

CONTRACT FOR CONSULTING/PROFESSIONAL SERVICES

This Contract is made as of the ____ day of _____, 2023, by and between the City of Hollywood, a municipal corporation of the State of Florida (hereinafter the "City"), and Tetra Tech, Inc. a corporation authorized to do business in the State of Florida, whose principal office is located at 3475 E Foothill Blvd. Pasadena, CA 91107, whose Federal I.D. number is _95-4148514_ (hereinafter referred to as "Consultant").

WHEREAS, On January 30, 2023 the City of Hollywood entered into a Standard Grant Agreement, Agreement Number 22PLN44, with the Florida Department of Environmental Protection (FDEP); and

WHEREAS, the City will receive \$800,000.00 from the FDEP to complete the Citywide Vulnerability Assessment Update, based on a Study Titled City Wide Vulnerability Assessment and Adaptation by Hazen, dated May 6, 2020 prepared for the City; and

WHEREAS, on November 2, 2022, the City Commission passed and adopted Resolution No. R-2022-326, which authorized the appropriate City officials to negotiate an agreement with _Tetra Tech, Inc., the highest ranked firm, to provide Engineering, Survey and General Consulting Services for the Citywide Vulnerability Assessment Update ; and

WHEREAS, on _____, 2023, the City Commission passed and adopted Resolution No. R-2023-_____, authorizing the appropriate City officials to execute this Contract with Tetra Tech, Inc. to provide the professional Engineering, Survey and General Consulting Services to develop the Citywide Vulnerability Assessment Update .

NOW, THEREFORE, in consideration of the mutual promises set forth in this Contract, the City and the Consultant agree as follows:

ARTICLE 1 - SERVICES/CONSULTANT AND CITY REPRESENTATIVES

The Consultant's responsibility under this Contract is to provide professional/consultation services for the Citywide Vulnerability Assessment Update , more specifically, all the grant conditions, terms, work plan, scope as set forth in the attached Exhibits "A" and "B"; hereby included as part of this contract as listed below:

1. Exhibit "A"-State of Florida Florida Department of Environmental Protection- City of Hollywood Vulnerability Assessment Update, Grant No. 22PLN44, specifically: Attachment 1, Article 5, Article 12, Article 17, Article 22, Article 23, Article 28, Article 31 b -g, Article 36; Attachment 2, Article 15; and with regard to Consequences for Non-Performance, any reduction to Consultant's funding hereunder be in proportion to delays that are wholly within the control of Consultant; and Attachment 4
2. Exhibit "B"- Tetra Tech, Inc. Scope of Services .

In the event of any inconsistency between the terms of this Agreement and its Exhibits, the terms of this Agreement prevail, with the Exception of the specific provisions from Exhibit A-Grant Agreement No. 22PLN44, referenced herein which shall prevail over this agreement.

The Consultant's Representative shall be: ___Georgia Vince, Sr. Project Manager ___
Telephone No.: 561-236-8692___

The City's Representative shall be: Jose Cortes, Director of Design & Const. Mgmt.
Telephone No.: (954) 921-3410

ARTICLE 2 – SCHEDULE/TERM

The Consultant shall commence services upon receipt of the executed contract and shall complete all services by March 31, 2024.

ARTICLE 3 - PAYMENTS TO CONSULTANT

- A. The total amount to be paid by the City under this Contract for all services, materials, out-of-pocket expenses, and also including any approved subcontracts shall not exceed a total contract amount of \$800,000, as proposed by the Consultant and accepted by the CITY. For purposes of this Contract, out-of-pocket expenses are for such items as travel, copying, postage, and express mail. The Consultant will bill the City on a percent complete basis against the total amount set forth in Exhibit "B" for services rendered toward the completion of the Scope of Services and as outlined in Exhibit "A and B". It is acknowledged and agreed to by the Consultant that the dollar limitation set forth in this section is a limitation upon, and describes the maximum extent of, City's obligation to pay Consultant but does not include a limitation upon Consultant's duty to perform all services set forth in Exhibit "A and B" for the total compensation in the amount or less than the guaranteed maximum stated above.
- B. Invoices received by the City from the Consultant pursuant to this Contract will be reviewed and approved in writing by the City's Representative, indicating that services have been rendered in conformity with the Contract, and then will be sent to the City's Financial Services Department for payment. All invoices shall contain a detailed breakdown of the services provided for which payment is being requested. Invoices shall be paid within 30 days following the City Representative's approval. In addition to detailed invoices, upon request of the City's Representative, Consultant will provide City with detailed periodic Status Reports on the project.
- C. Final Invoice: In order for both parties herein to close their books and records, the Consultant will clearly state "final invoice" on the Consultant's final/last billing to the City. This final invoice shall also certify that all services provided by Consultant have been properly performed and all charges and costs have been invoiced to the City. Because this account will thereupon be closed, any and other further charges not properly included on this final invoice are waived by the Consultant.

ARTICLE 4 - TRUTH-IN-NEGOTIATION CERTIFICATE

Signature of this Contract by the Consultant shall also act as the execution of a truth in negotiation certificate certifying that the wage rates, overhead charges, and other costs used to determine the compensation provided for this Contract are accurate, complete and current as of the date of the Contract and no higher than those charged the Consultant's most favored customer for the same or substantially similar service based on Consultant's 2022 rate schedule. Should the CITY determine that said rates and costs were significantly increased due to incomplete, noncurrent or inaccurate representation, then said rates shall be adjusted accordingly.

ARTICLE 5 - TERMINATION

This Contract may be cancelled by the Consultant upon 30 days prior written notice to the City's Representative in the event of substantial failure by the City to perform in accordance with the terms of this Contract through no fault of the Consultant. It may also be terminated, in whole or in part, by the City, with or without cause, immediately upon written notice from the City's Representative to the Consultant. Unless the Consultant is in breach of its Contract, the Consultant shall be paid for services rendered to the City's satisfaction through the date of termination. Ten Dollars paid to the Consultant, the adequacy of which is acknowledged, is given as specific and independent consideration of the City's right to terminate this Contract for convenience. Termination for cause by the City shall include, but not be limited to, failure to suitably perform the work, failure to continuously perform the work in a manner calculated to meet or accomplish the objectives of the City as set forth herein, or multiple breach of the provisions of this Contract notwithstanding whether any such breach was previously waived or cured. After receipt of a Termination Notice and except as otherwise directed by the City the Consultant shall:

- A. Stop work on the date and to the extent specified.
- B. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
- C. Transfer all work documents in process, completed work, and other materials related to the terminated work to the City.
- D. Continue and complete all parts of the work that have not been terminated.

ARTICLE 6 - PERSONNEL

The Consultant is, and shall be, in the performance of all work services and activities under this Contract, an Independent Contractor, and not an employee, agent, or servant of the CITY. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the Consultant's sole direction, supervision, and control. The Consultant shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Consultant's

relationship and the relationship of its employees to the City shall be that of an Independent Contractor and not as employees or agents of the City. This contract does not create a partnership or joint venture between the parties.

The Consultant represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the City, nor shall such personnel be entitled to any benefits of the City including, but not limited to, pension, health and workers' compensation benefits.

All of the services required hereunder shall be performed by the Consultant or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

Any changes or substitutions in the Consultant's key personnel, as may be listed in Article 1, must be made known to the City's Representative and written approval must be granted by the City's Representative before said change or substitution can become effective.

The Consultant warrants that all services shall be performed by skilled and competent personnel in accordance with industry professional standards and practices in the field.

ARTICLE 7 - SUBCONTRACTING

Consultant shall not subcontract any services or work to be provided to City without the prior written approval of the City's Representative. The City reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractors in order to make determination as to the capability of the subcontractor to perform properly under this Contract. The City's acceptance of a subcontractor shall not be unreasonably withheld. The Consultant is encouraged to seek minority and women business enterprises for participation in subcontracting opportunities.

ARTICLE 8 - FEDERAL AND STATE TAX

The City is exempt from payment of Florida State Sales and Use Taxes. The City will sign an exemption certificate submitted by the Consultant. The Consultant shall **not** be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the City, nor is the Consultant authorized to use the City's Tax Exemption Number in securing such materials.

The Consultant shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this Contract.

ARTICLE 9 - AVAILABILITY OF FUNDS

The CITY'S performance and obligation to pay under this Contract is contingent upon an annual appropriation for its purpose by the City Commission. The City Commission has appropriated sufficient funds in the FY 22 Operating Budget for this Contract.

ARTICLE 10 - INSURANCE REQUIREMENTS

The Consultant shall not commence work under this Contract until it has obtained all insurance required under this paragraph and such insurance has been approved by the Risk Manager of the City, nor shall the Consultant allow any Subcontractor to commence work on its sub-contract until all similar such insurance required of the Subcontractor has been obtained and approved.

CERTIFICATES OF INSURANCE, reflecting evidence of the required insurance, shall be filed with the Risk Manager prior to the commencement of the work. These Certificates shall contain a provision that coverage afforded under these policies will not be cancelled, will not expire and will not be materially modified until at least 30 days prior written notice has been given to the City. Policies shall be issued by companies authorized to do business under the laws of the State of Florida and shall have adequate Policyholders and Financial ratings with a minimum A.M. Best rating of A-.

Insurance shall be in force until all work required to be performed under the terms of the Contract is satisfactorily completed as evidenced by the formal acceptance by the City. In the event the Insurance Certificate provided indicates that the insurance shall terminate and lapse during the period of this Contract, the Consultant shall furnish a renewed Certificate of Insurance as proof that equal and like coverage for the balance of the period of the Contract and extension thereunder is in effect. The Consultant shall not continue to work pursuant to this Contract unless all required insurance remains in full force and effect.

REQUIRED INSURANCE

1. Commercial General Liability

Commercial General Liability Insurance to cover liability for bodily injury and property damage. Exposures to be covered are: premises, operations, products/completed operations, and contractual. Coverage must be written on an occurrence basis, with the following limits of liability:

A. Single Limit Bodily Injury & Property Damage

1. General Aggregate	\$ 2,000,000.00
2. Products-Comp/Op Aggregate	\$ 1,000,000.00
3. Each Occurrence	\$ 1,000,000.00
4. Personal & Adv. Injury	\$ 1,000,000.00
5. Fire Damage	\$ 50,000

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

2. Professional Liability

Professional Liability with minimum limits of \$1,000,000.00 for each claim/\$2,000,000.00 aggregate. If coverage is provided on a claims made basis then coverage must be continued for the duration of this Contract and for not less than one year thereafter, or in lieu of continuation, provide an "extended reporting clause" for one year.

Consultant shall notify the City's Risk Manager in writing within thirty days of any claims filed or made against the Professional Liability Insurance Policy.

3. Worker's Compensation Insurance

Workers' Compensation Insurance shall be maintained during the life of this Contract to comply with statutory limits for all employees, and in the case any work is sublet, the Consultant shall require any Subcontractors similarly to provide Workers' Compensation Insurance for all the latter's employees unless such employees are covered by the protection afforded by the Consultant. The Consultant and his Subcontractors shall maintain during the life of this Contract Employer's Liability Insurance. The following must be maintained.

A.	Workers' Compensation	\$500,000
B.	Employer's Liability	\$500,000

The City reserves the right to require any other insurance coverage it deems necessary depending upon the exposures.

ARTICLE 11 - INDEMNIFICATION

The Consultant shall indemnify, defend and hold harmless the CITY, its officials, appointed officers, agents and employee, from and against any and all liability, suits, actions, damages, costs, losses and expenses, including, but not limited to attorneys' fees, to the extent caused by the negligence, recklessness or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance of the services under this Contract. These provisions shall survive the expiration or earlier termination of this Contract. Such obligation to indemnify and hold harmless shall continue notwithstanding any negligence or comparative negligence on the part of the City relating to such loss or damage and shall include all costs, expenses and liabilities incurred by the City in connection with any such claim, suit, action or cause of action, including the investigation thereof and the defense of any action or proceeding brought thereon and any order, judgment or decree which may be entered in any such action or proceeding or as a result thereof. Consultant acknowledges and agrees that City would not enter into this Contract without this indemnification of CITY by Consultant, and that City's entering into this Contract shall constitute good and sufficient consideration for this indemnification. These provisions

shall survive the expiration or earlier termination of this Contract. Nothing in this contract 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 Florida Statutes §768.28.

ARTICLE 12 - SUCCESSORS AND ASSIGNS

The City and the Consultant each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Contract and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Except as above, neither the City nor the Consultant shall assign, sublet, encumber, convey or transfer its interest in this Contract without the prior written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the City which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the City and the Consultant.

ARTICLE 13 - REMEDIES

This Contract shall be governed by the laws of the State of Florida. Any and all legal action between the parties arising out of the Contract will be brought in Broward County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

ARTICLE 14 - CONFLICT OF INTEREST

The Consultant represents that it has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in the Code of Ethics for Public Officers and Employees (Chapter 112, Part III, Florida Statutes). The Consultant further represents that no person having any interest shall be employed for said performance.

The Consultant shall promptly notify the City's representative, in writing, by certified mail, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the Consultant's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the Consultant may undertake and request an opinion of the City as to whether the association, interest or circumstance would, in the opinion of the City, constitute a conflict of interest if entered into by the Consultant. The City agrees to notify the Consultant of its opinion by certified mail within 30 days of receipt of notice by the Consultant. If, in the opinion of the City, the prospective business association, interest or circumstance would not constitute a conflict of interest by the Consultant, the City shall so state in the notice and the Consultant shall, at its option, enter into said association, interest or circumstance and it shall be

deemed not in conflict of interest with respect to services provided to the City by the Consultant under the terms of this Contract.

ARTICLE 15 - EXCUSABLE DELAYS

The Consultant shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of the Consultant or its subcontractors and without their fault or negligence. Such causes include, but are not limited to: acts of God; natural or public health emergencies; freight embargoes; and abnormally severe and unusual weather conditions.

Upon the Consultant's request, the City shall consider the facts and extent of any failure to perform the work and, if the Consultant's failure to perform was without it or its subcontractors fault or negligence, the Contract Schedule and/or any other affected provision of this Contract shall be revised accordingly; subject to the City's rights to change, terminate, or stop any or all of the work at any time.

ARTICLE 16 - DEBT

The Consultant shall not pledge the City's credit or attempt to make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness. The Consultant further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

ARTICLE 17 - DISCLOSURE AND OWNERSHIP OF DOCUMENTS

The Consultant shall deliver to the City's Representative for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the City under this Contract.

All written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the City or at its expense will be kept confidential by the Consultant and will not be disclosed to any other party, directly or indirectly, without the City's prior written consent unless required by a lawful order. All drawings, maps, sketches, programs, data base, reports and other data developed, or purchased, under this Contract for or at the City's expense shall be and remain the City's property and may be reproduced and reused at the discretion of the City.

The City and the Consultant shall comply with the provisions of Chapter 119, Florida Statutes (Public Records Law). Pursuant to Section 119.0701, Florida Statutes, any party contracting with City is required to (a) keep and maintain available for public inspection any records that pertain to services rendered under this Agreement; (b) provide the public with access to public records on the same terms and conditions that the City would provide such records and 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; and (d) meet all requirements for retaining public records and transfer, at no cost, to City all public records in that party's possession upon termination of its contract with City and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All of such party's records stored electronically must be provided to City in a format that is compatible with the City's information technology systems. Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law. Each party acknowledges that this Agreement and all attachments thereto are public records and do not constitute trade secrets.

IF A PARTY TO THIS AGREEMENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENT, CONTACT THE CITY'S CUSTODIAN OF PUBLIC RECORDS AT (954) 921-3211, PCERNY@HOLLYWOODFL.ORG, 2600 HOLLYWOOD BOULEVARD, HOLLYWOOD, FLORIDA 33020.

ARTICLE 18 - CONTINGENT FEES

The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant to solicit or secure this Contract 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 the Consultant, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract. Violation of this Article shall constitute a forfeiture of this Contract by Consultant.

ARTICLE 19 - ACCESS AND AUDITS

The Consultant shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least three years after completion of this Contract or until completion of any audit, whichever is later. The City shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the Consultant's place of business.

ARTICLE 20 - NONDISCRIMINATION

The Consultant warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.

ARTICLE 21 - INTERPRETATION

The language of this Contract has been agreed to by both parties to express their mutual intent and no rule of strict construction shall be applied to either party hereto. The headings 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, the plural, and vice versa, unless the context otherwise requires.

ARTICLE 22 - AUTHORITY TO PRACTICE

The Consultant hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the City's representative upon request.

ARTICLE 23 - SEVERABILITY

If any term or provision of this Contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, to remainder of this Contract, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Contract shall be deemed valid and enforceable to the extent permitted by law.

ARTICLE 24 - ENTIRETY OF CONTRACTUAL AGREEMENT

The City and the Consultant agree that this Contract together with the Exhibits hereto, sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. 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. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto in accordance with Article 25 - Modification of Work. In the event of any conflict or inconsistency between this Contract and the provisions in the incorporated Exhibits, the terms of this Contract shall supersede and prevail over the terms in the Exhibits.

ARTICLE 25 - MODIFICATION OF SCOPE OF WORK

The City reserves the right to make changes in the Scope of Work, including alterations, reductions therein or additions thereto. Upon receipt by the Consultant of the City's notification of a contemplated change, the Consultant shall, in writing: (1) provide a detailed estimate for the increase or decrease in cost due to the contemplated change, (2) notify the City of any estimated change in the completion date, and (3) advise the City if the contemplated change shall effect the Consultant's ability to meet the completion dates or schedules of this Contract.

If the City so instructs in writing, the Consultant shall suspend work on that portion of the Scope of Work affected by a contemplated change, pending the City's decision to proceed with the change.

If the City elects to make the change, the City shall initiate a Contract Amendment and the Consultant shall not commence work on any such change until such written amendment is signed by the Consultant and the City, and if such amendment is in excess of \$50,000 it

must also first be approved by the City Commission and signed by the appropriate City official authorized by the City Commission.

The City shall not be liable for payment of any additional or modified work which is not authorized in the manner provided for by this Article.

ARTICLE 26 - NOTICE

All notices required in this Contract shall be sent by certified mail, return receipt requested, and if sent to the City shall be mailed to:

City of Hollywood, Dept. of Design, Construction and Management
Attn: Jose Cortes
P.O. Box 229045
Hollywood, FL. 33022

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

and if sent to the Consultant shall be mailed to:

___ Georgia Vince, Sr. Project Manager
___ c/o Tetra Tech, Inc. _____
___ 759 S. Federal Hwy, Suite 314, Stuart, FL 34994

ARTICLE 27 – OWNERSHIP OF DOCUMENTS

All finished or unfinished documents, data, reports, studies, surveys, drawings, maps, models and photographs prepared or provided by Consultant in connection with this Contract shall become property of the City, whether the project for which they are made is completed or not, and shall be delivered by Consultant to City within ten days of notice of termination. If applicable, City may withhold any payments then due to Consultant until Consultant complies with the provisions of this section.

IN WITNESS WHEREOF, the parties hereto have set their hands and official seals the day and year first above written.

ATTEST:

City of Hollywood, a municipal
corporation of the State of Florida

Patricia A. Cerny, MMC, City Clerk

By: _____
Josh Levy, Mayor

Approved as to Form:

Approved by: _____
David Keller, Director of
Financial Services

Douglas R. Gonzales
City Attorney

AS TO CONSULTANT

ATTEST:

Corporate Secretary

By: _____
Signature
Title: _____