

CITY OF HOLLYWOOD, FLORIDA

**PROFESSIONAL ENGINEERING CONSULTANT SERVICES
AGREEMENT**



Tidal Flood Mitigation and Shoreline Protection Project, Phase I

**CITY OF HOLLYWOOD
DEPARTMENT OF DESIGN AND CONSTRUCTION MANAGEMENT
PROJECT NO. DCM-19-001187**



PROFESSIONAL SERVICES AGREEMENT

BETWEEN THE CITY OF HOLLYWOOD, FLORIDA
AND
CUMMINS CEDERBERG, INC.

PROFESSIONAL ENGINEERING SERVICES

Tidal Flood Mitigation and Shoreline Protection Project, Phase I

THIS AGREEMENT is made this 25 day of November, 2020, by and between the City of Hollywood, a municipal corporation of the State of Florida ("City") and Cummins Cederberg, Inc., a corporation authorized to do business in the State of Florida ("Consultant").

WITNESSETH:

WHEREAS, the City issued RFQ No. DCM-19-001187 in accordance with Section 287.055, Florida Statutes, ("Consultants' Competitive Negotiation Act") seeking a firm to provide Professional Engineering Services for Tidal Flooding Mitigation and Shoreline Protection Engineering Design, permitting and construction phase services and related professional consulting services; and

WHEREAS, on October 21, 2020, the City Commission passed and adopted Resolution No. R-2020-275 which awarded the contract to Consultant and authorized the execution of this Agreement between City and Consultant.

NOW, THEREFORE, the City and the Consultant, for the considerations herein set forth, agree as follows:

TABLE OF CONTENTS

ARTICLE	PAGE
SCOPE OF THE WORK.....	1
1. DEFINITIONS.....	2
1.01 Additional Services	
1.02 Basic Services	
1.03 City	
1.04 City Manager	
1.05 Consultant	
1.06 Contractor or Construction Manager (CM)	
1.07 Director	
1.08 Inspector	
1.09 Project	
1.10 Project Manager	
2. CONSULTANT SERVICES AND RESPONSIBILITIES.....	3
2.1 Basic Services	
2.2 Reimbursables	
3. SUBCONSULTANTS.....	5
3.01 Definitions	
3.02 Subconsultant's Relations	
4. THE CITY'S RESPONSIBILITIES.....	6
4.01 Information Furnished	
4.02 Project Management	
4.03 Legal Services, Etc.	
5. BASIS OF COMPENSATION.....	6
5.01 Professional Service Fee	
5.02 Additional Service/Reimbursables Fee	
6. PAYMENTS TO THE CONSULTANT.....	7
6.01 Payment for Basic Services	
6.02 Payment for Additional/Reimbursables Services	
6.03 Deductions	
6.04 Project Suspension	

ARTICLE	PAGE
7. REUSE OF PLANS AND SPECIFICATIONS.....	9
7.01 Scope of Services	
8. GENERAL PROVISIONS.....	13
8.01 Indemnification	
8.02 Insurance	
8.03 Performance	
8.04 Termination of Agreement	
9. MISCELLANEOUS.....	21
EXHIBIT "A" RFQ No. DCM-19-001187 Documents	
EXHIBIT "B" Consultant's Proposal	
EXHIBIT "C" Rate Schedule	
EXHIBIT "D" Certificates of Insurance	

SCOPE OF SERVICES/TERM

CONSULTANT shall furnish professional engineering, survey and general consulting services for the Tidal Flood Mitigation and Shoreline Protection GOB Project in accordance with RFQ No. R-2020-072 attached as Exhibit "A", and the Consultant's Proposal, attached as Exhibit "B". The time for the performance of such services is set forth in Article 7 of this Agreement.

As set forth in the RFQ, the CONSULTANT shall provide engineering, survey and general consulting services for the Tidal Flood Mitigation and Shoreline Protection GOB Project based upon the proposal in Exhibit "B, that may include but is not limited to:

1. The City wishes to engage the services of a civil engineering consultant to design approximately 7,300 linear feet of shore line protection, along city owned property immediately west of the Intercoastal Waterway . On the areas known as North Lake and South Lake and Holland Park. This portion of the project is funded with 2019 GOB project initiatives.
2. The City also wishes to engage the same consultant to design approximately 2,946 linear feet of seawall repair/replacement, and possibly up to approximately 10,873 linear feet of private seawall repair replacement. These last two projects are not funded at this time and the City may or may not award any portion of a contract in the advancement of these two projects.
3. The scope of work may include surveys, above water and below as needed, geotechnical engineering, environmental services and biological services related to coastal construction, coastal engineering, structural engineering, civil engineering and landscape architecture, cost estimating, permitting and construction administration. The scope may include construction inspection and management services.
4. Develop alternate shoreline protection sections, 3 minimum, for each different site condition encountered along the route in relation to available lands, environmental impacts, access for construction and surveys. Estimate costs and develop matrix for selection of most appropriate section.
5. Develop presentations on the shoreline protection recommended and present before Community meetings City Commission, Technical Advisory, GOB Oversight Board, etc.
6. Provide all necessary permitting assistance as require to obtain permits from Broward County, Army Corps of Engineers, Florida Fish and Wildlife, City of Hollywood and other required permit agency.
7. Participate in the design and construction administration of the project on an as needed basis as determined by the City, providing services such as limited submittal review, attending City Commission presentations, predesign/construction conferences and occasional project meetings and answering technical questions as design and construction progresses.
8. May be requested to provide onsite part time or full time inspection observations services as needed by the City, as well as project administration.
9. May be requested to assist in the application or creation of support documents for the pursuit of project related grants such as FEMA Community Flood Mitigation or Disaster Preparation Grants.

ARTICLE 1
DEFINITIONS

- 1.01 ADDITIONAL SERVICES: Those services defined in Section 2.5
- 1.02 BASIC SERVICES: Those Engineering services defined in Section 2.1.
- 1.03 CITY: The City of Hollywood, Florida, a Florida Municipal Corporation.
- 1.04 CITY MANAGER: The duly appointed chief executive officer of the City.
- 1.05 CONSULTANT: The individual, partnership, corporation, association, joint venture, or any combination thereof, of properly registered professional engineers, which has entered into the agreement to provide professional services to the City. The consultant for this agreement is Cummins Cederberg, Inc.
- 1.06 N/A
- 1.07 DIRECTOR: The Director of the Department of Design and Construction Management having the authority and responsibility for management of the Project authorized under this Agreement.
- 1.08 INSPECTOR: An employee of the City assigned by the Director to make observations of work performed by the Consultant and any Contractor.
- 1.09 PROJECT: The Engineering Services relating to the engineering design, permitting and construction phase services and related professional consulting services Tidal Flooding Mitigation and Shoreline Protection Project, Phase I, as outlined in Exhibit "A" and as set forth in Exhibit "B".
- 1.10 PROJECT MANAGER: An employee of the CITY, expressly designated as PROJECT MANAGER in writing by the DIRECTOR, who is the representative of the CITY, concerning the overseeing of the PROJECT and this Agreement.

ARTICLE 2
CONSULTANT SERVICES AND RESPONSIBILITIES

2.1 BASIC SERVICES

- 2.1.1 CONSULTANT shall employ architects, mechanical, electrical, structural, and civil engineers licensed as such by the State of Florida, and such other consultants as may be necessary for the provision of services under this Agreement. All sub-consultants provided under basic services shall be paid by CONSULTANT. CONSULTANT shall submit, for approval by CITY, names of sub-consultants for each professional element of service of the PROJECT. Nothing in the foregoing shall create any contractual relationship between CITY and any sub-consultants employed by CONSULTANT under the terms of this Agreement. CONSULTANT is as responsible for the performance of its sub-consultants as it would be if it had rendered these services itself.
- 2.1.2 CONSULTANT shall designate a principal or a staff member within five days after receiving its Authorization to Proceed, or other directive from the CITY, a qualified licensed professional to service as the CONSULTANT's Project Manager (the "Consultant's Project Manager") . So long as the Consultant's Project Manager performs in a manner acceptable to CITY, and remains in CONSULTANT's employ, the Consultant's Project Manager shall remain in charge of all design and other services required under this Agreement, including attending meetings for the PROJECT, unless a substitution mutually acceptable to CONSULTANT and CITY is made. The Consultant's Project Manager shall be authorized and responsible to act on the behalf of CONSULTANT with respect to directing, coordinating and administering all aspects of the services to be provided and performed under this Agreement.
- 2.1.3 CONSULTANT has represented to the CITY it has expertise in the type of professional services that will be required for this PROJECT. CONSULTANT agrees that all services to be provided by CONSULTANT pursuant to this Agreement shall be subject to the CITY's review and approval and shall be in accordance with the generally accepted standards of professional practice in the State of Florida, as may be applied to the type of services to be rendered, as well as in accordance with all published laws, statutes, ordinances, codes, rules, regulations and requirements of any governmental agencies which regulate or have jurisdiction over the PROJECT or the services to be provided and performed by CONSULTANT. In the event of any conflicts in these requirements, CONSULTANT shall notify the CITY of such conflict and utilize its best professional judgment to advise CITY regarding resolution of the conflict.
- 2.1.4 CONSULTANT shall abide by all regulations imposed by authorities having jurisdiction over the Project.
- 2.1.5 CONSULTANT shall cooperate with other professionals CITY may employ for related work.
- 2.1.6 To the extent required by CITY, CONSULTANT shall consult with authorized employees, agents, and representatives of CITY relative to the development of the PROJECT.
- 2.1.7 Independent of the PROJECT when conducted, review, approval or acceptance of CONSULTANT's work whether by CITY or others, shall not relieve CONSULTANT from responsibility for errors and omissions in CONSULTANT's work.

- 2.1.8 CONSULTANT shall provide the engineering design, permitting and construction phase services and related professional consulting services Tidal Flooding Mitigation and Shoreline Protection Project, Phase I, in accordance with the RFQ and in accordance with all applicable laws, codes, rules, regulations, ordinances, and standards.
- 2.1.9 CONSULTANT acknowledges that access to the project site(s), to be arranged by CITY for CONSULTANT, may be provided during times that are not the normal business hours of the CONSULTANT, if necessary.
- 2.1.10 CONSULTANT shall provide a written monthly progress report regarding to the PROJECT.

2.2 REIMBURSABLES:

Reimbursables are those items authorized by the City in addition to the Basic Services and consist of actual expenditures made by the CONSULTANT and the CONSULTANT'S employees, Subconsultants, and Special Subconsultants in the interest of the PROJECT for the following purposes:

- a) Identifiable transportation expenses in connection with the PROJECT, subject to the limitations of Section 112.061, Florida Statutes. Transportation expenses to locations outside the Miami-Dade/Broward/Palm Beach County area or from locations outside the Miami-Dade/Broward/Palm Beach County area will not be reimbursed unless specifically pre-authorized in writing by the Project Manager. Such pre-authorization will be subject to the limitations of Section 112.061, Florida Statutes. Transportation expenses within the Miami-Dade/Broward/Palm Beach County area are not reimbursable.
- b) Identifiable per diem, meals and lodging, taxi fares and miscellaneous travel-connected expenses for CONSULTANT'S personnel subject to the limitations of Section 112.061 Florida Statutes. Meals for class C travel inside Broward County will not be reimbursed. Meals and lodging expenses will not be reimbursed for temporarily relocating CONSULTANT'S employees from one of CONSULTANT'S offices to another office, if the employee is relocated for more than ten consecutive working days. Lodging will be reimbursed only for room rates equivalent to Holiday Inn, Days Inn or Ramada Inn. Governmental lodging will not be reimbursed within Miami-Dade, Broward or Palm Beach County.
- c) Identifiable communication expenses approved by the PROJECT MANAGER, long distance telephone, courier and express mail between the CONSULTANT'S various permanent offices. The CONSULTANT'S field office at the Project site is not considered a permanent office.
- d) Cost of printing, reproduction or photography, which is required by or for the CONSULTANT to deliver services, set forth in this Agreement.
- e) Reimbursable subconsultant expenses are limited to the items described above when the subconsultant agreement provides for reimbursable expenses and when such agreement has been previously approved in writing by the City and subject to all budgetary limitations and requirements of Section 2.2 herein.

ARTICLE 3
SUBCONSULTANTS

(A) A Subconsultant is a person or organization of properly registered professional architects and/or engineers, who has entered into a written agreement with the CONSULTANT to furnish professional services for a project or task, described under Basic Services in Section 2.1.

(B) All services provided by the Subconsultants shall be pursuant to appropriate written agreements between the CONSULTANT and the Subconsultants, which shall contain provisions that preserve and protect the rights of the CITY and the CONSULTANT under this Agreement.

(C) Nothing contained in this Agreement shall create any contractual or business relationship between the City and the Subconsultants. The CONSULTANT acknowledges that Subconsultants are under its direction, control, supervision, retention and/or discharge.

(D) The CONSULTANT proposes to utilize the following Subconsultants:

NAME OF FIRM	CONSULTING SERVICE
<u>Curtis Rogers</u>	<u>Landscape Architecture</u>
<u>Chen Moore</u>	<u>Civil Engineering</u>
<u>Brizaga</u>	<u>Public Outreach and Engagement</u>
<u>Keith</u>	<u>Topographic and Bathymetric Surveying</u>
<u>NV5</u>	<u>Geotechnical Investigations and Engineering</u>

The CONSULTANT shall not change any Subconsultant without prior approval by the DIRECTOR, in response to a written request from the CONSULTANT stating the reasons for any proposed substitution. Such approval shall not be unreasonably withheld or delayed by the DIRECTOR

ARTICLE 4
THE CITY'S RESPONSIBILITIES

4.01 INFORMATION FURNISHED:

The CITY at its expense and insofar as performance under this Agreement may require, shall furnish the CONSULTANT with the following information or may authorize the CONSULTANT to provide the information:

- a) Available LiDAR data.
- b) Available record drawings for existing drainage facilities,

4.02 PROJECT MANAGEMENT:

- a) The DIRECTOR shall act on behalf of the CITY in all matters pertaining to this Agreement. The DIRECTOR shall approve all invoices for payment to the CONSULTANT.
- b) The Department of Design and Construction Management shall act as liaison between the Consultant and CITY. The DIRECTOR shall designate a PROJECT MANAGER from the Department of Design and Construction Management staff to have general responsibility for management of this PROJECT. The PROJECT MANAGER shall meet with the CONSULTANT at periodic intervals throughout the preparation of the PROJECT to assess the progress of the work in accordance with approved schedules. The PROJECT MANAGER shall also examine documents submitted by the CONSULTANT, including invoices, and shall promptly render decisions and/or recommendations pertaining thereto, to avoid unreasonable delay in the progress of the CONSULTANT'S work.
- c) If the City observes or otherwise becomes aware of any fault or defective work in the project or other nonconformance with Exhibits "A" and "B", the City shall give prompt notice to the CONSULTANT.

ARTICLE 5
BASIS OF COMPENSATION

5.01 PROFESSIONAL SERVICE FEES:

- A. CITY agrees to pay the CONSULTANT, and the CONSULTANT agrees to accept for services rendered pursuant to this Agreement, an amount not to exceed **\$1,249,870.** Payments to the Consultant shall be based upon the not to exceed amount in accordance with the rate schedule attached as Exhibit "C" and paid in accordance with the payment provisions set forth in Article 6 herein. It is understood that the Consultant shall perform all services for the total compensation not to exceed amount. CITY shall have no obligation or liability to pay any fee, expenditure, charge or cost beyond the not to exceed amount stipulated in this Agreement.

- 1) Personnel directly engaged on the PROJECT by the CONSULTANT may include engineers, designers, job captains, draftsmen, specifications writers, field accountants and inspectors engaged in consultation, research and design, production of drawings, specifications and related documents, construction inspection, and other services pertinent to the PROJECT.
- 2) Any authorized reimbursable services fee shall not include charges for office rent or overhead expenses of any kind, including local telephone and utility charges, office and drafting supplies, depreciation of equipment, professional dues, subscriptions, etc., reproduction of drawings and specifications and plans, mailing, stenographic, clerical, or other employees time or travel and subsistence not directly related to the project. For all reimbursable services the CONSULTANT will apply the multiplier of one- (1.0) times the amount expended by the CONSULTANT. City authorized reproductions in excess of sets required for this PROJECT will be a Reimbursable Service.

ARTICLE 6
PAYMENTS TO THE CONSULTANT

6.01 PAYMENT FOR BASIC SERVICES:

Payments for Basic Services may be requested monthly in proportion to services performed during the PROJECT.

CONSULTANT shall invoice CITY based upon the CONSULTANT's fee table and/or rate schedule set forth in Exhibit "C". Each invoice shall be due and payable 45 days after the CITY receives a correct, fully documented invoice, in a form substantially acceptable to the CITY with all appropriate cost substantiations attached. Invoices shall be sent to: **City of Hollywood Department of Design and Construction Management, P.O. Box 229045, Hollywood, FL 33022-9045.** CONSULTANT shall clearly state "Final Invoice" on CONSULTANT's last billing for the services rendered to the CITY. CONSULTANT's submission of a Final Invoice is its certification that all services have been properly performed and all charges and costs have been invoiced to the CITY. This account will be closed upon the CITY's receipt of the Final Invoice. CONSULTANT waives any charges not properly included in the Final Invoice and CONSULTANT'S acceptance of final payment shall constitute a full waiver of any and all claims, by it against the CITY arising out of this Agreement or otherwise related to this PROJECT, except those previously made in writing and identified by CONSULTANT as unsettled at the time of the final payment. The CITY's payment of a Final Invoice shall not constitute evidence of the CITY's acceptance of CONSULTANT's performance of the services or its acceptance of any of CONSULTANT's work for this PROJECT. The CITY's review, approval, acceptance, or payment for any of CONSULTANT's services shall not be construed to: (i) operate as a waiver of any rights the CITY possesses under this Agreement; (ii) waive or release any claim or cause of action arising out of CONSULTANT's performance or nonperformance of this Agreement. CONSULTANT shall be and will always remain liable to the CITY in accordance with applicable law for any and all damages to the CITY caused by CONSULTANT's negligent or wrongful performance or nonperformance of any of the services to be furnished under this Agreement.

6.02 DEDUCTIONS:

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

6.03 PROJECT SUSPENSION:

If this PROJECT is suspended for the convenience of the CITY for more than three months or terminated without any cause in whole or in part, during the PROJECT, CONSULTANT shall be paid for services rendered which were performed prior to such suspension or termination, together with the cost of authorized reimbursable services and expenses then due and all appropriate and applicable terminal expenses resulting from such suspension or termination. If this PROJECT is resumed after having been suspended for more than three months, CONSULTANT's further compensation shall be subject to renegotiations.

ARTICLE 7
GENERAL PROVISIONS

7.01 INDEMNIFICATION:

CONSULTANT shall indemnify and hold harmless the CITY, and its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of CONSULTANT and other persons employed or utilized by CONSULTANT in the performance of this Agreement . These provisions shall survive the expiration or earlier termination of this Agreement. Nothing in this Agreement shall be construed to affect in any way the CITY's rights, privileges and immunities under the doctrine of "sovereign immunity" and as set forth in Section 768.28, Florida Statutes. These provisions shall survive the expiration or earlier termination of this Agreement.

7.02 INSURANCE:

Prior to the commencement of work governed by this Agreement, CONSULTANT shall obtain insurance as specified in the schedules shown below. CONSULTANT will ensure that the insurance obtained will extend protection to all sub-Consultants engaged by CONSULTANT. As an alternative, CONSULTANT may require all sub-Consultants to obtain insurance consistent with the schedules shown below.

CONSULTANT will not be permitted to commence work governed by this Agreement until satisfactory evidence of the required insurance has been furnished to the CITY as specified below. Delays in the commencement of work, resulting from the failure of CONSULTANT to provide satisfactory evidence of the required insurance, shall not extend deadlines specified in this Agreement and any penalties and failure to perform assessments shall be imposed as if the work commenced on the specified date and time, except for CONSULTANT's failure to provide satisfactory evidence.

CONSULTANT shall maintain the required insurance throughout the entire term of this Agreement and any extensions specified in any attached schedules. Failure to comply with this provision may result in the immediate suspension of all work until the required insurance has been reinstated or replaced. Delays in the completion of work resulting from the failure of CONSULTANT to maintain the required insurance shall not extend deadlines specified in this contract and any penalties and failure to perform assessments shall be imposed as if the work had not been suspended, except for CONSULTANT's failure to maintain the required insurance.

CONSULTANT shall provide, to the City, as satisfactory evidence of the required insurance, either:

1. Certificate of Insurance with endorsements; or
2. Certified copy of the actual insurance policy and endorsement policy.

CITY, at its sole option, has the right to request a certified copy of any or all insurance policies required by this Agreement. All insurance policies must specify that they are not subject to cancellation, non-renewal, material change, or reduction in coverage unless a minimum of 30 days prior notification is given to CITY by the insurer.

The acceptance and/or approval of CONSULTANT's insurance shall not be construed as relieving CONSULTANT from any liability or obligation assumed under this contract or imposed by law. The City of Hollywood, Florida, its employees and officials will be included as "Additional Insured" on all policies, except for Workers' Compensation and Professional Liability. In addition, CITY will be named as an Additional Insured and Loss Payee on all policies covering City-owned property. Any deviations from these General Insurance Requirements must be requested in writing on the CITY's prepared form entitled "Request for Waiver of Insurance Requirements" and approved by the CITY's Risk Manager.

Any sub-consultant shall supply such similar insurance required of CONSULTANT. Such certificates shall name the CITY, its employees and officials as additional insured on the general liability and auto liability policies.

7.02A Insurance Limits of Liability:

All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida and satisfactory to the Owner. All companies shall have a Florida resident agent and be rated a minimum A-VI, as per A.M. Best Company's Key Rating Guide, latest edition.

CONSULTANT shall furnish certificates of insurance to the Risk Manager for review and approval prior to the execution of this agreement. The Certificates shall clearly indicate that CONSULTANT has obtained insurance of the type, amount and classification required by these provisions, in excess of any pending claims at the time of contract award to CONSULTANT. No failure to renew, material change or cancellation of, the insurance shall be effective without a 30 day prior written notice to and approval by the CITY.

1. Commercial General Liability:

Prior to the commencement of work governed by this Agreement, CONSULTANT shall obtain General Liability Insurance. Coverage shall be maintained throughout the life of this Agreement and include, as a minimum:

- a. Premises Operations
- b. Products and Completed Operations
- c. Blanket Contractual Liability
- d. Personal Injury Liability
- e. Expanded Definition of Property Damage

The minimum limits acceptable shall be:

\$ 2,000,000 per occurrence/\$4,000,000 aggregate

2. Comprehensive Automobile Liability:

Recognizing that the work governed by this contract requires the use of vehicles, CONSULTANT, prior to the commencement of work, shall obtain Vehicle Liability Insurance. Coverage shall be maintained throughout the life of the contract and include, as a minimum, liability coverage for:

Owned, Non-Owned, and Hired Vehicles

The minimum limits acceptable shall be:

\$ 1,000,000.00 Combined Single Limit (CSL)

If split limits are provided, the minimum limits acceptable shall be:

\$ 500,000.00 per Person

\$ 1,000,000.00 per Occurrence

\$ 100,000.00 Property Damage

The City of Hollywood, its employees and officials shall be named as Additional Insured on all policies issued to satisfy the above requirements.

3. Worker's Compensation Insurance:

Prior to the commencement of work governed by this Agreement, CONSULTANT shall obtain Workers' Compensation Insurance with limits sufficient to respond to the applicable state statutes.

In addition, CONSULTANT shall obtain Employers' Liability Insurance with limits of not less than:

\$ 500,000.00 Bodily Injury by Accident

\$ 500,000.00 Bodily Injury by Disease, policy limits

\$ 500,000.00 Bodily Injury by Disease, each employee

Coverage shall be maintained throughout the entire term of this Agreement.

Coverage shall be provided by a company or companies authorized to transact business in the state of Florida and the company or companies must maintain a minimum rating of A-VI, as assigned by the A.M. Best Company.

If CONSULTANT has been approved by the Florida's Department of Labor, as an authorized self-insurer, the CITY shall recognize and honor CONSULTANT's status. CONSULTANT may be required to submit a Letter of Authorization issued by the Department of Labor and a Certificate of Insurance, providing details on CONSULTANT's Excess Insurance Program.

If CONSULTANT participates in a self-insurance fund, a Certificate of Insurance will be required. In addition, CONSULTANT may be required to submit updated financial statements from the fund upon request from the CITY.

4. Professional Liability (Errors and Omissions) Insurance:

Recognizing that the work governed by this Agreement involves the furnishing of advice or services of a professional nature, CONSULTANT shall purchase and maintain, throughout the life of this Agreement and for a period of three years beginning at the time work under this Agreement is completed, Professional Liability Insurance covering CONSULTANT's negligent acts, errors and/or omissions, including design errors of CONSULTANT, for damages resulting from a claim arising out of CONSULTANT's performance of professional services under this Agreement. In the event that any professional liability insurance required under this Agreement is written on a claims-made basis, CONSULTANT warrants that any retroactive date under the policy shall precede the effective date of this Agreement.

The minimum limits of liability shall be:

\$ 5,000,000 per Claim / \$ 5,000,000 Aggregate

7.03 TIME FOR PERFORMANCE:

Services to be rendered by CONSULTANT shall commence subsequent to the issuance of an Authorization to Proceed from the CITY for all or any designated portion of the PROJECT and shall be performed and completed by completion date identified in Exhibit "E" project schedule with a 1460 calendar day close-out timeframe.

Time is of the essence with respect to performance of this Agreement.

A reasonable extension of the time for completion of the PROJECT will be granted by the CITY should there be a delay on the part of the CITY in fulfilling its part of the Agreement as stated herein. Such extension of time shall not be cause for any claim by CONSULTANT for extra compensation.

7.04 TERMINATION OF AGREEMENT:

CITY has the right to terminate this Agreement for any reason or no reason, upon seven days' written notice. Upon termination of this Agreement, all charts, sketches, studies, drawings, and other documents related to work authorized under this Agreement, whether finished or not, must be turned over to the CITY. CONSULTANT shall be paid in accordance with Section 6.04, provided that said documentation be turned over to CITY within ten business days of termination. Failure to timely deliver the documentation shall be cause to withhold any payments due.

CONSULTANT shall have the right to terminate this Agreement, in writing, following breach by the CITY, if breach of contract has not been corrected within 60 days from the date of the CITY's receipt of a statement from CONSULTANT specifying its breach of its duties under this Agreement.

ARTICLE 8
MISCELLANEOUS

8.01 CONSULTANT'S ACCOUNT RECORDS:

CITY reserves the right to audit CONSULTANT's accounts for bills submitted based upon the rate schedule and hourly rate during the performance of this Agreement and for five years after final payment under this Agreement. CONSULTANT agrees to furnish copies of any records necessary, in the opinion of the DIRECTOR, to approve any requests for payment by CONSULTANT.

8.02 OWNERSHIP OF DOCUMENTS:

Documents supporting the Tidal Flooding Mitigation and Shoreline Protection Project, Phase I, including preliminary drafts of the plan, any plan documents, drawings, specifications, analysis, backup materials are and shall become the property of the CITY whether the PROJECT for which they are made is executed or not. .

Submission or distribution to meet official regulatory requirements or for other purposes in connection with the PROJECT is not to be construed as publication in derogation of the CONSULTANT's rights.

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

8.03 MAINTENANCE OF RECORDS:

CONSULTANT will keep adequate records and supporting documentation, which concern or reflect its services hereunder. The records and documentation will be retained by CONSULTANT for a minimum of five years from the date of termination of this Agreement or the date the Project is completed, whichever is later. CITY, or any duly authorized agents or representatives of CITY, shall have the right to audit, inspect, and copy all such records and documentation as often as they deem necessary during the period of this Agreement and during the five year period noted above; provided, however such activity shall be conducted only during normal business hours.

8.04 MODIFICATION OF AGREEMENT: No modification or change in this Agreement shall be valid or binding upon the parties unless in writing and executed by the party or parties intended to be bound by it.

8.05 EXTENT OF AGREEMENT:

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

8.06 SUCCESSORS AND ASSIGNS:

The performance of this Agreement shall not be transferred pledged, sold, delegated or assigned, in whole or in part, by CONSULTANT without the written consent of the CITY, acting by and through its City Commission.

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

8.07 TRUTH-IN-NEGOTIATION CERTIFICATE:

In compliance with the Consultant's Competitive Negotiation Act, for any Authorization to Proceed for the PROJECT to be compensated under the Lump Sum method, CONSULTANT shall certify that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of execution of this Agreement and issuance of the Authorization to Proceed. The original project price and any addition thereto will be adjusted to exclude any significant sums by which the CITY determines the project price was increased due to inaccurate, incomplete or noncurrent wage rates and other factual unit costs. All such price adjustments will be made within one year following the end of the PROJECT.

8.08 PROHIBITION AGAINST CONTINGENCY 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 award of or making of this Agreement. For the breach or violation of this provision, the CITY shall have the right to terminate the Agreement at its sole discretion, without liability and to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

8.09 APPLICABLE LAW AND VENUE OF LITIGATION:

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any suit or action brought by any party, concerning this agreement, or arising out of this agreement, shall be brought in Broward County, Florida. Each party shall bear its own attorney's fees except in actions arising out of CONSULTANT's duties to indemnify the CITY pursuant to Article 8, subsection 8.01 where CONSULTANT shall pay the CITY's reasonable attorney's fees.

8.10 CONSULTANT'S STAFF:

CONSULTANT shall maintain an adequate and competent staff of professionally qualified persons during the term of this Agreement for the purpose of rendering the required services set forth in this Agreement. CITY may require in writing, that CONSULTANT remove from the services/work any of CONSULTANT's personnel, or any sub-consultants or subcontractors or any personnel of such sub-consultants or subcontractors engaged by CONSULTANT, that CITY determines to be incompetent, careless or otherwise objectionable. No claims for an increase in the Agreement amount or contract time based on CITY's exercise of this provision will be valid. CONSULTANT shall indemnify and hold CITY harmless from and against any claim by CONSULTANT's personnel, sub-consultant's, subcontractors, or personnel of sub-consultant's or subcontractor's on account of CITY'S use of this provision.

8.11 NOTICES:

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

FOR CITY:

City Manager
2600 Hollywood Blvd., Rm. 421
Hollywood, Florida 33020

With a Copy to: City Attorney
2600 Hollywood Blvd., Rm. 407
Hollywood, Florida 33020

FOR CONSULTANT:

Jason Cummins, M.Sc., P.E., Principal
7550 Red Rd #217,
South Miami, FL 33143

8.12 INTERPRETATION:

The language of this Agreement has been agreed to by both parties to express their mutual intent and no rule of strict construction shall be applied against either party hereto. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a Section or Article of this Agreement, such reference is to the Section or Article as a whole, including all of the subsections of such Section, unless the reference is made to a particular subsection or subparagraph of such Section or Article.

8.13 JOINT PREPARATION:

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

8.14 PRIORITY OF PROVISIONS:

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

8.15 MEDIATION; WAIVER OF JURY TRIAL:

In an effort to engage in a cooperative effort to resolve conflict which may arise during the course of the PROJECT , and/or following the completion of the PROJECT , the parties to this Agreement agree all disputes between them shall be submitted to non-binding mediation prior to the initiation of litigation, unless otherwise agreed in writing by the parties. A certified Mediator, who the parties find mutually acceptable, will conduct any Mediation Proceedings in Broward County, State of Florida. The parties will split the costs of mediation on a 50/50 basis. The parties to this Agreement agree to include such similar contract provisions with all Subconsultants and/or independent contractors and/or consultants retained for the project(s), thereby providing for non-binding mediation as the primary mechanism for dispute resolution.

8.16 TIME:

Time is of the essence in this agreement.

8.17 COMPLIANCE WITH LAWS:

CONSULTANT shall comply with all applicable laws, codes ordinances, rules, regulations and resolutions in performing its duties, responsibilities, and obligations related to this agreement.

8.18 PUBLIC RECORDS LAW

CONSULTANT acknowledges that Chapter 119, Florida Statutes entitled "Public Records Law" is applicable to this Agreement. Further, the provisions of Section 119.0701, Florida Statutes, are also applicable and CONSULTANT acknowledges its obligations to comply with said requirements with regard to public records and shall:

- a) Keep and maintain public records required by CITY to perform the services required under this Agreement;
- b) Upon request from the City's custodian of public records or his/her designee, provide 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;
- c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the term of this Agreement and following the completion of this Agreement if CONSULTANT does not transfer the records to the CITY ; and
- d) Upon completion of this Agreement, CONSULTANT shall transfer, at no cost, to the CITY, all public records in possession of CONSULTANT or keep or maintain public records required by the CITY to perform the service. If the CONSULTANT transfers all public records to the CITY upon completion of this Agreement, CONSULTANT shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONSULTANT keeps and maintains public records upon completion of this Agreement, CONSULTANT shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon the request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the CITY.


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: CITY CLERK'S OFFICE, 2600 HOLLYWOOD BOULEVARD, HOLLYWOOD, FLORIDA 33020 OR AT (954) 921-3211, PCERNY@HOLLYWOODFL.ORG.


IN WITNESS WHEREOF, the CITY has caused this Agreement to be executed by the undersigned and the said CONSULTANT has caused this Agreement to be executed by the undersigned and the seal of the CONSULTANT set hereto on this day and year first above written.

THE CITY OF HOLLYWOOD, FLORIDA

THE CITY OF HOLLYWOOD, a municipal Corporation of the State of Florida

(SEAL)
ATTEST

 By: _____
Josh Levy, Mayor


Patricia A. Cerny, MMC, City Clerk

APPROVED AS TO FORM & LEGAL SUFFICIENCY for the use and reliance of the City of Hollywood, Florida, only.

Approved By:



Douglas R. Gonzales, City Attorney 



David Keller, Director of Financial Services

[THIS SPACE LEFT INTENTIONALLY BLANK]

PROFESSIONAL ENGINEERING SERVICES AGREEMENT FOR TIDAL FLOODING MITIGATION AND SHORELINE PROTECTION PROJECT, PHASE I

WHEN THE CONSULTANT IS A CORPORATION OR PROFESSIONAL ASSOCIATION

CUMMINS CEDERBERG, INC.
Name of Corporation

ATTEST:

J. Cedarberg
Secretary Jannik Cedarberg

By [Signature]
JASON CUMMINS, P.E.



P10000023540
Consultant's Registration No.

WHEN THE CONSULTANT IS AN INDIVIDUAL OR PARTNERSHIP

ATTEST

Witness: _____

Legal name of Partnership

Witness: _____

By: _____

Legal name (Title, if any)

WHEN THE CONSULTANT IS A JOINT VENTURE

Legal name of firm

Legal name firm

By: _____
Signature

By: _____
Signature

Legal name and title

Legal name and title

ATTEST

Witness

Witness

Witness

Witness