such negotiations.

ARTICLE 3

SCOPE OF SERVICES

- 3.1** **CONSULTANT'S** services shall consist of the tasks set forth in **EXHIBIT "A,"** attached hereto and made a part hereof, and shall include professional services, as applicable for the **PROJECT**. **CONSULTANT** shall provide all services as set forth in **EXHIBIT "A"** including all necessary, incidental and related activities and services required by the Scope of Services and contemplated in **CONSULTANT'S** level of effort.
- 3.2** The **CITY** reserves the right to add or delete tasks shown in **EXHIBIT "A"** as deemed necessary and based on fund availability. Added Tasks will be set forth in writing in a Work Authorization.
- 3.3** **CONSULTANT** and **CITY** acknowledge that the Scope of Services does not delineate every detail and minor work Task required to be performed by **CONSULTANT** to complete a **PROJECT**. If, during the course of the performance of the services included in this **AGREEMENT**, **CONSULTANT** determines that it should perform work to complete a **PROJECT**, which is outside the level of effort originally anticipated, **CONSULTANT** will notify **CONTRACT ADMINISTRATOR** in writing in a timely manner before proceeding with the work. If **CONSULTANT** proceeds with said work without notifying **CONTRACT ADMINISTRATOR** as provided in Article 6, said work shall be deemed to be within the original level of effort, whether or not specifically addressed in the Scope of Services. Notice to **CONTRACT ADMINISTRATOR** does not constitute authorization or approval by **CITY**. Performance of work by **CONSULTANT** outside the originally anticipated level of effort without prior written **CITY** approval is at **CONSULTANT'S** sole risk.
- 3.4** **REPRESENTATIVE OF CITY AND CONSULTANT**
It is recognized that questions in the day-to-day conduct of a **PROJECT** will arise. The **CONTRACT ADMINISTRATOR**, upon request by **CONSULTANT** shall designate in writing and shall advise **CONSULTANT** in writing of one or more **CITY** employees to whom all communications pertaining to the day-to-day conduct of **PROJECT** shall be addressed. **CONSULTANT** shall inform **CONTRACT ADMINISTRATOR** in writing of the representative of **CONSULTANT** to whom matters involving the conduct of **PROJECT** shall be addressed. **CONSULTANT** shall, at all times during this Agreement, have available for **CONSULTANT** or otherwise, an employee who shall be familiar with all work contemplated under this Agreement.
- 3.5** **INDEPENDENT CONTRACTOR**
CONSULTANT is an independent contractor under this Agreement. Personal services provided by the **CONSULTANT** shall be by employees of the **CONSULTANT** and subject to supervision by the **CONSULTANT**, and not as officers, employees, or agents of the **CITY**. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement shall be those of the **CONSULTANT**.
- 3.6** **WARRANTIES OF CONSULTANT**
CONSULTANT hereby warrants and represents as follows:
- a. At all times during the term of this Agreement, **CONSULTANT** shall maintain in good standing all required licenses, certifications and permits required under federal, state and local laws necessary for the performance under this Agreement.
 - b. At all times during this Agreement, **CONSULTANT** shall perform its obligations in a prompt, professional and businesslike manner.

3.7 **CONFLICT OF INTEREST**

The award of any contract hereunder is subject to the provisions of Chapter 112, Florida Statutes. **CONSULTANTS** must disclose with their bid the name of any officer, director, partner, proprietor, associate or agent who is also an officer or employee of the **CITY** or any of its agencies. Further, all **CONSULTANTS** must disclose the name of any officer or employee of the **CITY** who owns, directly or indirectly, an interest of five percent (5%) or more in the **CONSULTANT'S** firm or any of its branches or affiliate companies.

ARTICLE 4

TIME OF PERFORMANCE

- 4.1 **CONSULTANT** shall perform the services described in **EXHIBIT "A"** within the time periods specified in the **PROJECT SCHEDULE** included in **EXHIBIT "A."**
- 4.2 In the event **CONSULTANT** is unable to complete performance of services because of delays resulting from untimely review and approval by governmental authorities having jurisdiction over the **PROJECT**, and such delays are not the fault of **CONSULTANT**, **CITY** shall grant a reasonable extension of time for completing the work. It shall be the responsibility of **CONSULTANT** to notify the **CONTRACT ADMINISTRATOR** promptly, in writing, whenever a delay is anticipated or experienced, and to inform the **CONTRACT ADMINISTRATOR** of all facts and details related to the delay.
- 4.3 In the event **CITY** declares an emergency, the **CONSULTANT** shall make every reasonable effort to respond within two (2) hours, but under no circumstances, shall response time exceed four (4) hours.
- 4.4 **CONSULTANT** shall provide **CITY** with a current up-to-date list of emergency personnel at all times.

ARTICLE 5

COMPENSATION AND PAYMENT

- 5.1 **CITY** agrees to pay **CONSULTANT** as compensation for performance of all approved **PROFESSIONAL SERVICES** required under the terms of this Agreement and as described in **EXHIBIT "A."** In the event the **CITY** exercises the terms and conditions of 3.2 of Article 3, the contracted fees shall be adjusted accordingly.
- 5.2 The total contract amount includes full payment, including all labor, overhead, and other costs. No travel and meal costs are reimbursable unless incurred outside of Miami-Dade, Broward and Palm Beach Counties, and approved in writing in advance by the **CITY**. Any such costs are payable at the **CITY** reimbursement rate.
- 5.3 **CONSULTANT** shall submit billings, which are identified by the specific task, authorized under **PROFESSIONAL SERVICES** on a monthly basis in a timely manner for all **LABOR** and **REIMBURSABLES** attributable to the task. These billings shall identify the nature of the work performed, the total hours of work performed and the employee category of the individuals performing same. Billings shall itemize **REIMBURSABLES** by category and identify same as to the work personnel incurring the expense and the nature of the work with which such expense was associated. Where prior written approval by **CONTRACTOR ADMINISTRATOR** is required

for **REIMBURSABLES**, a copy of said approval shall accompany the billing for such **REIMBURSABLES**. External **REIMBURSABLES** and subconsultant fees must be documented by copies of invoices or receipts which describe the nature of the expenses and contain a project number or other identifier which clearly indicates the expense is identifiable to a task. Internal expenses must be documented by appropriate **CONSULTANT'S** cost accounting forms with a summary of charges by Category.

5.4 **CONSULTANT** shall bill identifiable subconsultant fees at the actual fees paid by **CONSULTANT**.

5.5 **CITY** agrees that it will use its best efforts to pay **CONSULTANT** within thirty (30) calendar days of receipt of **CONSULTANT'S** proper statement as provided above. The parties shall comply with Section 218.70, Florida Statutes, as amended from time to time, et seq. The Prompt Payment Act.

5.6 Payment will be made to **CONSULTANT** at:

KIMLEY-HORN AND ASSOCIATES, INC.

Contact Name, Title: Accounts Receivable

Address: PO BOX 932520

City, State, Zip Code: Atlanta, GA 31193-2520

Phone:

Email: payments@kimley-horn.com

5.7 **NO CONTINGENT FEES**

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

5.8 **TRUTH-IN-NEGOTIATION CERTIFICATE**

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

5.9 **ANTI-COLLUSION**

Only one (1) proposal from any individual, firm, partnership, or corporation, under the same or different names, will be considered. Should it appear to the **CITY** that more than one proposal was submitted, this will lead to rejection of all responses in which the **CONSULTANT** is involved, except for circumstances where **CONSULTANT** is the subcontractor listed on another **CONSULTANT'S** response.

ARTICLE 6

ADDITIONAL SERVICES AND CHANGES IN SCOPE OF WORK

- 6.1 Services related to a **PROFESSIONAL SERVICES** task, which would increase, decrease or which are outside the level of effort agreed upon by **CITY** and **CONSULTANT** shall be services for which **CONSULTANT** must obtain prior written approval of **CITY** before compensation can be paid.
- 6.2 Services related to a **WORK AUTHORIZATION**, which would increase, decrease or which are otherwise outside the Scope of Services or level of effort contemplated by a **WORK AUTHORIZATION** shall be services for which **CONSULTANT** must obtain the prior written approval from **CITY** before compensation can be paid. All terms for the performance of such services must be agreed upon in writing in a document of equal dignity herewith prior to any deviation from the terms of a **WORK AUTHORIZATION** and when properly executed shall become an Amendment to the **WORK AUTHORIZATION**.
- 6.3 **CITY** shall arrange for access to make all provisions for **CONSULTANT** to enter upon public and private property as reasonably required for **CONSULTANT** to perform its services under this Agreement.

ARTICLE 7

CITY'S RESPONSIBILITIES

- 7.1 **CITY** shall assist **CONSULTANT** by placing at **CONSULTANT'S** disposal all information it has available pertinent to the **PROJECT** including previous reports and any other data relative to a **PROJECT**.
- 7.2 **CITY** shall arrange for access to make all provisions for **CONSULTANT** to enter upon public and private property as reasonably required for **CONSULTANT** to perform its services under this Agreement.

ARTICLE 8

MISCELLANEOUS

- 8.1 **COMPLIANCE WITH THE DAVIS-BACON ACT**
 - a. All transactions regarding this Agreement shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29C.F.R. pt. 5 as may be applicable. The **CONSULTANT** shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
 - b. **CONSULTANTS** are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
 - c. Additionally, **CONSULTANTS** are required to pay wages not less than once a week.

8.2 COMPLIANCE WITH THE COPELAND “ANTI-KICKBACK” ACT

- a. **Consultant.** The **CONSULTANT** shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this Agreement.
- b. **Subcontracts.** The **CONSULTANT** shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime **CONSULTANT** shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- c. **Breach.** A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.”

8.3 COMPLIANCE WITH THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

- a. **Overtime requirements.** No **CONSULTANT** or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- b. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (b)(1) of this section the **CONSULTANT** and any subcontractors responsible therefor shall be liable for the unpaid wages. In addition, such **CONSULTANT** and subcontractors shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
- c. **Withholding for unpaid wages and liquidated damages.** The **CITY** shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the **CONSULTANT** or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime **CONSULTANT**, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
- d. **Subcontracts.** The **CONSULTANT** or subcontractors shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring

the subcontractors to include these clauses in any lower tier subcontracts. The prime **CONSULTANT** shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

8.4 CLEAN AIR ACT

- a. The **CONSULTANT** agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- b. The **CONSULTANT** agrees to report each violation to the **CITY** and understands and agrees that the **CITY** will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- c. The **CONSULTANT** agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

8.5 FEDERAL WATER POLLUTION CONTROL ACT

- a. The **CONSULTANT** agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- b. The **CONSULTANT** agrees to report each violation to the **CITY** and understands and agrees that the **CITY** will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- c. The **CONSULTANT** agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

8.6 SUSPENSION AND DEBARMENT

- a. This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the **CONSULTANT** is required to verify that none of the **CONSULTANT'S** principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- b. The **CONSULTANT** must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- c. This certification is a material representation of fact relied upon by the **CONSULTANT**. If it is later determined that the **CONSULTANT** did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the **CONSULTANT**, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

- d. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

8.7 BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352 (AS AMENDED)

CONSULTANTS who apply or bid for an award of one hundred thousand (\$100,000.00) dollars or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

8.8 PROCUREMENT OF RECOVERED MATERIALS

- a. In the performance of this Agreement, the **CONSULTANT** shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
 - 1) Competitively within a timeframe providing for compliance with the contract performance schedule;
 - 2) Meeting contract performance requirements; or
 - 3) At a reasonable price.
- b. Information about this requirement, along with the list of EPA designated items, is available at EPA's Comprehensive Procurement Guidelines website, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- c. The **CONSULTANT** also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."

8.9 EQUAL EMPLOYMENT OPPORTUNITY (CONSTRUCTION WORK)

During the performance of this Agreement, the **CONSULTANT** agrees as follows:

- a. The **CONSULTANT** will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The **CONSULTANT** will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The **CONSULTANT** agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- b. The **CONSULTANT** will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c. The **CONSULTANT** will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- d. The **CONSULTANT** will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e. The **CONSULTANT** will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- f. The **CONSULTANT** will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- g. In the event of the **CONSULTANT's** noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the **CONSULTANT** may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- h. The **CONSULTANT** will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The **CONSULTANT** will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

8.9 OWNERSHIP OF DOCUMENTS

All sketches, tracings, drawings, specifications, designs, design calculations, details, models, photographs, reports, surveys and other documents, plans and data that result from **CONSULTANT'S** services under this Agreement or that is provided in connection with this Agreement shall become and shall remain the property of the **CITY**. Copies of all AutoCAD and other similar software files shall be provided to **CITY**. No changes or revisions to the documents or data furnished by **CONSULTANT** shall be made by **CITY** unless **CONSULTANT'S** name and professional seal are removed from such changed or revised materials. All data required to be sealed and signed by a registered Professional Architect in the State of Florida shall not be modified, changed or altered or used for other purposes than those intended without the express written permission of **CONSULTANT**. **CITY** shall hold **CONSULTANT** harmless for any loss or expense for any damages arising out of the modification or use for other projects of **CONSULTANT'S** data and plans, without the specific adaptation by and consent of **CONSULTANT**.

8.10 PUBLIC RECORDS

CONSULTANT shall keep such records and accounts and require any and all **CONSULTANTS** and subconsultants to keep records and accounts as may be necessary in order to record complete and correct entries as to personnel hours charged to the project and any expenses for which **CONSULTANT** expects to be reimbursed. Such books and records will be available at all reasonable times for examination and audit by **CITY** and shall be kept for a period of five (5) years after the completion of all work to be performed pursuant to this Agreement or termination of the Agreement, whichever is later. Incomplete or incorrect entries in such books and records will be grounds for **CITY'S** disallowance of any fees or expenses based upon such entries.

- a. **CITY** is a public agency subject to Chapter 119, Florida Statutes, as amended from time to time. To the extent **CONSULTANT** is a **CONSULTANT** acting on behalf of the **CITY** pursuant to Section 119.0701, Florida Statutes, as amended from time to time, **CONSULTANT** shall comply with all public records laws in accordance with Chapter 119, Florida Statutes. In accordance with state law, **CONSULTANT** agrees to:
- 1) Keep and maintain all records that ordinarily and necessarily would be required by the **CITY** in order to perform the services.
 - 2) Upon request from the **CITY'S** custodian of public records, provide the **CITY** with a copy of the requested records or allow the records to be inspected or copies within a reasonable time at a cost that does not exceed the costs provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
 - 3) Ensure that public records that are exempt, or confidential and exempt, from public records disclosure are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the **CONSULTANT** does not transfer the records to the **CITY**.
 - 4) Upon completion of the services within this Agreement, at no cost, either transfer to the **CITY** all public records in possession of the **CONSULTANT** or keep and maintain public records required by the **CITY** to perform the services. If the **CONSULTANT** transfers all public records to the **CITY** upon completion of the services, the **CONSULTANT** shall destroy any duplicate public records that are exempt, or confidential and exempt, from public records disclosure requirements. If the **CONSULTANT** keeps and maintains public records upon completion of the services, the **CONSULTANT** shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the **CITY**, upon request from the **CITY'S** custodian of public records, in a format that is compatible with the information technology systems of the **CITY**.
 - 5) **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 CITY'S CUSTODIAN OF PUBLIC RECORDS AT 954-973-6774, PublicRecords@coconutcreek.net, 4800 West Copans Road, Coconut Creek, FL 33063.**

If **CONSULTANT** does not comply with this section, the **CITY** shall enforce the Agreement provisions in accordance

8.11 TRADE SECRETS AND PROPRIETARY CONFIDENTIAL BUSINESS INFORMATION

Documents submitted by **CONSULTANT** which constitute trade secrets as defined in Section 812.081, Florida Statutes, as amended from time to time, or proprietary confidential business information when held by the **CITY** as defined in Section 119.0713(5), Florida Statutes, as amended from time to time, and which are clearly marked or stamped as confidential by the

CONSULTANT at the time of submission to the **CITY**, will not be subject to public access. However, should a requestor of public records challenge **CONSULTANT'S** interpretation of the term "trade secrets" or "proprietary confidential business information," within five (5) days of such challenge, **CONSULTANT** must provide a separate written affidavit that includes an indemnification and release guarantee, as approved by the **CITY** Attorney or designee, to the **CITY** to support its claim that the alleged trade secrets or proprietary confidential business information actually constitutes same as defined by law. **CONSULTANT** must demonstrate the need for confidentiality of the documentation by showing a business advantage or an opportunity to obtain an advantage if the documentation was released. Otherwise, **CONSULTANT** is required to timely seek a protective order in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County to prevent the **CITY'S** release of the requested records.

8.12 ANTI-DISCRIMINATION

That **CONSULTANT** shall for itself, its personal representatives, successors in interests, assigns, subcontractors, and sub-lessees, as a part of the consideration hereof, hereby covenant and agree that:

- a. No person on the ground of race, color, religion, sex, national origin, age, marital status, political affiliation, familial status, disability, sexual orientation, pregnancy, or gender identity or expression, veteran or service member status shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of or performance of services described herein; and
- b. **CONSULTANT**, its personal representatives, successors in interests, assigns, subcontractors, and sub-lessees shall not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement with respect to hiring, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment because of race, color, religion, sex, national origin, age, marital status, political affiliation, familial status, disability, sexual orientation, pregnancy, or gender identity or expression, veteran or service member status.

8.13 SUBCONSULTANTS

In the event **CONSULTANT**, during the term of this Agreement, requires the services of any subconsultants, or other professional associates in connection with services covered by this Agreement, **CONSULTANT** must secure the prior written approval of the **CONTRACT ADMINISTRATOR**. As part of the approval process, **CITY** shall require subconsultant to comply with the terms of this Agreement, specifically but without limitations, the requirements of this Article 8. **CONSULTANT** shall be responsible for obtaining releases from subconsultants at the time the subconsultants are paid.

8.14 ASSIGNMENT

This Agreement, or any interest herein, shall not be assigned, transferred to, or otherwise encumbered by **CONSULTANT**, under any circumstances, without the prior written consent of **CITY'S CONTRACT ADMINISTRATOR**. Said consent shall be at **CITY'S** reasonable discretion and may not be unreasonably withheld. Notwithstanding the preceding, **CONSULTANT** may assign this contract to the acquiring party in connect with the sale of All or substantially All of its assets or of its equity or membership interests provided that notice is given to **CITY** within thirty (30) days of same.

8.15 INSURANCE REQUIREMENTS

- a. The **CONSULTANT** shall assume full responsibility and expense to obtain all necessary

insurance as required by the **CITY** of Coconut Creek. Neither **CONSULTANT** nor any subcontractor shall commence work under this contract until they have obtained all insurance required under this section and have supplied the **CITY** with evidence of such coverage in the form of an insurance certificate and endorsement. The certificate must name as additional insured the **CITY** of Coconut Creek and its Officers, Agents, Employees and Commission Members; and that such insurance is primary to any other insurance available to the additional insured with respect to claims covered under the policy and that insurance applies separately to each insured against whom claims are made or suit is brought, but the inclusion of more than one insured shall not operate to increase the insurer's limit of liability. All insurance policies herein required of the **CONSULTANT** shall be written by a company with a A.M. Best rating of A-VII or better that is duly authorized and licensed to do business in the State of Florida and shall be executed by agents, thereof that are duly licensed as agents in Florida. The **CONSULTANT** will ensure that all subcontractors will comply with the above guidelines and will maintain the necessary coverage throughout the term of this Agreement. Policies shall be "Occurrence" form. Each carrier will give the **CITY** sixty (60) days' notice prior to cancellation. Throughout the term of this contract, **CONSULTANT** and/or any and all subcontractors or anyone directly or indirectly employed by either of them shall maintain in force, at all times, insurance as follows:

1) **Workers' Compensation**

If the **CONSULTANT** is required to go on to **CITY** of Coconut Creek property to perform work or services as a result of this contract, it must have the statutory limits of coverage to apply for all employees in compliance with all applicable State of Florida and federal laws. The policy must include Employers Liability with a limit of one hundred thousand (\$100,000.00) each accident. The Contractor's Worker's Compensation carrier will provide a Waiver of Subrogation to the **CITY**. The **CONSULTANT** shall be responsible for the payment of all deductibles and self-insured retentions. The **CITY** requires that the **CONSULTANT** purchase a bond to cover the full amount of the deductible or self-insured retention.

2) **General Liability**

Commercial General Liability insurance with limits not less than one million dollars (\$1,000,000.00) each occurrence combined single limit for Bodily Injury and Property Damage including coverage for premises/operations, contractual liability, personal injury, explosion, collapse, underground hazard, products/completed operations, broad form property damage, cross liability and severability of interest clause. This policy of insurance shall be written in an "occurrence" based format.

3) **Automobile Liability**

Comprehensive or Business Automobile Liability insurance with limits not less than one million dollars (\$1,000,000.00) each occurrence combined single limit for Bodily Injury and Property Damage including coverage's for owned, hired, and non-owned vehicles and/or equipment as applicable. This policy of insurance shall be written in an "occurrence" based format.

4) **Information Security/Cyber Liability Insurance**

CONSULTANT must provide the **CITY** with evidence of Information Security/Cyber Liability Insurance with, at a minimum of three million dollars (\$3,000,000.00) per occurrence written on a "Claims-Made" basis covering **CITY**, its employees, subcontractors and agents for expenses, claims and losses resulting from wrongful acts committed in the performance of, or failure to perform, all services under this Agreement, including, without limitation, claims, demand and any other payments related to

electronic or physical security, breaches of confidentiality and invasion of or breaches of privacy.

Information Security/Cyber Liability Insurance shall include Internet Media Liability including cloud computing and mobile devices for protection of private or confidential information whether electronic or non-electronic, network security and privacy; privacy against liability for system attacks, digital asset loss, denial or loss of service, introduction, implantation or spread of malicious software code, security breach, unauthorized access and use; including regulatory action expenses and notification and credit monitoring expenses.

5) Professional Liability / Errors and Omissions Coverage (If Applicable)

If the **CONSULTANT** is to provide professional services under this Agreement, the **CONSULTANT** must provide the **CITY** with evidence of Professional Liability insurance with, at a minimum of one million dollars (\$1,000,000.00) per occurrence and in the aggregate. "Claims-Made" forms are acceptable for Professional Liability insurance. Coverage shall include all claims arising out of the **CONSULTANT'S** operations or premises, any person directly or indirectly employed by the **CONSULTANT**, and the **CONSULTANT'S** obligations under indemnification under this contract. **CONSULTANT** acknowledges that the **CITY** is relying on the competence of the **CONSULTANT** to design the project to meet its functional intent. If it is determined during construction of the project that changes must be made due to **CONSULTANT'S** negligent errors and omissions, **CONSULTANT** shall promptly rectify them at no cost to **CITY** and shall be responsible for additional costs, if any, of the project to the proportional extent caused by such negligent errors or omissions.

6) Builder's Risk Insurance (If Applicable)

Builder's Risk insurance is required in an amount not less than the replacement cost for the construction of the work. Coverage shall be "ALL RISK" coverage for one hundred percent (100%) of the completed value. The **CITY** reserves the right to require higher limits depending upon the scope of work under this Agreement.

7) Environmental Liability/ Pollution Remediation and Legal Liability

The **CONSULTANT** shall maintain Pollution Legal Liability and Remediation Insurance at a minimum limit of liability not less than one million dollars (\$1,000,000.00) Each Occurrence and two million dollars (\$2,000,000.00) in the aggregate. The **CONSULTANT** agrees the policy benefiting the **CITY** shall be maintained for a minimum three (3) year period following expiration of the Agreement.

8) General

Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit and provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence limits specified above.

Should any required insurance lapse during the Agreement term, requests for payments originating after such lapse shall not be processed until the **CITY** receives satisfactory evidence of reinstated coverage as required by this Contract, effective as of the lapse date. If insurance is not reinstated, **CITY** may, at its sole option terminate this Agreement effective on the date of such lapse of insurance.

Auto Liability and General Liability policies shall be endorsed to provide the following:

- a) Name as additional insured the **CITY** of Coconut Creek and its Officers, Agents, Employees and Commission Members.
- b) That such insurance is primary to any other insurance available to the additional insured with respect to claims covered under the policy and that insurance applies separately to each insured against whom claims are made or suit is brought, but the inclusion of more than one insured shall not operate to increase the insurer's limit of liability.

All policies shall be endorsed to provide sixty (60) days prior written notice of cancellation, non-renewal or reduction in coverage or limits to:

City of Coconut Creek
Procurement Division
4800 West Copans Road
Coconut Creek, Florida 33063

The issuing agency shall include full name, address and telephone number in each insurance certificate issued.

If these requirements are provided as part of a formal procurement procedure, Certificates of Insurance, in form and evidencing all required insurance and endorsements, shall be submitted with the respondent's bid. If **CONSULTANT** is successful **CONSULTANT**, then prior to commencement of Contract, **CONSULTANT** must submit revised Certificate of Insurance naming the **CITY** of Coconut Creek as additional insured for all liability policies.

If **CONSULTANT** is self-insured, they shall provide the **CITY** with a recent audited financial statement and description of how the self-insurance program is funded, along with a liability coverage statement signed by an authorized corporate officer.

No contract shall be executed by the **CITY**, nor activities under this Agreement shall commence, until the required letter of self-insurance and/or certificates of insurance have been received and approved by the Risk Manager of each party.

8.16 INDEMNIFICATION & HOLD HARMLESS

The parties agree that one percent (1%) of the total compensation paid to **CONSULTANT** for the work or services under this Agreement shall constitute specific consideration to **CONSULTANT** for the indemnification to be provided under the Agreement. The **CONSULTANT** shall indemnify and hold harmless the **CITY** and appointed officials, employees, and agents from any and all claims, suits, actions, damages, liability, and expenses (including reasonable attorneys' fees) in connection with violations of copyrighted or trademarked materials used by **CONSULTANT**, loss of life, bodily or personal injury, or property damage, including loss of use thereof, to the extent caused by the negligence, arising out of or occurring in connection with the operations of the **CONSULTANT** or its officers, employees, agents, subconsultants, or independent **CONSULTANTS**, solely attributable to the negligence or willful misconduct of the **CITY** or its elected or appointed officials and employees. Nothing contained herein is intended nor shall be construed to waive **CITY'S** rights and immunities under the common law or Section 768.28, Florida Statutes, as amended from time to time; nor shall anything included herein be construed as consent to be sued by any third parties in any matter arising out of this Agreement. To the extent considered necessary by the Contract Administrator and the City Attorney, any sums due **CONSULTANT** under this Agreement may be retained by the **CITY** until all of the **CITY'S** claims subject to this indemnification obligation have been

settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by the **CITY**. The above provisions shall survive the termination or expiration of this Agreement and shall pertain to any occurrence during the term of this Agreement, even though the claim may be made after the termination or expiration hereof.

8.17 ATTORNEY'S FEES

If a party institutes any legal action to enforce any provision of this Agreement, they shall be entitled to reimbursement from the other party for all costs and expenses, including reasonable attorney's fees incurred by them, provided they are the prevailing party in such legal action, and provided further that they shall make application to the court or other tribunal, for an award of such costs and expenses.

8.18 ALL PRIOR AGREEMENTS SUPERSEDED

This document and the RFQ No. 07-09-25-11 incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

8.19 NON-EXCLUSIVE AGREEMENT

The services to be provided by **CONSULTANT** pursuant to this Agreement shall be non-exclusive and nothing herein shall preclude **CITY** from engaging other firms to perform the same or similar services for the benefit of **CITY** within **CITY'S** sole and reasonable discretion.

8.20 DISENTANGLEMENT

CONSULTANT will complete the transition of any terminated work from **CONSULTANT** and its subcontractors to **CITY** and/or any replacement providers **CITY** designates (collectively, the "Replacement Provider"), without causing any interruption of or adverse impact on the work, any other services and/or services provided by third parties (the "Disentanglement"). Without limiting the aforementioned obligations, **CONSULTANT** will:

- a. Cooperate by promptly taking all steps required to assist **CITY** in completing the Disentanglement related to the work it had previously performed.
- b. Provide all information regarding the work that these parties will need to perform the Disentanglement.
- c. Promptly and orderly conclude all work as directed. This may include the documentation of work in progress and other measures to provide an orderly transition as set forth in Labor Harmony.

8.21 LABOR HARMONY

CONSULTANT agrees that all labor employed by **CONSULTANT**, its agents or subcontractors for work on **CITY** property shall be in harmony with all other labor being used by **CITY** or other contractors working on **CITY'S** property. **CONSULTANT** agrees to give **CITY** immediate notice of any threatened or actual dispute and will provide assistance as determined necessary by **CITY** to resolve any such dispute. **CONSULTANT**, its agents or subcontractors, shall remove from **CITY'S** property any person objected to by **CITY** in association with the work.

8.22 NOTICE

Whenever either party desires to give notice unto the other, it must be given by written notice, sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified, and the place for giving notice in compliance with the provisions of this paragraph. Notice will be deemed received by the party for whom it is intended after the USPS certified mail process is complete. For the present, the parties designate the following as the respective places for giving notice, to wit:

CITY

City Manager
City of Coconut Creek
4800 West Copans Road
Coconut Creek, Florida 33063
With a copy to the City Attorney at
the same address

CONSULTANT

Stefano Viola, PE
Kimley-Horn and Associates, Inc.
8201 Peters Road
Plantation, FL 33324
Phone: 954-535-5133
Email: Stefano.Viola@kimley-horn.com

8.23 THIRD PARTY BENEFICIARIES

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

8.24 GOVERNING LAW

This Agreement shall be construed in accordance with the laws of the State of Florida. Venue for any action shall be located exclusively in the Seventeenth Judicial Circuit in and for Broward County, Florida and that all litigation between them in the federal courts shall take place exclusively in the United States District Court for the Southern District of Florida.

8.25 WAIVER OF JURY TRIAL

CONSULTANT AND THE CITY EACH HEREBY EXPRESSLY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY CIVIL LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND/OR THE PRODUCTS OR SERVICES PROVIDED HEREUNDER, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.

8.26 UNCONTROLLABLE CIRCUMSTANCES ("FORCE MAJEURE")

As used herein, "Force Majeure" means the occurrence of any event that prevents or delays the performance by either party of its obligations hereunder which are beyond the reasonable control of the non-performing party. Examples of "Force Majeure" include, but are not limited to, acts of God, natural disasters or emergency governmental action. To invoke this Paragraph, immediate written notice, consistent with the "Notice" provisions of this Agreement, must be sent by the non-performing party describing the circumstances constituting force majeure and proof that the non-performance or delay of performance is a direct and reasonable result of such event(s). The **CITY** reserves its right to challenge the invocation by the **CONSULTANT** within five (5) calendar days of receipt of said notice, in such case uninterrupted performance in

required. However, in the event the invocation is accepted by the **CITY**, the **CONSULTANT** must take all reasonable measures to mitigate any and all resulting damages, costs, delays, or disruptions to the **CONSULTANT'S** performance requirements under this Agreement. All obligations must resume when the circumstances of such event(s) have subsided, or other arrangements are made pursuant to a written amendment to this Agreement.

8.27 CONDITIONS FOR EMERGENCY/HURRICANE OR DISASTER

It is hereby made a part of this Agreement that before, during and after a public emergency, disaster, hurricane, flood, pandemic or other substantial loss that the **CITY** will require a “**first priority**” basis for goods and services. It is vital and imperative that the majority of citizens are protected from any emergency situation which threatens public safety and health, as determined by the City Manager or his/her designee. **CONSULTANT** agrees to rent/sell/lease all goods and services to the **CITY** or other governmental entities, as opposed to a private citizen or corporation, on a first priority basis. The **CITY** expects to pay a fair and reasonable price for all products/services in the event of a disaster, pandemic, emergency or hurricane. Awarded **CONSULTANT** must furnish a twenty-four (24) hour telephone number in the event of such an emergency.

8.28 DRUG-FREE WORKPLACE PROGRAMS

Preference shall be given to businesses with Drug-Free Workplace Programs. Whenever two (2) or more bids which are equal with respect to price, quality and service are received by the **CITY** for the procurement of commodities or contractual services, a bid received from a business that completes the attached Drug-Free Workplace form certifying that it is a Drug-Free Workplace shall be given preference in the award process.

8.29 PUBLIC ENTITY CRIMES STATEMENT

Pursuant to Section 287.133(2)(a), Florida Statutes, as amended from time to time, **CONSULTANT** by submitting its Response, hereby certifies that neither it nor its affiliate(s) have been placed on the convicted vendor list following a conviction for a public entity crime. If placed on that list after submitting its Response, **CONSULTANT** must notify the **CITY** immediately and is prohibited from pursuing the submitted Bid; and must not contract with any public entity to provide any goods or services; must not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; must not submit bids on leases of real property to a public entity; must not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and, must not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, as amended from time to time, for Category TWO (\$35,000) for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

8.30 SCRUTINIZED COMPANIES PURSUANT TO SECTIONS 287.135, 215.473, AND 287.138 FLORIDA STATUTES

CONSULTANT hereby certifies that it: a) has not been placed on the Scrutinized Companies that Boycott Israel List, nor is engaged in a boycott of Israel; b) has not been placed on the Scrutinized Companies with Activities in Sudan List nor the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; and c) has not been engaged in business operations in Cuba or Syria. If City determines that **CONSULTANT** has falsely certified facts under this paragraph or if **CONSULTANT** is found to have been placed on a list created pursuant to Section 215.473, Florida Statutes, as amended, or is engaged in a boycott of Israel after the execution of this Agreement, City shall have all rights and remedies to terminate this Agreement consistent with Section 287.135, Fla. Stat., as amended. The City reserves all rights to waive the certifications required by this paragraph on a case-by-case exception basis pursuant to Section 287.135, Fla. Stat., as amended. Beginning January 1, 2024, the City must not enter in to or renew any contract that grants access to an individual's personal identifying information to

any Foreign Country of Concern such as: People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic, unless the **CONSULTANT** provides the City with an affidavit signed by an authorized representative of the **CONSULTANT**, under penalty of perjury, attesting that the **CONSULTANT** does not meet any of the criteria in subparagraphs (2)(a)-(c) of Section 287.138, Florida Statutes, as may be amended. Beginning January 1, 2025, the City must not extend or renew any contract that grants access to an individual's personal identifying information unless the **CONSULTANT** provides the City with an affidavit signed by an authorized representative of the **CONSULTANT**, under penalty of perjury, attesting that the **CONSULTANT** does not meet any of the criteria in subparagraphs (2)(a)-(c) of Section 287.138, Florida Statutes, as may be amended. Violations of this Section will result in termination of this Agreement and may result in administrative sanctions and penalties by the Office of the Attorney General of the State of Florida.

<u>Kimley-Horn and Associates, Inc.</u> is not owned by the government of a Foreign Country of Concern, is not organized under the laws of nor has its Principal Place of Business in a Foreign Country of Concern, and the government of a Foreign Country of Concern does not have a Controlling Interest in the entity.	
Under penalties of perjury, I declare that I have read the foregoing statement and that the facts stated in it are true.	
Printed Name: <u>Stephen F. Viola</u>	Title: <u>Sr. V.P.</u>
Signature: <u>[Signature]</u>	Date: <u>10/2/2025</u>

8.31 E-VERIFY

Effective January 1, 2021, public and private employers, contractors and subcontractors must require registration with, and use of the E-verify system in order to verify the work authorization status of all newly hired employees. **CONSULTANT** acknowledges and agrees to utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of:

- a. All persons employed by **CONSULTANT** to perform employment duties within Florida during the term of the contract; and
- b. All persons (including subvendors/subconsultants/subcontractors) assigned by **CONSULTANT** to perform work pursuant to the contract with the **CITY**. The **CONSULTANT** acknowledges and agrees that use of the U.S. Department of Homeland Security's E-Verify System during the term of the contract is a condition of the contract with the **CITY** of Coconut Creek.

By entering into this Agreement, the **CONSULTANT** becomes obligated to comply with the provisions of Section 448.095, Florida Statutes, "Employment Eligibility," as amended from time to time. This includes, but is not limited to, utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subconsultant to provide an affidavit to **CONSULTANT** attesting that the subconsultant does not employ, contract with, or subcontract with, an unauthorized alien. **CONSULTANT** agrees to maintain a copy of such affidavit for the duration of this Agreement. Failure to comply with this paragraph will result in the termination of this Agreement as provided in Section 448.095, Florida Statutes, as amended, and **CONSULTANT** may not be awarded a public contract for at least one (1) year after the date on which the Agreement was terminated. **CONSULTANT** will also be liable for any additional

costs to **CITY** incurred as a result of the termination of this Agreement in accordance with this Paragraph.

8.32 ANTITRUST VIOLATIONS; DENIAL OR REVOCATION UNDER SECTION 287.137, FLORIDA STATUTES

Pursuant to Section 287.137, Florida Statutes, as may be amended, a person or an affiliate who has been placed on the antitrust violator vendor list (electronically published and updated quarterly by the State of Florida) following a conviction or being held civilly liable for an antitrust violation may not submit a bid, proposal, or reply for any new contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply for a new contract with a public entity for the construction or repair of a public building or public work; may not submit a bid, proposal, or reply on new leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a new contract with a public entity; and may not transact new business with a public entity. By entering into this Agreement, **CONSULTANT** certifies that neither it nor its affiliate(s) are on the antitrust violator vendor list at the time of entering this Agreement. False certification under this paragraph or being subsequently added to that list will result in termination of this Agreement, at the option of the **CITY** consistent with Section 287.137, Florida Statutes, as amended.

8.33 PROHIBITED TELECOMMUNICATIONS EQUIPMENT

CONSULTANT represents and certifies that it and its applicable subconsultant do not and will not use any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, as such terms are used in 48 CFR §§ 52.204-24 through 52.204-26. By executing this Agreement, **CONSULTANT** represents and certifies that **CONSULTANT** and its applicable subconsultant(s) shall not provide or use such covered telecommunications equipment, system, or services for any scope of work performed for the **CITY** for the entire duration of this Agreement. If **CONSULTANT** is notified of any use or provisions of such covered telecommunications equipment, system, or services by a subconsultant at any tier or by any other source, **CONSULTANT** must promptly report the information in 40 CFR § 52.204-25(d)(2) to City.

8.34 JOINT PREPARATION

It is acknowledged that each party to this Agreement had the opportunity to be represented by counsel in the preparation of this Agreement and accordingly the rule that a contract will be interpreted strictly against the party preparing same does not apply herein due to the joint contributions of both Parties.

8.35 INTERPRETATION

The titles and headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein" 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 subsections thereof, unless the reference is made to a particular subsection or subparagraph of such section or article. Any reference to "days" means calendar days, unless otherwise expressly stated.

8.36 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached to, referenced by, or incorporated in this Agreement and any provision of Articles 1 through 8 of this Agreement, the provisions contained in Articles 1 through 8 shall prevail and be given effect.

8.37 SEVERABILITY; WAIVER OF PROVISIONS

Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

8.38 REMEDIES

a. Damages

The **CITY** reserves the right to recover any ascertainable actual damages incurred as a result of the failure of the **CONSULTANT** to perform in accordance with the requirements of this Agreement, or for losses sustained by the **CITY** resultant from the **CONSULTANT'S** failure to perform in accordance with the requirements of this Agreement.

b. Correction of Work

If, in the judgment of the **CITY**, work provided by the **CONSULTANT** does not conform to the requirements of this Agreement, or if the work exhibits poor workmanship, the **CITY** reserves the right to require that the **CONSULTANT** correct all deficiencies in the work to bring the work into conformance without additional cost to the **CITY**, and / or replace any personnel who fail to perform in accordance with the requirements of this Agreement. The **CITY** is the sole judge of non-conformance and the quality of workmanship.

8.39 SIGNATORY AUTHORITY

The **CONSULTANT** shall provide the **CITY** with copies of requisite documentation evidencing that the signatory for **CONSULTANT** has the authority to enter into this Agreement.

8.40 GRATUITIES AND KICKBACKS

a. Gratuities

It is unethical for any person to offer, give, or agree to give any employee or for any employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, audit, or in any other advisory capacity in any proceeding or application, request for ruling, determination claim or controversy, or other particular matter, pertaining to any program requirement or an Agreement or subcontract, or to any solicitation or proposal therefore.

b. Kickbacks

It is unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a sub-contractor under a Contract to **CONSULTANT** or higher tier sub-contractor any person associated therewith, as an inducement of the award of a subcontract or order.

c. **Contract Clause**

The prohibition against gratuities and kickbacks prescribed in this section must be conspicuously set forth in every contract and subcontract and solicitation therefore.

8.41 AUDIT RIGHTS

The **CITY** reserves the right to audit the records of the **CONSULTANT** for the commodities and/or services provided under the Agreement at any time during the performance and term of the Agreement and for a period of five (5) years after completion and acceptance by the **CITY**. If required by the **CITY**, the **CONSULTANT** agrees to submit to an audit by an independent certified public accountant selected by the **CITY**. The **CONSULTANT** must allow the **CITY** to inspect, examine and review the records of the **CONSULTANT** in relation to this Agreement at any and all times during normal business hours during the term of the Agreement.

8.42 FOREIGN GIFTS AND CONTRACTS

The **CONSULTANT** must comply with any applicable disclosure requirements in Section 286.101, Florida Statutes. Pursuant to Section 268.101(7)(b), Florida Statutes, determining a third or subsequent violation by an entity other than a state agency or political subdivision must automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission Governor and Cabinet per §14.202, Florida Statutes, for "good cause."

8.43 ENVIRONMENTAL/SOCIAL ACTIVISM UNDER SECTION 287.05701, FLORIDA STATUTES

Pursuant to Section 287.05701, Florida Statutes, as may be amended, the **CITY** cannot give preference to a consultant based on social, political or ideological interests as defined in the statute. **CONSULTANT** is also prohibited from giving preference to any of its subconsultants based on the above referenced factors. Violations of this Paragraph will result in termination of this Agreement and may result in administrative sanctions and penalties by the Office of the Attorney General of the State of Florida.

8.44 HUMAN TRAFFICKING

When an agreement is executed, renewed, or extended between a nongovernmental entity and a governmental entity, the nongovernmental entity must provide the governmental entity with an affidavit signed by an officer or a representative of the nongovernmental entity under penalty or perjury attesting that the nongovernmental entity does not use coercion for labor or services as defined in Section 787.06, Florida Statutes.

<u>Kimley-Horn and Associates Inc.</u> does not use coercion for labor or services as defined in Section 787.06, Florida Statutes, entitled "Human Trafficking". Under penalties of perjury, I declare that I have read the foregoing statement and that the facts stated in it are true.	
Printed Name: <u>Stefano Viola</u>	Title: <u>Senior Vice President</u>
Signature: <u>[Signature]</u>	Date: <u>10/2/25</u>

8.45 TAXES

CONSULTANT shall be responsible for all taxes of any kind. An IRS W-2 form will not be provided. The **CITY** will provide an IRS Form 1099 required by law. **CONSULTANT** recognizes that no Federal Income Tax or Social Security will be withheld. However, if **CONSULTANT** requests in writing that Federal Income tax be withheld, the **CITY** will deduct the Federal Income tax withheld and remit to the IRS.

8.46 OWNERSHIP & USE OF DOCUMENTS

Notwithstanding the completion, suspension, termination, or expiration of this Agreement, the following provisions in this section shall apply with respect to ownership of documents:

- a. **Instruments of Service.** **CONSULTANT** use during the course of a project of certain proprietary documentation, including drawings, diagrams, maps, perspective renderings, other artworks, graphic aids, and various written materials. Subject to **CITY'S** rights hereunder, **CONSULTANT** and **CITY** are deemed the joint owners of this documentation and reserve all rights of ownership and legal protections, including copyright, which may be available under common law and statutory law.
- b. **Final Work Products.** Final work products produced during the course of a project under this Agreement shall be delivered to and become property of the **CITY**. **CITY** shall have a right to retain, use, and reproduce final work products. The provisions of this paragraph shall survive the expiration or termination of this Agreement.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature. **CITY OF COCONUT CREEK**, through its City Manager or designee and **KIMLEY-HORN AND ASSOCIATES, INC.**, signing by and through its _____ (President, Owner, CEO, etc.) duly authorized to execute same.

CITY OF COCONUT CREEK

ATTEST: _____ Sheila N. Rose _____ Date
City Manager

Joseph J. Kavanagh _____ Date
City Clerk

Approved as to form and legal sufficiency:

Terrill C. Pyburn _____ Date
City Attorney

[Consultant’s Signature to Follow]

CONSULTANT

ATTEST:


(Corporate Secretary)

JOHN MCWILLIAMS

Type/Print Name of Corporate Secretary

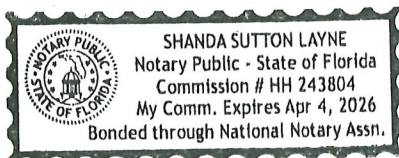


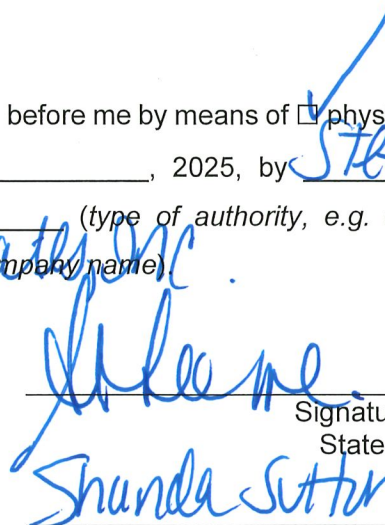
CORPORATE ACKNOWLEDGEMENT

STATE OF Florida :

COUNTY OF Broward :

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 2nd day of OCT, 2025, by Stefano F. Viola (name) as St. Vice President (type of authority, e.g. officer, trustee, etc.) for Kimley-Horn and Associates, Inc. (company name).




Signature of Notary Public
State of Florida at Large

Print, Type or Stamp
Name of Notary Public

- ☒ Personally known to me or
☐ Produced Identification

Type of I.D. Produced

- ☐ DID take an oath, or
☐ DID NOT take an oath.

EXHIBIT “A”
NEGOTIATED FEE SCHEDULE

These positions/titles are common throughout the profession. Firms using a different nomenclature for the listed positions, but similar in responsibility, shall use those listed below for the purposes of providing hourly rates.

Position/Title	Hourly Rate
Principal (PE registered)	\$310.00 / per hour
Senior Engineer (PE registered)	\$245.00 / per hour
Land Surveyor (PLS registered)	\$200.00 / per hour
Landscape Architect (State Registered)	\$220.00 / per hour
Project Manager	\$250.00 / per hour
Engineer	\$170.00 / per hour
Environmental Scientist	\$180.00 / per hour
Planner	\$150.00 / per hour
Senior Planner	\$215.00 / per hour
Technician	\$125.00 / per hour
Drafter/GIS	\$130.00 / per hour
Field Inspector	\$130.00 / per hour
Staff Assistant	\$105.00 / per hour
Construction Manager	\$195.00 / per hour
Engineer Analyst (EIT)	\$140.00 / per hour