



## CONTINUING PROFESSIONAL SERVICES AGREEMENT

This Agreement ("Agreement"), dated Mar. 20, 2024, is entered into by and between **THE CITY OF OAKLAND PARK**, a municipal corporation of the State of Florida with a business address of **3650 NE 12 AVENUE, OAKLAND PARK, FL 33334** (hereinafter referred to as the "CITY")

and

**Kimley-Horn and Associates, Inc.**, a professional services consulting firm authorized to do business in the State of Florida, (hereinafter referred to as the "CONSULTANT"). CITY and CONSULTANT may hereinafter be referred to collectively as the "Parties."

### W I T N E S S E T H:

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

#### ARTICLE 1 PREAMBLE

To establish the background, context, and form 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.

1.1 On August 31, 2023, the CITY advertised its notice to proposers of the CITY's desire to hire firms to provide professional engineering and related services, as more particularly described in **Exhibit A** attached hereto and by this reference made a part hereof, for the said bid entitled:

#### **Continuing Professional Consulting Services (CCNA) Request for Qualifications (RFQ) #100323**

1.2 On October 3, 2023, firm submittals were opened publicly, and the names of the respondents were read aloud.

1.3 On January 17, 2024, and January 26, 2024, the CITY's evaluation committees met to rank submittals received in response to RFQ 100323, and the CONSULTANT was deemed qualified to provide the required professional services described in **Exhibit A**, and to perform the required services in accordance with the Consultant's Competitive Negotiation Act ("CCNA"), §287.055, Florida Statutes.

1.4 On February 7, 2024, CITY commissioners confirmed the recommended ranking of the CONSULTANT and authorized the proper CITY officials to negotiate and enter into an agreement with the CONSULTANT to render the services more particularly described herein below.

1.5 Negotiations pertaining to the services to be performed by the CONSULTANT were undertaken in accordance with the CCNA, §287.055, Florida Statutes, and this Agreement incorporates the results of such negotiation.

1.6 On March 20, 2024, City Commissioners authorized the appropriate City officials to execute a continuing contract with CONSULTANT.

1.7 The services provided by CONSULTANT pursuant to this Agreement shall comply with the definition of "professional services" in Section 287.055(2)(a), Florida Statutes, as amended from time to time.

## **ARTICLE 2**

### **SERVICES AND RESPONSIBILITIES**

2.1 The CITY may request from the CONSULTANT from time to time, on an as-needed basis, specific professional engineering and related services for various projects and assignments as more particularly described in **Exhibit A**. These requests will describe the scope of work, the desired time frame for its completion, and the method of payment to be used. Upon receipt of these requests, the CONSULTANT shall timely review the scope of work and schedule described in each request and provide the CITY with a not-to-exceed fee, or a list of professionals required for the assignment, and an estimate of the work hours required to accomplish the services. Once the CITY and CONSULTANT agree to the scope of work, schedule, and fee, the CITY will issue a Work Authorization in a form approved by the CITY. A Work Authorization is not a notice to proceed. A fully approved purchase order must be issued by the CITY to CONSULTANT before work can commence. The CONSULTANT's fee and cost proposal shall be based upon the hourly rates outlined in the Schedule of Hourly Rates, attached hereto and by this reference made a part hereof as **Exhibit B**. The CONSULTANT's submittal is also attached hereto and made a part hereof as **Exhibit C**.

2.2 The services provided by CONSULTANT pursuant to this Agreement shall comply with the definition of "continuing contract" in §287.055(2)(g), Florida Statutes as amended from time to time. The scope of work set forth in **Exhibit A** includes a list of projects that the CONSULTANT may be engaged to perform. In accordance with Article 5 of this Agreement, the CITY, at its sole discretion, may add or remove projects to or from this list, subject to the requirements of §287.055, Florida Statutes.

2.3 CONSULTANT may furnish all services, labor, equipment, and materials necessary and as may be required in the performance of this Agreement and all services performed under this Agreement shall be performed in a professional manner.

2.4 CONSULTANT hereby represents to CITY, with full knowledge that CITY is relying upon these representations when entering into this Agreement with CONSULTANT, that CONSULTANT has the professional expertise, experience, and manpower to perform the services to be provided by CONSULTANT pursuant to the terms of this Agreement.

2.5 CONSULTANT assumes professional and technical responsibility for the performance of its

services to be provided hereunder in accordance with recognized professional standards of good engineering practice by exercising the skill and ability ordinarily required of engineers performing the same or similar services, under the same or similar circumstances, in the State of Florida, and ethical guidelines established by their profession. If within one year following completion of its services, such services fail to meet the aforesaid standards, and the CITY promptly advises CONSULTANT thereof in writing, CONSULTANT agrees to re-perform such deficient services without charge to the CITY.

2.6 CONSULTANT shall schedule regular meetings with the CITY's representatives at least once a month to discuss the progress of any work as more particularly described in **Exhibit A** and required in accordance with any Work Authorization issued pursuant to this Agreement.

2.7 The relationship between CITY and CONSULTANT created hereunder and the services to be provided by CONSULTANT pursuant to this Agreement are non-exclusive. CITY shall be free to pursue and engage similar relationships with other contractors to perform the same or similar services performed by CONSULTANT hereunder, so long as no other consultant shall be engaged to perform the specific project(s) assigned to CONSULTANT while CONSULTANT is so engaged without first terminating such assignment. CONSULTANT shall be free to pursue relationships with other parties to perform the same or similar services, whether or not such relationships are for services to be performed within the City of Oakland Park, so long as no such relationship shall result in a conflict of interest, ethical or otherwise, with the CITY's interests in the services provided by CONSULTANT hereunder.

2.8 CONSULTANT shall comply with the applicable provisions of the City of Oakland Park Code of Ordinances. CONSULTANT shall require that all sub-consultants comply with the applicable provisions of the City of Oakland Park Code of Ordinances.

2.9 CONSULTANT shall not utilize the services of any sub-consultant without the prior written approval of CITY.

2.10 The CITY shall furnish the CONSULTANT available studies, reports and other data pertinent to the CONSULTANT's services; obtain or authorize the CONSULTANT to obtain or provide additional reports and data as required; furnish to the CONSULTANT services of others required for the performance of the CONSULTANT's services hereunder, and the CONSULTANT shall be entitled to use and rely upon all such information and services provided by the CITY or others in performing the CONSULTANT's services under this Agreement.

### **ARTICLE 3**

#### **TERM FOR PERFORMANCE AND TERMINATION**

3.1 CONSULTANT shall perform the services identified in Article 2 within the time frame agreed upon by the Parties. Minor adjustments to the timetable for completion approved by CITY in advance, in writing, will not constitute non-performance by CONSULTANT pursuant to this Agreement.

3.2 This Agreement shall take effect as of the date of execution as shown herein below and continue for such time as is contemplated by the CITY for projects which the CITY from time to time authorizes CONSULTANT's services in connection therewith. Notwithstanding the foregoing, the Term of this Agreement shall be **FIVE (5) YEARS**. The Term of this Agreement may be renewed upon the mutual written agreement of the Parties for an additional **2-YEAR** period.

3.3 **Termination for Convenience.** This Agreement may be terminated by either Party for convenience, upon providing thirty (30) business days of written notice to the non-terminating Party for such termination in which event CONSULTANT shall be paid its compensation for services performed to termination date, including services reasonably related to termination [NOTE: CONSULTANT may not terminate existing assignments for convenience after they have been accepted as Work Authorizations/addendums to this Agreement.] In the event that the CONSULTANT abandons this Agreement or causes it to be terminated, CONSULTANT shall indemnify the CITY against any loss pertaining to this termination up to a maximum of the full contracted fee amount. All finished or unfinished documents, data, studies, plans, surveys, and reports prepared by CONSULTANT shall become the property of CITY and shall be delivered by CONSULTANT to CITY immediately.

3.4 **Default by CONSULTANT.** In addition to all other remedies available to CITY, this Agreement shall be subject to cancellation by CITY for cause, should CONSULTANT neglect or fail to perform or observe any of the terms, provisions, conditions, or requirements herein contained, if such neglect or failure shall continue for a period of thirty (30) calendar days after receipt by CONSULTANT of written notice of such neglect or failure.

#### **ARTICLE 4**

#### **COMPENSATION AND METHOD OF PAYMENT**

4.1 CITY agrees to compensate CONSULTANT for each Work Authorization issued by the CITY from time to time on an as-needed basis, for a project or assignment. The compensation amount will be in accordance with the Schedule of Hourly Rates more particularly described in **Exhibit B**.

4.2 CONSULTANT shall be entitled to invoice CITY monthly for services performed under this Agreement and any Work Authorization issued hereunder. The invoice shall include, but not be limited to, date of service, staff classification, the amount of time spent, a description of the service, and any other information reasonably required by CITY.

4.3 CONSULTANT expressly recognizes that CONSULTANT's acceptance of this Agreement does not guarantee any work or minimum fee to be paid to CONSULTANT and that the Services will be assigned on an as-needed assignment/project basis.

4.4 CITY will make its best efforts to pay CONSULTANT within thirty (30) calendar days of receipt of proper invoice the total shown to be due on such invoice. All payments shall be governed by the Local Government Prompt Payment Act, as outlined in Part VII, Chapter 218, Florida Statutes. Payment will be made to CONSULTANT at the remit to address stated on CONSULTANT'S invoice.

4.5 If any of the required services are rejected for any reason, the CONSULTANT shall be required to perform the services to the satisfaction of the CITY. Additionally, payment may be withheld by the City Manager, for failure of CONSULTANT to comply with a term, condition, or requirement of this Agreement.

4.6 **Truth-In-Negotiation Certificate.** Signature of this Agreement by CONSULTANT shall act as the execution of a Truth-in-Negotiation Certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting. The original contract price and any additions thereto shall be adjusted to exclude any significant sums, by which the CITY determines that the contract price was increased due to inaccurate,

incomplete, or non-current wage rates and other factual unit costs.

4.7 **Post Contractual Obligations.** In the event the term of this Agreement expires, and the CITY has already initiated a Work Authorization under this Agreement, the CONTRACTOR agrees to continue providing services, at the rates set forth herein, until completion of the assignment(s)/project(s). Notwithstanding the foregoing, these post-contractual obligations shall be at the discretion of the CITY should this Agreement be terminated under Section 3.3, Section 3.4, or Article 14 herein.

**ARTICLE 5**  
**CHANGES TO SCOPE OF WORK AND ADDITIONAL WORK**

5.1 CITY or CONSULTANT may from time to time request changes that would increase, decrease, or otherwise modify the Scope of Work, as described in **Exhibit A**, to be provided under this Agreement subject to the requirements outlined in §287.055, Florida Statutes. Such changes or additional work must be per the provisions of the CITY’s Code of Ordinances, and must be contained in a written amendment, executed by the Parties hereto, with the same formality, equality, and dignity herewith before any deviation from the terms of this Agreement, including the initiation of any additional or extra work.

5.2 CONSULTANT shall continue work when seeking a change order unless work has not been authorized herein, or by written amendment or change order, executed by the parties hereto, with the same formality, equality, and dignity herewith. Work to be performed while a seeking change order which has not been described herein or in a separate written agreement shall be performed at the CONSULTANT’s own risk. CITY shall not be responsible for any payments requested pursuant to a change order until the change order is approved by the CITY.

5.3 In no event will the CONSULTANT be compensated for any services which have not been described either herein or in a separate written agreement executed by the Parties hereto.

**ARTICLE 6**  
**INDEMNIFICATION**

Pursuant to §725.08, Florida Statutes, CONSULTANT shall indemnify and hold harmless the agency, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the design professional and other persons employed or utilized by the design professional in the performance of the contract.

**ARTICLE 7**  
**INSURANCE**

7.1 **INSURANCE REQUIREMENTS:** The proposer will be required to furnish evidence of the following insurance coverages by a licensed Florida Company that has at least a “BEST” rating of “A.”

7.1.1 Without limiting any of the other obligations or liabilities of proposer, proposer will provide, pay for and maintain in force until all of its work to be performed under this contract has been completed and accepted by City (or for such duration as is otherwise specified after this), the insurance coverages set forth herein.

- 7.1.2 **Workers Compensation Coverage** to apply for all employees of the contractor, sub-contractors, and the contractor's architect and/or engineer meeting the "Workers' Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy(s) must include employers' liability with a minimum limit of one hundred thousand dollars (\$100,000) each accident.
- 7.1.3 **Comprehensive General Liability Coverage** with minimum limits of one million dollars (\$1,000,000) per occurrence combined single limits for bodily injury liability and property damage liability.
- 7.1.4 **Personal Injury Coverage** with employee and contractual exclusions removed with minimum limits of coverage equal to those required for bodily injury liability and property damage liability.
- 7.1.5 **Business Automobile Liability Coverage** with minimum limits of five hundred thousand dollars (\$500,000) per occurrence combined single limits for bodily injury liability and property damage liability.
- 7.1.6 **Professional Liability/Errors and Omissions Coverage** - Combined single limit each occurrence \$1,000,000 general aggregate limit \$2,000,000

The City is to be expressly included as an "Additional Insured" in the name of "City of Oakland Park" with respect to liability arising out of operations performed by City by or for proposer; or acts or omissions of City concerning general supervision of such operation, except for Workers Compensation.

Policies must be endorsed to provide for thirty (30) days written notice to the City of cancellation and/or restriction.

## 7.2 **REQUIRED ENDORSEMENTS**

- 7.2.1 The City of Oakland Park shall be named as an Additional Insured on each of the Liability Policies required herein.
- 7.2.2 Waiver of all Rights of Subrogation against the CITY.
- 7.2.3 Thirty (30) calendar day Notice of Cancellation or Non-Renewal to the CITY.
- 7.2.4 CONSULTANT's policies shall be Primary & Non-Contributory.
- 7.2.5 All policies shall contain a "severability of interest" or "cross liability" clause without obligation for premium payment of the CITY.
- 7.2.6 The City of Oakland Park shall be named as a Loss Payee on all Property Policies as their interest may appear.

7.3 Any and all insurance required of the CONSULTANT pursuant to this Agreement must also be required by any subcontractor in the same limits and with all requirements as provided herein, including naming the CITY as an additional insured, in any work that is subcontracted unless such subcontractor is covered by the protection afforded by the CONSULTANT and provided proof of such coverage is provided to CITY. The CONSULTANT and any subcontractors shall maintain such policies during the term of this Agreement. The CITY reserves the right to require any other additional types of insurance coverage and/or higher limits of liability it deems necessary based on the nature of work being performed under this Agreement.

7.4 The insurance requirements specified in this Agreement are minimum requirements and in no way reduce any liability the CONSULTANT has assumed in the indemnification/hold harmless section(s) of this Agreement.

**ARTICLE 8**  
**NON-DISCRIMINATION AND EQUAL OPPORTUNITY EMPLOYMENT**

During the performance of the Agreement, neither the CONSULTANT nor any subcontractors shall discriminate against any employee or applicant for employment because of race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. CONSULTANT will take affirmative action to ensure that employees are treated during employment, without regard to their race, religion, color, gender, national origin, sex, age, marital status, political affiliation, familial status, sexual orientation, or disability if qualified. Such actions must include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. CONSULTANT shall agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. CONSULTANT further agrees that CONSULTANT will ensure that subcontractors, if any, will be made aware of and will comply with this nondiscrimination clause.

**ARTICLE 9**  
**INDEPENDENT CONTRACTOR**

This Agreement does not create an employee/employer relationship between the parties. It is the intent of the parties that the CONSULTANT is an independent contractor under this Agreement and not the CITY's employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers' Compensation Act, and the State unemployment insurance law. The CONSULTANT shall retain sole and absolute discretion in the judgment of the manner and means of carrying out CONSULTANT's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of CONSULTANT, which policies of CONSULTANT shall not conflict with CITY, State, or United States policies, rules or regulations relating to the use of CONSULTANT's funds provided for herein. The CONSULTANT agrees that it is a separate and independent enterprise from the CITY, that it has full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the CONSULTANT and the CITY and the CITY will not be liable for any obligation incurred by CONSULTANT, including but not limited to unpaid minimum wages and/or overtime premiums.

**ARTICLE 10**  
**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 Oakland Park in the annual budget for each fiscal year of this Agreement and is subject to termination based on lack of funding.

**ARTICLE 11**  
**UNCONTROLLABLE FORCES**

11.1 Neither CITY nor CONSULTANT shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing Party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a Party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming Party. It includes, but is not limited to: fire, flood, earthquakes, storms, lightning, epidemic, pandemic, acts of God, war, riot, civil disturbance, sabotage, and governmental actions.

11.2 Neither Party shall, however, be excused from performance if nonperformance is due to forces, which are preventable, removable, or remediable, and which the nonperforming Party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The nonperforming Party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other Party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

**ARTICLE 12**  
**GOVERNING LAW AND VENUE**

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida as now and hereafter in force. The venue for any and all claims or actions arising out of or related to this Agreement shall be in Broward County, Florida.

**ARTICLE 13**  
**SIGNATORY AUTHORITY**

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

**ARTICLE 14**  
**DEFAULT OF CONTRACT & REMEDIES**

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

14.2 **Correction of Work.** If, in the judgment of CITY, the services provided by CONSULTANT do not conform to the requirements of this Agreement, or if the services exhibit poor workmanship, CITY reserves the right to require that CONSULTANT correct all deficiencies in the services to bring the services into conformance without additional cost to CITY, and / or replace any personnel who fail to perform in accordance with the requirements of this Agreement. CITY shall be the sole judge of non-conformance and the quality of workmanship.

14.3 **Default of Contract.** The occurrence of any one or more of the following events shall constitute a default and breach of this Agreement by CONSULTANT for which CITY may terminate for cause:

14.3.1 The abandonment, unnecessary delay, refusal of, or failure to comply with any of the terms of this Agreement or neglect, or refusal to comply with the instructions of the Utilities Director or individual relative thereto.

14.3.2 The failure by CONSULTANT to observe or perform any of the terms, covenants, or conditions of this Agreement to be observed or performed by CONSULTANT, where such failure shall continue for a period of seven (7) calendar days after written notice thereof by CITY to CONSULTANT; provided, however, that if the nature of CONSULTANT's default is such that more than seven (7) calendar days are reasonably required for its cure, then CONSULTANT shall not be deemed to be in default if CONSULTANT commences such cure within said seven (7) calendar day period and thereafter diligently prosecutes such cure to completion.

14.3.3 The assignment and/or transfer of this Agreement or execution or attachment thereon by CONSULTANT or any other Party in a manner not expressly permitted hereunder.

14.3.4 The making by CONSULTANT of any general assignment or general arrangement for the benefit of creditors, or the filing by or against CONSULTANT of a petition to have CONSULTANT adjudged a bankruptcy, or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against CONSULTANT, the same is dismissed within sixty (60) calendar days); or the appointment of a trustee or a receiver to take possession of substantially all of CONSULTANT's assets, or for CONSULTANT's interest in this Agreement, where possession is not restored to CONSULTANT within thirty (30) calendar days; for attachment, execution or other judicial seizure of substantially all of CONSULTANT's assets, or for CONSULTANT's interest in this Agreement, where such seizure is not discharged within thirty (30) calendar days.

14.4 **Remedies in Default.** In case of default by CONSULTANT, CITY shall notify CONSULTANT, in writing, of such abandonment, delay, refusal, failure, neglect, or default and direct CONSULTANT to comply with all provisions of the Agreement. If the

abandonment, delay, refusal, failure, neglect or default is not cured within seven (7) calendar days of when notice was sent by CITY, CITY may declare a default of the Agreement and notify CONSULTANT of such declaration of default and terminate the Agreement.

14.4.1 Upon such declaration of default, all payments remaining due CONSULTANT at the time of default, less all sums due CITY for damages suffered, or expenses incurred by reason of default, shall be due and payable to CONSULTANT.

14.4.2 CITY may complete the Agreement, or any part thereof, either by day labor or re-letting a contract for the same, and procure services necessary for the completion of the Agreement, and charge the cost of same to CONSULTANT with the costs incident thereto to such default.

14.4.3 In the event CITY completes the Agreement at a lesser cost than would have been payable to CONSULTANT under this Agreement, if the same had been fulfilled by CONSULTANT, CITY shall retain such differences. Should such cost to CITY be greater, CONSULTANT shall pay the amount of such excess to the CITY.

14.4.4 Notwithstanding the other provisions in this Article, CITY reserves the right to terminate the Agreement at any time, whenever the service provided by CONSULTANT fails to meet reasonable standards of the trade after CITY gives written notice to the CONSULTANT of the deficiencies as set forth in the written notice within fourteen calendar (14) calendar days of the receipt by CONSULTANT of such notice from CITY.

## **ARTICLE 15** **BANKRUPTCY**

It is agreed that if CONSULTANT is adjudged bankrupt, either voluntarily or involuntarily, then this Agreement shall terminate effective on the date and at the time the bankruptcy petition is filed.

## **ARTICLES 16** **DISPUTE RESOLUTION**

If a dispute arises between CITY and CONSULTANT relating to this Agreement, performance, or compensation hereunder, CONSULTANT shall continue to render service in full compliance with all terms and conditions of this Agreement as interpreted by CITY regardless of such dispute. CONSULTANT expressly agrees, in consideration for the execution of this Agreement, that in the event of such a dispute, if any, it will not seek injunctive relief in any court, but will negotiate with CITY for an adjustment on the matter or matters in dispute and, upon failure of said negotiations to resolve the dispute, may present the matter to a court of competent jurisdiction in an appropriate suit therefore instituted by it or by CITY.

## **ARTICLE 17** **PUBLIC RECORDS**

17.1 The City of Oakland Park is a public agency subject to Chapter 119, Florida Statutes. The CONSULTANT shall comply with Florida's Public Records Law. Specifically, the CONSULTANT shall:

17.1.1 Keep and maintain public records required by the CITY to perform the service;

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

17.1.3 Ensure that public records that are exempt or that are confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and, following completion of the Agreement, CONSULTANT shall destroy all copies of such confidential and exempt records remaining in its possession after the CONSULTANT transfers the records in its possession to the CITY; and

17.1.4 Upon completion of the Agreement, CONSULTANT shall transfer to the CITY, at no cost to the CITY, all public records in CONSULTANT's possession. All records stored electronically by the CONSULTANT 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.

17.2 The failure of CONSULTANT to comply with the provisions set forth in this Article shall constitute a Default and Breach of this Agreement, for which, the CITY may terminate the Agreement in accordance with the terms herein.

**IF CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**RENEE SHROUT, CMC, CITY CLERK  
CITY OF OAKLAND PARK  
3650 NE 12 AVENUE OAKLAND PARK, FL 33334  
(954) 630-4298  
[RENEES@OAKLANDPARKFL.GOV](mailto:RENEES@OAKLANDPARKFL.GOV)**

**ARTICLE 18  
SCRUTINIZED COMPANIES**

18.1 CONSULTANT, its principals, or owners, certify that they are not listed on the Scrutinized Companies that Boycott Israel List, Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or is engaged in business operations with Syria. In accordance with Section 287.135, Florida Statutes, as amended, a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with any agency or local governmental entity for goods or services of:

18.1.1 Any amount if, at the time bidding on, submitting a proposal for, or entering into or renewing such contract, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel; or

18.1.2 One million dollars or more if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company:

18.1.2.1 Is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes; or

18.1.2.2 Is engaged in business operations in Syria.

**ARTICLE 19  
EQUAL BENEFITS FOR EMPLOYEES**

19.1 CONSULTANT certifies that it is aware of the requirements of Section 2-197.1 of the CITY's Code of Ordinances (Ordinance No. O-2012-028) entitled "Requirement for city contractors to provide equal benefits for domestic partners" and further certifies that CONSULTANT currently complies with the requirements of Section 2-197.1 of the CITY's Code of Ordinances.

19.2 Except where federal or state law mandates to the contrary, a contractor awarded a contract pursuant to a competitive solicitation shall provide benefits to Domestic Partners and spouses of its employees, irrespective of gender, on the same basis as it provides benefits to employees' spouses in traditional marriages.

19.3 CONSULTANT shall provide the City Manager and his/her designee, access to its records for the purpose of audits and/or investigations to ascertain compliance with the provisions of this Article, and upon request shall provide evidence that the CONSULTANT is in compliance with the provisions of this Article upon the renewal of this AGREEMENT or when the City Manager or his/her designee receives a complaint or has reason to believe CONSULTANT may not be in compliance with the provisions of this Article. Records shall include but not be limited to providing the City Manager and his/her designee with certified copies of CONSULTANT's records pertaining to its benefits policies and its employment policies and practices.

19.4 CONSULTANT must conspicuously make available to all employees and applicants for employment the following statement:

**“During the performance of a contract with the City of Oakland Park, Florida, the CONSULTANT will provide Equal Benefits to its employees with spouses, as defined by Section 2.197.1 of the City of Oakland Park Code of Ordinances, and its employees with Domestic Partners and all Married Couples”.**

If CONSULTANT has questions regarding the application of Section 2.197.1 of the City of Oakland Park Code of Ordinances to CONSULTANT's duties pursuant to this Agreement, contact Human Resources at 954-630-4323. By executing this Agreement, CONSULTANT certifies that it agrees to comply with the above and Section 2.197.1 of the City of Oakland Park Code of Ordinances, as may be amended from time to time.

## **ARTICLE 20**

### **EMPLOYMENT ELIGIBILITY**

20.1 **E-Verify.** CONSULTANT certifies that it is aware of and complies with the requirements of Section 448.095, Florida Statutes, as may be amended from time to time and briefly described herein below.

#### **20.1.1 Definitions for this Section.**

20.1.1.1 “Contractor” means a person or entity that has entered or is attempting to enter into a contract with a public employer to provide labor, supplies, or services to such employer in exchange for salary, wages, or other remuneration.

20.1.1.2 “Contractor” includes, but is not limited to, a vendor or consultant.

20.1.1.3 “Subcontractor” means a person or entity that provides labor, supplies, or services to or for a contractor or another subcontractor in exchange for salary, wages, or other remuneration.

20.1.1.4 “E-Verify system” means an Internet-based system operated by the

United States Department of Homeland Security that allows participating employers to electronically verify the employment eligibility of newly hired employees.

20.2 **Registration Requirement; Termination.** Pursuant to Section 448.095, Florida Statutes, effective January 1, 2021, Contractors, shall register with and use the E-verify system in order to verify the work authorization status of all newly hired employees. Contractor shall register for and utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of:

20.2.1 All persons employed by a Contractor to perform employment duties within Florida during the term of the contract; and

20.2.2 All persons (including subvendors/subconsultants/subcontractors) assigned by Contractor to perform work pursuant to the contract with the City of Oakland Park. The Contractor acknowledges and agrees that registration and 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 Oakland Park; and

20.2.3 The Contractor shall comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes but is not limited to registration and utilization of the E-Verify System to verify the work authorization status of all newly hired employees. Contractor shall also require all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The Contractor shall maintain a copy of such affidavit for the duration of the contract. Failure to comply will lead to termination of this Contract, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination. Termination of this Contract under this Section is not a breach of contract and may not be considered as such. If this contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of one (1) year after the date of termination.

## **ARTICLE 21**

### **FEDERAL REQUIREMENTS**

Notwithstanding anything to the contrary set forth herein, CONSULTANT shall comply with the applicable federally required standard provisions, as set forth in 2 C.F.R. Sec. 200.326 and 2 C.F.R. Part 200. In the event of any conflicts, the provisions of 2 C.F.R. Part 200 shall prevail. Any reference made to CONSULTANT in this section shall also apply to any subcontractor under the terms of this Agreement. The prime contractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with all of these contract clauses:

21.1 **Equal Employment Opportunity.** During the performance of this contract, CONSULTANT agrees as follows:

21.1.1 CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. 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. CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices

to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

21.1.2 CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

21.1.3 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 CONSULTANT's legal duty to furnish information.

21.1.4 CONSULTANT will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of CONSULTANT's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

21.1.5 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.

21.1.6 CONSULTANT will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

21.1.7 In the event of CONSULTANT's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this Agreement may be canceled, terminated or suspended in whole or in part and CONSULTANT may be declared ineligible for further Government 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.

21.1.8 CONSULTANT will include the provisions of paragraphs (21.1.1) through (21.1.8) 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. CONSULTANT will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided*, however, that in the event CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

The CITY 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 CITY 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 CITY further 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 CITY 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 CITY 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 CITY under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such CITY; and refer the case to the Department of Justice for appropriate legal proceedings.

21.2 **Davis-Bacon Act**. CONSULTANT shall comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor Regulations (29 CFR Part 5). In accordance with the statute, CONSULTANT must be 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. In addition, CONSULTANT must be required to pay wages not less

than once a week.

21.3 **Copeland “Anti-Kickback” Act.** CONSULTANT shall comply with the Copeland “Anti-Kickback” Act, (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). CONSULTANT must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. CITY must report all suspected or reported violations to the Federal awarding agency.

21.4 **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701- 3708).** Where applicable, pursuant to 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5) CONSULTANT must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous.

21.4.1 **Overtime requirements.** No contractor 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.

21.4.2 **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (21.4.1) of this section the CONSULTANT and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor 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 (21.4.1) of this section, in the sum of

\$10 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 (21.4.1) of this section.

21.4.3 **Withholding for unpaid wages and liquidated damages.** 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 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 contractor, 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 (21.4.2) of this section.

21.4.4 **Subcontracts.** CONSULTANT or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (21.4.1) through (21.4.4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (21.4.1) through (21.4.4) of this section.

21.5 CONSULTANT agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401- 7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251- 1387). CITY will report violations to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

21.5.1 **Clean Air Act.** 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. CONSULTANT agrees to report each violation to CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to the State, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. CONSULTANT agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

21.5.2 **Federal Water Pollution Control Act.** 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. 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 State, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

CONSULTANT agrees to include these requirements in each subcontract exceeding one hundred fifty thousand dollars (\$150,000) financed in whole or in part with Federal assistance.

21.6 **Suspension and Debarment.** This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000, as such CONSULTANT is required to verify that none of the contractor's agents, principals (defined at 2 C.F.R. § 180.995), or 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).

21.6.1 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. This certification is a material representation of fact relied upon by CITY. If it is later determined that 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 State and CITY, the

Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

21.6.2 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.

21.7 **Byrd Anti-Lobbying Amendment, as amended (31 U.S.C. § 1352)**. CONSULTANT shall file the required certification pursuant to 31 U.S.C. 1352. 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.

21.8 **Compliance with State Energy Policy and Conservation Act**. CONSULTANT shall comply with all mandatory standards and policies relating to energy efficiency contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

21.9 **Procurement of Recovered Materials**. The CITY and CONSULTANT must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable,

consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

21.10 **Reporting**. Pursuant to 44 CFR 13.36(i)(7), CONSULTANT shall comply with federal requirements and regulations pertaining to reporting, including but not limited to those set forth at 44 CFR 40 and 41, if applicable. Furthermore, both parties shall provide the CITY, the applicable Federal Administrator, the Comptroller General of the United States, or any of their authorized representative access to any books, documents, papers, and records of CONSULTANT which are directly pertinent to this contract for the purpose of making audits, examinations, excerpts, and transcriptions. Also, both Parties agree to provide the applicable Federal Administrator or his authorized representative access to construction or other work sites pertaining to the work being completed under the Agreement.

21.11 **Rights to Inventions**. CONSULTANT agrees that if this Agreement results in any copyrightable materials or inventions, the Federal Government reserves a royalty- free, nonexclusive and irrevocable license to reproduce, publish or otherwise use the copyright of

said materials or inventions for Federal Government purposes.

21.12 **No Obligation by the Federal Government.** The federal government is not a party to this contract and is not subject to any obligations or liabilities to the non-federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

21.13 **DHS Seal, Logo, and Flags.** CONSULTANT shall not use DHS(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific federal pre-approval.

21.14 **Compliance with Federal Law, Regulations, and Executive Orders.** This is an acknowledgement that federal financial assistance will be used to fund the Agreement only. CONSULTANT will comply with all applicable federal law, regulations, executive orders, policies, procedures, and directives.

21.15 **Fraudulent Statements.** CONSULTANT acknowledges that 31 U.S.C. Chap. 38 applies to CONSULTANT's actions pertaining to this Agreement.

21.16 **Prohibition on Contracting for Covered Telecommunications Equipment or Services.** As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause.

21.16.1 **Prohibitions.**

21.16.1.1 Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug. 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

21.16.1.2.1 Unless an exception in paragraph 21.16.3 of this clause applies, the CONSULTANT and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to: Procure or obtain 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 of any system;

21.16.1.2.2 Enter into, extend, or renew a contract to procure or obtain 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 of any system;

21.16.1.2.3 Enter into, extend, or renew contracts with entities that use

covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

21.16.1.2.4 Provide, as part of its performance of this contract, subcontract, or other contractual instrument, 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.

21.16.2 **Exceptions.**

21.16.2.1 This clause does not prohibit CONSULTANT from providing: (i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or (ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

21.16.2.2 By necessary implication and regulation, the prohibitions also do not apply to: (i) Covered telecommunications equipment or services that: i. Are not used as a substantial or essential component of any system; and ii. Are not used as critical technology of any system. (ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

21.16.3 **Reporting Requirement.**

21.16.3.1 In the event CONSULTANT identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph 21.16.3.2 of this clause to the recipient or sub recipient, unless elsewhere in this contract are established procedures for reporting the information.

21.16.3.2 The CONSULTANT shall report the following information pursuant to paragraph 21.16.3.1 of this clause: (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended. (ii) Within ten (10) business days of submitting the information in paragraph

21.16.3.1 of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services. The CONSULTANT shall insert the substance of this clause, including this in all subcontracts and other contractual instruments.

21.17 **Domestic Preference for Procurements**. As appropriate, and to the extent consistent with law, the CONSULTANT should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products. For purposes of this clause: *Produced in the United States* means, for iron and steel products, that all manufacturing

processes, from the initial melting stage through the application of coatings, occurred in the United States. *Manufactured products* mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

21.18 **Affirmative Socioeconomic Steps**. If subcontracts are to be let, CONSULTANT is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

21.19 **License and Delivery of Works Subject to Copyright and Data Rights**. If applicable, the CONSULTANT grants to CITY, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, CONSULTANT will identify such data and grant to the CITY or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, CONSULTANT will deliver to the CONSULTANT data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by CONSULTANT.

## **ARTICLE 22** **MISCELLANEOUS**

22.1 **Ownership of Documents**. Reports, surveys, plans, studies and other data provided in connection with this Agreement are and shall remain the property of CITY whether or not the project for which they are made is completed. CITY hereby agrees to use CONSULTANT's work product for

its intended purposes.

22.2 **Legal Representation.** 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 shall be interpreted strictly against the Party preparing same shall not apply herein due to the joint contributions of both Parties.

22.3 **Records.** CONSULTANT shall keep such records and accounts and require any and all subcontractors to keep records and accounts as may be necessary in order to record complete and correct entries as to personnel hours charged to this engagement, 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 ten

(10) years after the completion of all work to be performed pursuant to this Agreement. Incomplete or incorrect entries in such books and records will be grounds for disallowance by CITY of any fees or expenses based upon such entries. All records shall be maintained and available for disclosure, as appropriate, in accordance with Chapter 119, Florida Statutes.

22.4 **Assignments; Amendments.** This Agreement, and any interests herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by CONSULTANT without the prior written consent of CITY. For purposes of this Agreement, any change of ownership of CONSULTANT shall constitute an assignment which requires CITY approval. However, this Agreement shall run to the benefit of CITY and its successors and assigns. 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.

22.5 **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 at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

22.6 **Notice.** Whenever any Party desires to give notice unto any other Party, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the Party for whom it is intended and the remaining Party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. For the present, CONSULTANT and CITY designate the following as the respective places for giving of notice:

CITY: David Hebert, City Manager City of Oakland Park  
3650 NE 12 Avenue  
Oakland Park, Florida 33334 Telephone No.: (954) 630-4200

Copy To: Donald J. Doody, City Attorney  
Goren, Cherof, Doody & Ezrol, P.A.

3099 East Commercial Boulevard, Suite 200  
Fort Lauderdale, Florida 33308  
Telephone No.: (954) 771-4500

**CONSULTANT: Kimley-Horn and Associates, Inc.**  
**8201 Peters Road**  
**Suite 2200**  
**Plantation, FL 33324**  
**E-mail: stefano.viola@kimley-horn.com**  
**Phone: 954-535-5133**

22.7 **Binding Authority.** Each person signing this Agreement on behalf of either Party individually warrants that he or she has full legal power to execute this Agreement on behalf of the Party for whom he or she is signing, and to bind and obligate such Party with respect to all provisions contained in this Agreement.

22.8 **Headings.** Headings herein are for the convenience of reference only and shall not be considered in any interpretation of this Agreement.

22.9 **Exhibits.** Each exhibit referred in this Agreement forms an essential part of this Agreement. The exhibits if not physically attached should be treated as part of this Agreement and are incorporated herein by reference.

22.10 **Severability.** If any provision of this Agreement or application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

22.11 **Extent of Agreement; Conflicts.** This Agreement represents the entire and integrated agreement between the CITY and the CONSULTANT and supersedes all prior negotiations, representations, or agreements, either written or oral. In the event of any conflict or ambiguity by and between this Agreement and its exhibits, Agreement shall govern and prevail, followed by the CITY's Work Authorization form.

22.12 **Attorneys' Fees.** In the event that either Party brings suit for enforcement of this Agreement, each Party shall bear its own attorney's fees and court costs, except as otherwise provided under the indemnification provisions set forth herein above.

22.13 **Counterparts and Execution.** This Agreement may be executed by hand or electronically in multiple originals or counterparts, each of which shall be deemed to be an original and together shall constitute one and the same agreement. Execution and delivery of this Agreement by the Parties shall be legally binding, valid, and effective upon delivery of the executed documents to the other Party through facsimile transmission, email, or other electronic delivery.

22.14 **No Third Party Beneficiaries.** The services to be performed by the CONSULTANT are intended solely for the benefit of the CITY. No person or entity not a signatory to this Agreement shall be entitled to rely on the CONSULTANT's performance of its services hereunder, and no right to assert a claim against the CONSULTANT by assignment of indemnity rights or otherwise shall accrue to a third

party as a result of this Agreement or the performance of the CONSULTANT's services hereunder.

22.15 A DESIGN PROFESSIONAL WHO IS AN INDIVIDUAL EMPLOYEE OR AGENT OF CONSULTANT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE OCCURRING WITHIN THE COURSE AND SCOPE OF THIS AGREEMENT, PURSUANT TO §558.0035, FLORIDA STATUTES, AS MAY BE AMENDED FROM TIME TO TIME.

[SIGNATURE PAGE FOLLOWS]

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

CITY:

**CITY OF OAKLAND PARK, FLORIDA**

ATTEST:

Lee M. Shroy  
CITY CLERK  
R.2024.057

BY: [Signature]  
MAYOR Mitch Rosenwald



APPROVED AS TO FORM:

[Signature]  
OFFICE OF THE CITY ATTORNEY

BY: Allyson Chae Smith  
CITY MANAGER David Hestert

Print Name: Sam Swack

CONSULTANT:

**Kimley-Horn and Associates, Inc.**

By: [Signature]

Print Name: Stefano F. Viola, P.E.  
Title: Vice President

Email: Stefano.viola@kimley-horn.com

STATE: Florida  
 COUNTY: Broward

Sworn to (or affirmed) and subscribed before me this 20th day of March, 2024, by: Stefano F. Viola  
Name of Person Making Statement

[Signature]  
Signature of Notary Public  
Shanda Sutton Layne  
Name of Notary Public (Typed, Printed, Stamped)

SHANDA SUTTON LAYNE  
 Notary Public - State of Florida  
 Commission #1111 243804  
 My Comm. Expires Apr 4, 2026  
 Bonded through National Notary Assn.

Personally Known:  OR Identification Produced:

Type of Identification Produced: \_\_\_\_\_

**EXHIBIT C**

CITY OF OAKLAND PARK



**RFQ #100323  
CONTINUING PROFESSIONAL  
SERVICES CONSULTANTS (CCNA)**

<b>SCHEDULE OF HOURLY RATES</b>	<b>Kimley-Horn and Associates, Inc.</b>
<i>Staff Title</i>	<i>Hourly Rate</i>
<b>Principal</b>	
Principal Engineer	\$ 275.00
Principal Surveyor	\$ 200.00
Principal Landscape Architect/Planner	\$ 250.00
<b>Senior Architect/Project Manager/Engineer/Landscape Architect</b>	
Senior Architect	\$ 300.00
Senior Project Manager	\$ 250.00
Senior Engineer	\$ 225.00
Senior Landscape Architect	\$ 215.00
<b>Project Manager</b>	
Construction Manager	\$ 175.00
<b>Jr. Project Manager</b>	
Senior Designer	\$ 150.00
Designer	\$ 120.00
<b>Architect/Engineer/Landscape Architect</b>	
Senior Engineer	\$ 225.00
Engineer	\$ 175.00
Senior Landscape Architect	\$ 215.00
Landscape Architect	\$ 200.00
Project Landscape Designer	\$ 165.00
Project Planner	\$ 175.00
Job Captain/Project Architect	\$ 200.00
Senior Drafter	\$ 150.00
<b>Senior Inspector</b>	
Director of Construction Management	\$ 175.00
Senior Construction Inspector	\$ 150.00
Senior Field Representative	\$ 125.00
Project Designer/Project Specialist III	\$ 120.00
<b>Inspector</b>	
Project Specialist II	\$ 115.00
<b>Surveyor</b>	
Project Surveyor	\$ 160.00
1-Man Survey Crew	\$ 130.00
2-Man Survey Crew	\$ 150.00

