

CITY OF HOLLYWOOD, FLORIDA

PROFESSIONAL SERVICES AGREEMENT

4337-307-R, 4337-252-R, 4337-248-R



**DESIGN AND CONSTRUCTION ADMINISTRATION SERVICES
FOR BACKUP ELECTRICAL POWER GENERATORS FOR
SEWER LIFT STATIONS; E-03, E-06, & STORMWATER PUMP
STATION SW-08**

AT

CITY OF HOLLYWOOD

PROJECT NO. 20-8532

Kimley-Horn and Associates, Inc.

PROFESSIONAL SERVICES AGREEMENT

**BETWEEN THE CITY OF HOLLYWOOD, FLORIDA
AND
KIMLEY-HORN AND ASSOCIATES, INC.**

PROFESSIONAL ENGINEERING SERVICES FOR THE DESIGN, PERMITTING AND BIDDING PHASES

**Design and Construction Administration Services for Backup Electrical Power Generators for
Sewer Lift Stations; E-03, E-06, & Stormwater Pump Station SW-08**

THIS AGREEMENT is made this _____ day of _____, 2020, by and between the City of Hollywood, a municipal corporation of the State of Florida ("City") and Kimley - Horn And Associates, Inc., a corporation authorized to do business in the State of Florida ("Consultant").

WITNESSETH:

WHEREAS, the City has selected the Consultant in accordance with Section 287.055, Florida Statutes ("Consultants' Competitive Negotiation Act"), to provide Professional engineering services for the Design and Construction Administration Services as directed by the Director of the Department of Public Utilities, for the Project with the terms and conditions of the Request for Statement of Qualifications (RFQ) used in the selection and being a part of this agreement.

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

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EXHIBIT 'A' Insurance Certificate

EXHIBIT 'B' Rate Schedule (To be Provided Before Negotiations)

EXHIBIT 'C' Consultant Proposal

SCOPE OF WORK

The Consultant shall furnish professional engineering services for the Design, Permitting and Bidding and Construction Administration services for the design and construction of permanent electrical generators for the sanitary sewer lift stations E-03, E-06 and stormwater pump station SW-08, as part of the "Design and Construction Administration Services For Backup Electrical Power Generators For Sewer Lift Stations; E-01, E-03, E-06, W-14, W-15 & Stormwater Pump Station SW-08 project.

The City will pay the Consultant a lump sum amount in accordance with the negotiated scope of work and fee in this Agreement.

The Agreement is for the duration of the Project, estimated at this time to be a term of two years with the option to renew for two additional one year periods.

ARTICLE 1 **DEFINITIONS**

- 1.01 ADDITIONAL SERVICES: Those design services defined in Section 2.5
- 1.02 BASIC SERVICES: Those Engineering design 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 Brown and Caldwell Corporation.
- 1.06 CONTRACTOR OR CONSTRUCTION MANAGER (CM): An individual, partnership, corporation, association, joint venture, or any combination thereof, which has entered into a contract with the City for construction of City of Hollywood, Florida, facilities and incidents thereto.
- 1.07 DIRECTOR: The Director of the Department of Public Utilities 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 Design Services pertaining to the design, alteration or repair, and all services and incidents thereto, for design, permitting and bidding of deep injection wells pump station contemplated and budgeted by the City.
- 1.10 PROJECT MANAGER: An employee of the CITY of Hollywood, expressly designated as PROJECT MANAGER in writing by the DIRECTOR, who is the representative of the City, concerning the Contract Documents.

ARTICLE 2
CONSULTANT SERVICES AND RESPONSIBILITIES

2.1 BASIC SERVICES

- 2.1.1 To the extent deemed necessary by CONSULTANT, 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 as the PROJECT MANAGER. So long as the PROJECT MANAGER performs in a manner acceptable to CITY, and remains in CONSULTANT's employ, the PROJECT MANAGER shall remain in charge of all design and other services required under this Agreement, including attending design-related meetings for the Project, unless a substitution mutually acceptable to CONSULTANT and CITY is made. CITY-approved PROJECT MANAGER shall be named in the proposal provided for a particular Work Order.
- 2.1.3 CONSULTANT shall assist CITY in fulfilling the requirements of the authorities and funding agencies whose interests bear on the design, cost, and construction of the Project.
- 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 design and construction of the Project.
- 2.1.7 Independent of the Project Phase 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 prepare designs and Construction Documents in compliance with all applicable laws, codes, rules, regulations, ordinances, and standards.
- 2.1.9 CONSULTANT acknowledges that access to a project site, to be arranged by CITY for CONSULTANT, may be provided during times that are not the normal business hours of the CONSULTANT.
- 2.1.10 CONSULTANT shall provide a written monthly progress report for each Work Order currently assigned to the CONSULTANT.

2.2 PRE-DESIGN PHASE

- 2.2.1 Upon written Authorization to Proceed CONSULTANT shall evaluate the Project to ascertain the requirements of the Project and shall review and clarify CONSULTANT's understanding of these requirements with CITY.
- 2.2.2 CONSULTANT shall review site surveys; existing record documents; mechanical, geotechnical, and other test reports; environmental documents, and any other documentation furnished by CITY. CONSULTANT shall determine from the examination of the site and a review of available information whether such data are sufficient for purposes of design or whether additional data are needed and, if so, recommend the manner in which said data is to be provided and needed services obtained.
- 2.2.3 CONSULTANT shall prepare applications and supporting documents for grants or advances under Federal or State programs.
- 2.2.4 CONSULTANT shall provide a written preliminary evaluation of the Project and the Construction Budget requirements.
- 2.2.5 CONSULTANT shall prepare and submit an outline of applicable provisions of building codes that apply to this project to CITY. The outline shall include a written report and schematic drawings that delineate the design criteria.
- 2.2.6 If requested by CITY, CONSULTANT shall review with and recommend to CITY alternative approaches to the design, and recommend the contracting mode best suited to the scope, project schedule, and construction budget of the Project.
- 2.2.7 CONSULTANT shall prepare Preliminary Design studies consistent with and incorporating the Project requirements, including site plans and other drawings, sketches, or graphic materials needed to describe the Project, including conceptual design criteria, schematic layouts and sketches.
- 2.2.8 CONSULTANT shall submit a written Estimated Project Construction Cost and a preliminary construction schedule based on the documents submitted in this phase. Evaluation shall include construction costs, contingencies and allowances for professional consultant services.
- 2.2.9 The Work of this phase is subject to independent reviews, both internal and external, and Value Engineering.
- 2.2.10 Upon written direction, CONSULTANT shall prepare a design presentation for the CITY Commission. CONSULTANT shall assist in the preparation of materials for the Commission's review including executive summaries, drawings and illustrations. CONSULTANT shall attend scheduled meetings with representatives of CITY regarding the presentation material to the CITY Commission.
- 2.2.11 Should The CITY fail to approve the design or aspects of the design due to errors and/or omissions, CONSULTANT shall, at its own expense, revise the design unless CONSULTANT

has been given prior written approval from CITY to proceed with the Engineering Design phase, in which case the revision of the design shall be an Additional Service subject to an amendment.

2.3 ENGINEERING DESIGN PHASE

- 2.3.1 Upon CITY's written Authorization to Proceed and based on Preliminary Design documents approved in writing by CITY, CONSULTANT shall prepare for approval by CITY, Construction Documents using standard CSI format, or other format as may be required by the CITY, consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the project.
- 2.3.2 CONSULTANT shall provide surveys, soil investigations and other field studies required for design.
- 2.3.3 CONSULTANT shall submit documentation supporting the design criteria for the structural (including structural loading), HVAC, plumbing, electrical, lighting and communication systems; and other specialized building systems.
- 2.3.4 CONSULTANT shall submit construction documents to CITY for review and approval upon 30%, and 90% completion, and 100% completion. CONSULTANT shall resubmit the documents for back-check by CITY after corrections are made to each submittal.
- 2.3.5 Prior to submission of the 90% completed Construction Documents for CITY review, CONSULTANT shall review CITY's Bidding Documents for Project requirements and recommend any changes needed to make them applicable to the Project. CONSULTANT shall submit, with the review set of the 90% completed Construction Documents, a single marked-up set of the CITY's "Supplementary General Conditions" showing the recommended changes.
- 2.3.6 Upon 30%, 90% and 100% completion of the Construction Documents, CONSULTANT shall submit for CITY review and comment 10 copies each of the Construction Documents, a summary of the calculations for the structural, HVAC electrical, plumbing, communications, and other specialized building system calculations, and the current Estimated Project Construction Cost and Schedule.
- 2.3.7 Construction Document review is subject to a Constructability Analysis by CITY, which will consist of internal review, and will be subject to external review of the construction documents to determine whether designated components, systems and materials specified in the construction documents represent a complete and constructable facility based upon the previously approved design.
- 2.3.8 The Construction Documents submittals shall either incorporate any changes or corrections required by CITY or review agencies as a result of their review of the 30%, 90% and 100% completed Construction Documents or be accompanied by a written statement as to why such changes were not incorporated. CITY may reject CONSULTANT's explanation and require CONSULTANT to make the changes or corrections to the Construction Documents as previously requested by CITY.

- 2.3.9 Final Construction Drawings and the Certification page of the specifications submitted to CITY for bidding purposes shall be signed and sealed by CONSULTANT or the appropriate sub-consultant.
- 2.3.10 CONSULTANT shall be responsible for the content of all Construction Documents. All construction documents prepared or signed by CONSULTANT or sub-consultants shall be complete, coordinated and contain directions as will enable a competent contractor to carry them out.
- 2.3.11 Upon approval by the CITY, the 100%-completed Construction Documents will be deemed to be final and ready for bid. CONSULTANT shall provide to CITY ten (10) sets of 24 x 36 prints, ten (10) sets of 11 x 17 prints and ten (10) complete sets of the Specifications, of the final set of Construction Documents. The Specifications shall be submitted in both hard copy form and electronic form in Microsoft-Word format. CONSULTANT is also required to provide CITY with one (1) computer-CD version of the Drawings that is compatible with AutoDesks AutoCAD 2018 or later version. CONSULTANT shall submit a final written Estimated Project Construction Cost and schedule based on the documents submitted to CITY.

2.3.12 The Work of this phase is subject to independent reviews, both internal and external.

- 2.3.13 CONSULTANT shall be responsible for obtaining review and approval by applicable regulatory agencies. CITY's Designated Project Coordinator will attend all meetings with these agencies. Unless directed otherwise in writing by CITY the Engineering Design Phase shall not be considered 100% complete until all required agency and CITY approvals have been received by CONSULTANT.

2.4 BIDDING PHASE

- 2.4.1 If prequalification of construction contractors is required by CITY, CONSULTANT shall recommend prequalification criteria, and assist CITY in preparation of the prequalification documents. If requested by CITY, CONSULTANT shall participate with CITY in evaluation of prequalification submittals.
- 2.4.2 CONSULTANT shall distribute contract documents to prospective bidders, and maintain records of documents issued.
- 2.4.3 CONSULTANT shall assist CITY in document clarification and in the preparation of Addenda as required for issuance in accordance with both the "Instructions to Bidders" and the "Supplementary Instructions to Bidders" of CITY's Bidding Documents.
- 2.4.4 CONSULTANT shall organize and conduct, and CITY's Representative shall attend, all scheduled pre-bid meetings and/or site visits.
- 2.4.5 CONSULTANT's Representative shall review and evaluate bids. CONSULTANT Project Manager shall prepare a certified bid tabulation and recommendation to award.
- 2.4.6 Attend bid protest hearings, provide documentation as required to evaluate bid protests.

2.5 CONSTRUCTION PHASE

2.5.1 CONSULTANT shall not be responsible for means, methods, techniques, sequences or procedures of construction selected by contractors or the safety precautions and programs incident to the work of contractors.

2.5.2 The Construction Phase will commence on the date the Notice to Proceed between CITY and Contractor is signed by CITY and will terminate one year after Notice of Completion or, in the absence of a Notice of Completion, one year after Final Completion of construction.

2.5.3 CONSULTANT shall schedule and conduct a pre-construction meeting. Attendees shall be sub-consultants, Contractor and major subcontractors, CITY's Representative and Designated Project Coordinator, and others as deemed necessary by CONSULTANT and/or CITY.

2.5.4 Except as otherwise provided in the Contract Documents or as determined by CITY, all written communications with Contractor will be issued by CITY's Representative.

2.5.5 CONSULTANT shall, at no cost to CITY, satisfactorily correct any and all errors, omissions, deficiencies, or conflicts in the Construction Documents prepared by CONSULTANT or Sub-consultants promptly upon discovery or notice. The obligations of CONSULTANT to correct defective or nonconforming Work shall not in any way limit any other obligations of CONSULTANT.

2.5.6 CONSULTANT shall provide professional services necessary to certify completion of the project as required by the appropriate regulatory authorities, including but not limited to the following:

- (1) Consultations and attendance at meetings with CITY and Contractor.
- (2) Review of Contractor's submittals.
- (3) Issue clarifications and interpretations of the Contract documents as required.
- (4) Prepare and submit to the CITY all required record drawings showing changes made during construction.
- (5) Prepare and submit to the CITY a final report of variations from the contract documents, including reasons for the variations.
- (6) CONSULTANT shall make periodic on-site observations, not less than weekly, of construction as it progresses except for periods of construction downtime as approved by CITY in writing.
- (7) CONSULTANT shall make off-site observations of fabricated materials and equipment when such off-site checks are specified in the Contract Documents. Observations shall be conducted deliberately and thoroughly by CONSULTANT.
- (8) CONSULTANT shall have the authority to reject Work that does not conform to any of the following: the Contract Documents; CITY's Representative's directives; applicable code requirements; approved Shop Drawings, Product Data, and Samples; Clarification Drawings; or work that is considered defective. CITY's Representative shall require special inspection or testing of the Work in accordance with the provisions of the Contract Documents if, in

CONSULTANT's reasonable opinion, such inspection or testing is necessary or advisable for the implementation of the Contract Documents, regardless of the state of completion of the Work subject to such inspection or testing.

- (9) CONSULTANT shall review inspection reports, laboratory reports, and test data to determine conformity of such data with the design requirements expressed, implied, or depicted in the Contract Documents; approved Shop Drawings, Product Data, and Samples; and Clarification Drawings. Response shall be provided to the CITY's Representative who shall direct Contractor, in writing, about actions that need to be taken, as determined from Project site visits, inspection reports, laboratory reports, and test data or from Contractor proposals, schedules, or other relevant documents.
- (10) CONSULTANT shall review the amounts owed to Contractor, based on observations at the Project site and on evaluations of Contractor's Applications For Payment and shall issue Certificates For Payment in accordance with the construction contract documents. CONSULTANT recommendations to CITY to pay the amounts on Contractor's Applications For Payment shall constitute a representation by CONSULTANT to CITY based on CONSULTANT's periodic observations as provided for above, that the Work has progressed to the point indicated, that, to the best of CONSULTANT's knowledge, information and belief, the Work is in accordance with the Contract Documents, and that Contractor is entitled to payment in the amount recommended. Reductions in the amounts recommended by CONSULTANT shall be made by CITY if needed to satisfy assessed liquidated damages, stop notices, or other requirements of the Construction Contract Documents.
- (11) Before recommending payment, CONSULTANT shall review and approve the updated Contract Schedule and other submittals required from Contractor in connection with Contractor's Application for Payment, and confirm that As-Builts are being maintained by Contractor in accordance with the General Conditions of the Construction Contract Documents.
- (12) CONSULTANT shall conduct punch list inspections accompanied by CITY and Contractor to determine Beneficial Occupancy, Substantial Completion, and Final Completion. CONSULTANT shall recommend the issuance of the Certificate of Beneficial Occupancy and the Certificate of Substantial Completion in accordance with the Construction Contract Documents. CONSULTANT shall review for conformance with the Construction Contract Documents all warranties, guarantees, As-Builts, and other items required by the Construction Contract Documents to be delivered by Contractor as a condition of final payment.
- (13) CONSULTANT shall assist CITY REPRESENTATIVE to prepare Field Orders and Change Orders for CITY's approval and execution. Preparation and review of Field Orders and Change Orders shall include providing necessary Drawings and Specifications, describing the Field Order or Change Order, review of Contractor's proposed time and cost changes, and making recommendations to CITY. CONSULTANT shall provide its best estimate of the changes to the Contract Sum or Contract Time prior to issuance of a Field Order or Change Order.
- (14) Record Documents consisting of Record Drawings and final Specifications shall be provided within 60 days after Final Completion. CONSULTANT shall, at no additional cost, furnish CITY with one (1) signed and seal copy and one (1) AutoCAD copy of the Record Drawings and one annotated hard copy of the Specifications and one computer CD compatible with Microsoft-

Word. The Record Drawings shall be made from the As-built Drawings, including revisions and changes made via Addenda and, during the course of construction, via marked-up prints, As-Built Drawings and other data furnished by Contractor to CONSULTANT. The revisions and changes shall be accurately annotated and cross-referenced. Each page of the Drawings shall prominently note the words "Record Documents." The cover page of the annotated Specifications shall also note the words "Record Documents."

2.5.7 When requested by the CITY as part of the Work Order proposal, CONSULTANT shall provide contract administration services during construction. CONSULTANT shall designate a principal or staff member as the CITY's Representative to provide such services. That person shall continue to serve as CITY's Representative so long as that person remains in the employ of CONSULTANT and her/his performance is acceptable to CITY, unless a substitution mutually acceptable to CONSULTANT and CITY is made. CITY-approved CITY's Representative shall be named in the Work Order proposal. When construction contract administration services are authorized:

- (1) They shall be performed in accordance with the Public Utility Department's Construction Management Operations Manual.
- (2) CONSULTANT shall conduct regular construction meetings, plus special meetings as they are deemed necessary.
- (3) CONSULTANT shall review materials and workmanship used on the project for compliance with the contract documents.
- (4) CONSULTANT shall submit to the CITY monthly progress and status reports, updating project status.
- (5) CONSULTANT shall monitor, prepare and maintain all project records, including correspondence, schedules, meeting minutes, construction records, progress photographs, etc.
- (6) CONSULTANT shall review all contractor submittals, including operation and Maintenance manuals, schedules, warranties and guarantees.
- (7) CONSULTANT shall negotiate the scope and cost of all change orders with the contractor, provide a recommendation to the CITY on approval of change requests.
- (8) CONSULTANT shall evaluate and recommend periodic pay requests received from the contractor.
- (9) CONSULTANT shall provide full time resident inspection of the project.
- (10) CONSULTANT shall provide project closeout services, including final inspection, review of final documentation, preparation of closeout change orders etc.
- (11) CONSULTANT shall prepare to serve and serve as a consultant or witness for CITY in any litigation, or other legal or administrative proceeding, involving the Project.

2.5.8 When CONSULTANT shall be responsible for construction administration as part of its basic services as CITY Representative, these services may include direction of inspectors, who may be CITY employees or outside contractors.

2.6 ADDITIONAL SERVICES:

Additional Services as listed below are normally considered to be beyond the scope of the Basic Services as defined in this Agreement, and if authorized by an appropriate Authorization to Proceed, will be compensated for as provided under subsection 5.02.

- a) Professional detailed Estimates of Construction Cost consisting of quantity surveys itemizing all material, equipment and labor required for a project.
- b) Planning surveys, or comparative studies of prospective sites.
- c) Investigation and making detailed appraisals and valuations of existing facilities, and surveys or inventories in connection with construction performed by the City.
- d) The services of one or more full-time Project Field Representatives during construction.
- e) Extended assistance beyond that provided under Basic Services for the initial start-up, testing, adjusting and balancing of any equipment or system; extended training of City's personnel in operation and maintenance of equipment and systems, and consultation during such training; and preparation of operating and maintenance manuals, other than those provided by the Contractor, subcontractor, or equipment manufacturer.
- f) Consultation concerning replacement of any work damaged or built inconsistently with the Contract Drawings, providing the cause is found by the City to be other than by fault of the Consultant or his/her agents.
- g) Making major revisions changing the scope of a project, to drawings and specifications, when such revisions are inconsistent with written approvals or instructions previously given by the City and are due to causes beyond the control of the Consultant. (Major revisions are defined as those changing the scope and/or scheme and/or any significant portion thereof.)
- h) Preparing to serve or serving as an expert witness in connection with any public hearing, arbitration proceeding or legal proceeding, providing, however, that the Consultant cannot testify against the City in any proceeding during the course of this Agreement.
- i) Providing services after issuance to the City of the Final Certificate for Payment, following when such payment has been made to the contractor.
- j) Any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted engineering practice related to construction.

2.7 REIMBURSABLES:

Reimbursables are those items authorized by the City in addition to the Basic and Additional Services and consist of actual expenditures made by the Consultant and the Consultants' employees, Subconsultants, and Special Subconsultants in the interest of the Work 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 (10) 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 2.6 herein.

ARTICLE 3 **SUBCONSULTANTS**

3.01 DEFINITIONS:

3.01A 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.

3.01B A Special Subconsultant is a person or organization who has entered into a written agreement with the Consultant to furnish professional services for a project or task described under Additional Services.

3.02 SUBCONSULTANTS' RELATIONS:

3.02A 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.

3.02B 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 his/her direction, control, supervision, retention and/or discharge.

3.02C The Consultant proposes to utilize the following Subconsultants:

NAME OF FIRM	CONSULTING SERVICE
<u>Nutting Engineering of Florida, Inc.</u>	Geotechnical
<u>Gibbs Land Surveyor, Inc.</u>	Survey
<u>T2 Utility Engineers</u>	Utility Investigations
<u>McKim & Creed</u>	Electrical
<u>Archaeological and Historical Conservancy, Inc.</u>	Historical Review

The Consultant shall not change any Subconsultant without prior approval by the Director of the Department of Public Utilities, 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 as an Additional Reimbursable Service:

- a) Complete and accurate surveys of sites, giving boundary dimensions, locations of existing structures and/or trees, the grades and lines of street, pavement, and adjoining properties; the rights, restrictions, easements, boundaries, and topographic data of a building site, and such information as it is relative to storm water, communications, sewer, water, gas and electrical services.
- b) Soil borings or test pits, or other tests when deemed necessary; also, if required, an appropriate professional interpretation thereof and recommendations. The Consultant shall recommend necessary tests to the City.
- c) Information regarding Project Budget, City and State procedures, guidelines, forms, formats, and assistance required to establish a program pursuant to Article 2, Section 2.1.
- d) Drawings representing as-built conditions at the time of original construction will be furnished to the Consultant; however, they are not warranted to represent conditions as of this date. The Consultant must perform field investigations as necessary in accordance with Article 2, to obtain sufficient information to perform his services. Investigative services in excess of "Normal Requirements", as defined, must be authorized in advance.
- e) The services, information, surveys and reports required by subsections a. through c above, inclusive, shall be furnished at the City's expense, and the Consultant shall be entitled to rely upon the accuracy and completeness thereof, provided the Consultant reviews all of the information provided by the City (such as surveys & soil borings) to determine if additional information and/or testing is required to properly design the project.
- f) The City shall furnish the above information or authorize the Consultant to provide it as expeditiously as possible for the orderly progress of a project development.

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 Public Utilities shall act as liaison between the Consultant and City. The Director shall designate a Project Manager from the Department of Public Utilities staff to have general responsibility for management of a project or task through all phases. The Project Manager shall meet with the Consultant at periodic intervals throughout the preparation of the Contract Documents 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) During the construction phase, the Consultant and the Department of Public Utilities staff shall assume the responsibilities described in the General Conditions and Supplementary Conditions of the Construction Contract.
- d) If the City observes or otherwise becomes aware of any fault or defective work in the project or other nonconformance with the Contract Documents, during the construction phases, the City shall give prompt notice thereof to the Consultant.

4.03 LEGAL SERVICES, ETC.:

The City shall furnish any legal, accounting, insurance counseling, and auditing services that the Consultant may require to ascertain how or for what purposes a Contractor has used the money paid to the Contractor under a Construction Contract, as may be required by the City.

ARTICLE 5 BASIS OF COMPENSATION

5.01 PROFESSIONAL SERVICE FEES:

A. The City agrees to pay the Consultant, and the Consultant agrees to accept for services rendered pursuant to this Agreement, in the lump sum amount of **\$179,361.00**. Payments to the Consultant shall be based upon the lump sum amount in accordance with the attached Scope of Services Proposal and paid in accordance with the payment provisions of this Agreement. It is understood that the Consultant shall perform all services for the total compensation, lump sum amount. The City shall have no obligation or liability to pay any fee, expenditure, charge or cost beyond the lump sum 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 during all phases thereof.

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, 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 at each phase of the work will be a Reimbursable Service.

5.02 ADDITIONAL SERVICE/REIMBURSABLES FEE:

The Consultant may be authorized to perform Additional/Reimbursable Services as described in Article 2. The fee for such services will be computed by one of the following methods:

- a) Mutually agreeable Fixed or Lump Sum, in accordance with subsection 5.01A above.
- b) Hourly Rate as set forth in the Exhibit "B".

An independent and detailed Authorization to Proceed shall be required to be issued for each additional service requested by the City. The Authorization to Proceed will specify the fee for such service and upper limit of the fee, which shall not be exceeded, and shall comply with the City of Hollywood Purchasing Ordinance and other applicable laws and consistent with the fees based upon either 5.01A or the hourly rate set forth in Exhibit "B".

The City will reimburse the Consultant for authorized Reimbursable Services as verified by appropriate bills, invoices or statements.

5.03 Regardless of the method of compensation elected herein, this Agreement and/or "Exhibit B" as applicable, shall include all salary costs which include without limitation: A fringe benefit (e.g. sick leave, vacation, holiday, unemployment taxes, retirement, medical, insurance and unemployment benefits) factor and an overhead factor. At its discretion, the City may request a breakdown of overhead and fringe benefit factors, certified by Florida Certified Public Accountant. Subconsultant salary costs and Reimbursables shall be billed to the City in the actual amount paid by Consultant.

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

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 Work.

The Consultant shall invoice the City based upon the Consultant's Scope of Services Proposal, which is made part of this Agreement. 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 Public Utilities, ECSD, 1621 N 14th Avenue, Hollywood, FL 33020. The Consultant shall clearly state "Final Invoice" on the Consultant's last billing for the services rendered to the City. The 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. The Consultant waives any charges not properly included in the Final Invoice. The City's payment of a Final Invoice shall not constitute evidence of the City's acceptance of the Consultant's performance of the services or its acceptance of any of the Consultant's project work. The City's review, approval, acceptance, or payment for any of the 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 the Consultant's performance or nonperformance of this Agreement. The 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 the Consultant's negligent or wrongful performance or nonperformance of any of the services to be furnished under this Agreement.

6.02 PAYMENT FOR ADDITIONAL/REIMBURSABLE SERVICES:

Payment for Additional Services may be requested monthly in proportion to the services performed. When such services are authorized as an hourly rate, the Consultant shall submit for approval by the City, a duly certified invoice, giving names, classification, salary rate per hour, hours worked and total charge for all personnel directly engaged on a project or task. To the

sum thus obtained, any authorized Reimbursable Services Cost may be added. The Consultant shall attach to the invoice all supporting data for payments made to Subconsultants engaged on the project.

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

6.03 DEDUCTIONS:

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

6.04 PROJECT SUSPENSION:

If the Project is suspended for the convenience of the City for more than three months or terminated without any cause in whole or in part, during any Phase, the Consultant shall be paid for services 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 the Project is resumed after having been suspended for more than three months, the Consultant's further compensation shall be subject to renegotiations.

ARTICLE 7 **REUSE OF PLANS AND SPECIFICATIONS**

7.01 SCOPE OF SERVICES:

It is understood that all Consultant agreements for new work will include the provision for the re-use of plans and specifications, including Basic Services described in Article 2, at the City's sole option, by the Consultants agreeing to do work in accordance with the above listed schedule, and by virtue of signing this agreement they agree to a re-use in accordance with this provision without the necessity of further approvals or documents being required and without recourse for such re-use.

The Consultant shall bind all Sub-consultants to the Contract requirements for re-use of Plans and Specifications.

ARTICLE 8 **GENERAL PROVISIONS**

8.01 INDEMNIFICATION:

The 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 the CONSULTANT and other persons employed or utilized by the CONSULTANT in the performance of this Contract. These provisions shall survive the expiration or earlier termination of this Contract. 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.

8.02 INSURANCE:

Prior to the commencement of work governed by this contract (including the pre-staging of personnel and material), the Consultant shall obtain insurance as specified in the schedules shown below. The Consultant will ensure that the insurance obtained will extend protection to all sub-Consultants engaged by the Consultant. As an alternative the Consultant may require all sub-Consultants to obtain insurance consistent with the schedules shown below.

The Consultant will not be permitted to commence work governed by this contract (including pre-staging of personnel and material) 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 the Consultant to provide satisfactory evidence of 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 commenced on the specified date and time, except for the Consultant's failure to provide satisfactory evidence.

The Consultant shall maintain the required insurance throughout the entire term of this contract 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 the 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 the Consultant's failure to maintain the required insurance.

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

1. Certificate of Insurance
2. Certified copy of the actual insurance policy

The City, at its sole option, has the right to request a certified copy of any or all insurance policies required by this contract. 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 the City by the insurer.

The acceptance and/or approval of the Consultant's insurance shall not be construed as relieving the 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, the 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 prepared form entitled "Request for Waiver of Insurance Requirements" and approved by the City's Risk Management Department.

Any sub-consultant shall supply such similar insurance required of the Consultant. Such certificates shall name the City as additional insured on the general liability and auto liability policies.

8.02A 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.

The Consultant shall furnish certificates of insurance to the Risk Management Director for review and approval prior to the execution of this agreement. The Certificates shall clearly indicate that the Consultant has obtained insurance of the type, amount and classification required by these provisions, in excess of any pending claims at the time of contract award to the Consultant. 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 Owner.

1. Commercial General Liability:

Prior to the commencement of work governed by this contract, the Consultant shall obtain General Liability Insurance. Coverage shall be maintained throughout the life of the contract 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:

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

2. Comprehensive Automobile Liability:

Recognizing that the work governed by this contract requires the use of vehicles, the 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 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 contract, the Consultant shall obtain Workers' Compensation Insurance with limits sufficient to respond to the applicable state statutes.

In addition, the 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 the contract.

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

If the Consultant participates in a self-insurance fund, a Certificate of Insurance will be required. In addition, the 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 contract involves the furnishing of advice or services of a professional nature, the Consultant shall purchase and maintain, throughout the life of the contract 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 the 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:

\$1,000,000 per Claim / \$2,000,000 Aggregate

8.03 PERFORMANCE:

8.03A Performance and Delegation:

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

Consultant agrees, within 14 calendar days of receipt of a written request from the City, to promptly remove and replace any personnel employed or retained by the Consultant, or any sub-consultants or subcontractors or any personnel of any such sub-consultants or subcontractors engaged by the Consultant, to provide and perform services or work pursuant to the requirements of this Agreement, whom the City shall request in writing to be removed, which request may be made by the City with or without cause.

8.03B Time for Performance:

The Consultant agrees to start all work upon receipt of an Authorization to Proceed issued by the Director, and to complete the Project within the time stipulated in the Authorization to Proceed and as indicated in the Scope of Work, if applicable. 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 the Consultant for extra compensation

8.04 TERMINATION OF AGREEMENT:

8.04A Right to Terminate:

The 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. The 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.

The Consultant shall have the right to terminate this agreement, in writing, following breach by the City, if breach of contract has not been corrected within 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 9 **MISCELLANEOUS**

9.01 CONSULTANT'S ACCOUNT RECORDS:

The City reserves the right to audit the Consultant's accounts for bills submitted on Hourly Rate basis during the performance of this Agreement and for five years after final payment under this Agreement. The Consultant agrees to furnish copies of any records necessary, in the opinion of the Director, to approve any requests for payment by the Consultant.

9.02 OWNERSHIP OF DOCUMENTS:

Drawings and Specifications as instruments of service are and shall become the property of the City whether the Project for which they are made is executed or not. The Consultant shall be permitted to retain copies, including reproducible copies, of Drawings and Specifications for information and reference in connection with the City's use and occupancy of the Project.

The Drawings and Specifications shall not be used by the City on other projects, for additions to this Project, or for completion of this Project by others, provided the Consultant is not in default under this Agreement, except as provided in Article 7 or by agreement in writing and appropriate compensation to the Consultant, in which case such drawings and specifications may be used.

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 the Consultant's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by Consultant hereunder, and Consultant shall require all of its employees, agents, sub-consultants and subcontractors to comply with the provisions of this subsection.

9.03 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.

9.04 EXTENT OF AGREEMENT:

This Agreement represents the entire and integrated agreement between the City and the Consultant and supersedes all prior negotiations, representations or agreements, written or oral.

This Agreement may not be amended, changed, modified, or otherwise altered in any respect, at any time after the execution hereof, except by a written document executed with the same formality and equal dignity herewith. Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach of any provision of this Agreement.

9.05 SUCCESSORS AND ASSIGNS:

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

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

9.06 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 the 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 issue 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 1 year following the end of the Project.

9.07 NO 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 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 the 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.

9.08 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.

9.09 CONSULTANT'S STAFF:

CONSULTANT will provide the key staff identified in their proposal for Project as long as said key staff is in CONSULTANT's employment.

CONSULTANT will obtain prior written approval of Project Manager to change key staff. CONSULTANT shall provide Project Manager with such information as necessary to determine the suitability of proposed new key staff. Project Manager will act reasonably in evaluating key staff qualifications.

If Project Manager desires to request removal of any of CONSULTANT's staff, Project Manager shall first meet with CONSULTANT and provide reasonable justification for said removal.

9.10 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

City Attorney
2600 Hollywood Blvd., Rm. 407
Hollywood, Florida 33020

FOR CONSULTANT:

9.11 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.

9.12 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.

9.13 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.

9.14 MEDIATION; WAIVER OF JURY TRIAL:

In an effort to engage in a cooperative effort to resolve conflict which may arise during the course of the design and /or construction of the subject project(s), and/or following the completion of the projects(s), the parties to this Agreement agree all disputes between them shall be submitted to non-binding mediation prior to the initiation of litigation, unless otherwise agreed in writing by the parties. A certified Mediator, who the parties find mutually acceptable, will conduct any Mediation Proceedings in 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.

9.15 TIME:

Time is of the essence in this agreement.

9.16 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.

9.17 PUBLIC RECORDS LAW

The 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 the 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 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;
- 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 the 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 the 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, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of this Agreement, the 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

Director of Financial Services

WHEN THE CONSULTANT IS A CORPORATION OR PROFESSIONAL ASSOCIATION

ATTEST

Name of Corporation

By _____

Secretary

(Corporate Seal)

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