



City Of Hollywood, Florida
Department of Public Utilities

Phone: (954) 921-3930 • PO Box 229045 Hollywood, FL 33022-9045 • FAX: (954)921-3258

Arcadis U.S. Inc.

PROFESSIONAL SERVICES AGREEMENT

for

**GENERAL ENGINEERING CONSULTANT
SERVICES**

FOR THE:

**CITY OF HOLLYWOOD
DEPARTMENT OF PUBLIC UTILITIES**

**WATER TREATMENT PLANT
AND
WASTEWATER TREATMENT PLANT
PROJECTS**

CITY PROJECT NO. 17-1324

August 2017

TABLE OF CONTENTS

PROFESSIONAL SERVICES AGREEMENT FOR GENERAL ENGINEERING CONSULTANT SERVICES

ARTICLE 1 GENERAL PROVISIONS	
1.1	GENERAL REQUIREMENTS 1
1.2	SCOPE OF SERVICES 3
1.3	TERM OF AGREEMENT 4
1.4	DEFINITIONS..... 6
1.5	CONTRACT SERVICE AREAS 7
1.6	PROJECT PHASES 7
ARTICLE 2 CONSULTANT'S SERVICES AND RESPONSIBILITIES BASIC SERVICES	
2.1	GENERAL 9
2.2	PRE DESIGN PHASE 10
2.3	ENGINEERING DESIGN PHASE 11
2.4	BIDDING PHASE 13
2.5	CONSTRUCTION PHASE 13
2.6	GUARANTEE TO REPAIR PERIOD 16
2.7	INDEPENDENT REVIEWS 17
ARTICLE 3 CONSULTANT'S SERVICES AND RESPONSIBILITIES ADDITIONAL SERVICES	
3.1	GENERAL 19
ARTICLE 4 CITY RIGHTS AND RESPONSIBILITIES	
4.1	ADMINISTRATION..... 21
4.2	PROVISION OF INFORMATION, SURVEYS, AND REPORTS 21
ARTICLE 5 COMPENSATION	
5.1	COMPENSATION FOR BASIC SERVICES..... 23
5.2	COMPENSATION FOR ADDITIONAL SERVICES 23
5.3	REIMBURSABLE EXPENSES..... 24
5.4	PAYMENT PERIOD 24
5.5	SUB CONSULTANT ADMINISTRATIVE FEE 25
5.6	RATE SCHEDULE UPDATES 25
ARTICLE 6 PAYMENTS	
6.1	PAYMENTS FOR BASIC SERVICE 27
6.2	PAYMENTS FOR ADDITIONAL SERVICES AND REIMBURSABLE EXPENSES 27
6.3	PROJECT SUSPENSION 27
ARTICLE 7 DESIGN PROFESSIONAL'S RECORDS AND FILES	
7.1	BOOKS AND RECORDS..... 29
7.2	FILES 29
7.3	RIGHTS TO ACCESS..... 29
ARTICLE 8 OWNERSHIP AND USE OF DOCUMENTS	
8.1	UPON COMPLETION OR TERMINATION 31
8.2	CONSTRUCTION DOCUMENTS 31
8.3	INDEMNIFICATION 31

ARTICLE 9 DISPUTES	
9.1	NEGOTIATION..... 33
9.2	MEDIATION 33
9.3	ARBITRATION OR LITIGATION 33
9.4	PERSONAL INJURY, WRONGFUL DEATH OR PROPERTY DAMAGE 34
9.5	WAIVER OF CLAIMS 34
ARTICLE 10 INDEMNIFICATION AND INSURANCE	
10.1	INDEMNIFICATION 37
10.2	INSURANCE REQUIREMENTS 37
ARTICLE 11 STATUTORY REQUIREMENTS	
11.1	NONDISCRIMINATION..... 39
11.2	PAYROLL RECORDS 39
11.3	LAWS AND REGULATIONS 40
ARTICLE 12 EXTENT OF AGREEMENT	
12.1	AUTHORITY OF AGREEMENT 41
12.2	EXHIBITS 41
12.3	THIRD-PARTY BENEFICIARIES 41
12.4	MODIFICATION 41
ARTICLE 13 FEDERAL AND STATE GRANTS 43	
ARTICLE 14 NOTICES	
14.1	CITY 45
14.2	CONSULTANT 45
ARTICLE 15 SUCCESSORS AND ASSIGNS	
15.1	GENERAL 47
15.2	CONSULTANT DEATH OR INCAPACITATION 47
15.3	ASSIGNMENT..... 47
ARTICLE 16 TERMINATION OF AGREEMENT	
16.1	CITY - INITIATED TERMINATION..... 49
16.2	CONSULTANT - INITIATED TERMINATION..... 50
16.3	DOCUMENTS AND MATERIALS 50
16.4	SUSPENSION 50
ARTICLE 17 MISCELLANEOUS 45	

THIS AGREEMENT is made and entered into this 7 day of Nov 2017 by and between **Arcadis, U.S., Inc.**, a Delaware corporation authorized to do business in the State of Florida, with its principal place of business at **8201 Peters Road, #2400, Plantation, Florida** hereinafter referred to as the CONSULTANT whose Federal I.D. number is **57-0373224** and City of Hollywood, a municipal Corporation of the State of Florida, by and through its Commissioners, whose principal place of business is at 2600 Hollywood Blvd., Hollywood, Florida, 33020, hereinafter referred to as "CITY".

WHEREAS, the CITY desires to obtain the professional services of the CONSULTANT; and

WHEREAS, the CONSULTANT has submitted a proposal for provision of those services; and

WHEREAS, the CONSULTANT represents that it has expertise in the type of professional services that will be required.

NOW, THEREFORE, in consideration of the mutual covenants and provisions contained herein, the parties hereto agree as follows:

ARTICLE 1 GENERAL PROVISIONS

1.1 GENERAL REQUIREMENTS

1.1.1 The City of Hollywood General Conditions (Exhibit "A") are herein included as part of this agreement, except as modified within this document.

1.1.2 The term "he" shall be deemed to refer to individuals, firms, partnerships and other corporate structures without regard to sex or multiple parties as a convenience to improve clarity of these instructions.

1.1.3 Legal Venue: This agreement shall be governed by the law of the State of Florida, and the venue for any legal action will be Broward County, Florida.

1.1.4 In the event of a conflict between the provisions of any exhibit to this Agreement and the Agreement, the provisions of this Agreement shall govern.

1.1.5 Force Majeure:

- a) A Force Majeure shall mean any event arising from causes beyond the control of a Party that causes a delay in or prevents the performance of any obligation under this Agreement, including, but not limited to:
 - 1. Acts of God; fire; war; insurrection; civil disturbance; or explosion;
 - 2. Unanticipated breakage or accident to machinery, equipment or lines of pipe despite reasonably diligent maintenance;
 - 3. Adverse weather conditions that could not be reasonably anticipated;
 - 4. Restraint by court order or order of public authority;
 - 5. Inability to obtain, at a reasonable cost and after exercise of reasonable diligence, any necessary authorizations, approvals, permits, or licenses due to

- action or inaction of any governmental agency or authority other than the City of Hollywood; and
6. Delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence.
 7. Any strike or other labor dispute, not within the control of the Parties affected thereby.
- b) Neither CONSULTANT nor CITY shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions classified above as being a Force Majeure. Force Majeure shall not include increased costs or expenses of Response Actions, whether or not anticipated at the time such Response Actions were initiated.

1.1.6 Standard of Care: The CONSULTANT has represented to the CITY that it has expertise in the type of professional services that will be required for the services to be provided hereunder. The CONSULTANT agrees that all services to be provided by CONSULTANT pursuant to this Agreement shall be subject to the CITY's review and approval and shall be in accordance with the generally accepted standards of professional practice in the State of Florida, as well as in accordance with all published laws, statutes, ordinances, codes, rules, regulations and requirements of any governmental agencies which regulate or have jurisdiction over the Project or the services to be provided and performed by CONSULTANT hereunder. In the event of any conflicts in these requirements, the CONSULTANT shall notify the CITY of such conflict and utilize its best professional judgment to advise CITY regarding resolution of the conflict.

1.1.7 CITY's exercise of any of its rights or remedies prescribed in this Agreement shall not relieve CONSULTANT from responsibility for damages or other losses incurred or to be incurred by CITY as a result of CONSULTANT's breach of its obligations under this Agreement.

1.1.8 The CONSULTANT agrees to obtain and maintain throughout the period of this Agreement all such licenses as are required to do business in the State of Florida and in Broward County, Florida, including, but not limited to, all licenses required by the respective State boards and other governmental agencies responsible for regulating and licensing the professional services to be provided and performed by the CONSULTANT pursuant to this Agreement.

1.1.9 The CONSULTANT agrees that, when the services to be provided hereunder relate to a professional service which, under Florida Statutes, requires a license, certificate of authorization or other form of legal entitlement to practice such services, it shall employ and/or retain only qualified personnel to provide such services.

1.1.10 CONSULTANT agrees to employ and designate, in writing, within five (5) calendar days after receiving its Notice to Proceed, a qualified licensed professional to serve as the CONSULTANT's project manager (hereinafter referred to as the "Project Manager"). The Project Manager shall be authorized and responsible to act on behalf of the CONSULTANT with respect to directing, coordinating and administering all aspects of the services to be provided and performed under this Agreement. The CONSULTANT agrees that the Project Manager shall devote whatever time is required to satisfactorily

manage the services to be provided and performed by the CONSULTANT hereunder. The person selected by the CONSULTANT to serve as the Project Manager shall be subject to the prior approval and acceptance of the CITY.

1.1.11 CONSULTANT agrees, within fourteen (14) calendar days of receipt of a written request from the CITY, to promptly remove and replace the Project Manager, or any other 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.

1.1.12 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 paragraph.

1.1.13 CONSTRUCTION BUDGET: Throughout the Project CONSULTANT is expected to keep the Project Construction Cost within the Construction Budget and is responsible to periodically submit a current Estimated Project Construction Cost to verify that the Project is within the Construction Budget.

1.2 SCOPE OF SERVICES

1.2.1 CONSULTANT shall provide to CITY professional engineering services in all phases of the work to which this Agreement applies.

1.2.2 The exact nature and magnitude of the required professional services cannot be defined precisely at the time of entering into this Agreement. The services to be performed by CONSULTANT will be set forth in the scope of services described in Work Orders to be issued by CITY from time to time.

1.2.3 The services to be provided by CONSULTANT are generally described herein. The CITY reserves the right to add or delete component parts when preparing Work Orders or to issue work in phases. The Work Orders, as issued, represent the entire scope of services between CITY and CONSULTANT.

1.2.4 Work to be performed under this contract will be authorized on a case by case basis through the issuance of individual Work Orders. A detailed scope of services will be incorporated into each Work Order. A written Work Order shall be issued approving a proposal for any Work Order under this Agreement. Work Orders shall be considered part of this agreement, and will be appended hereto.

1.2.5 At the CITY's Request for Proposal, CONSULTANT shall provide a written description of services proposed to be provided under a Work Order. CONSULTANT shall respond to Requests for Proposal in a timely manner.

1.2.6 CONSULTANT's Work Order Proposal shall be based on the CITY's Request for Proposal, discussions with CITY's staff, CONSULTANT's knowledge of similar work, local conditions, and field investigations. As a minimum, the proposal shall consist of a background of problem, scope of work, schedule and cost of services. To the extent applicable, CONSULTANT's Proposal shall be prepared substantially in accordance with this Agreement. The Work Order proposal shall provide comments on the scope of services, as well as a detailed staff hour estimate where appropriate, a fee proposal in standard format, and support for all costs contained in the fee proposal. The supporting information must be adequate to determine a factual basis for all costs contained in the proposal.

1.2.7 Sufficient documentation must be provided with the fee proposal to support the basis for all proposed direct expenses. Written quotes from vendors, invoices reflecting prices paid on previous purchases, copies of catalog pages, etc. may be used as support for the proposed prices. Verbal quotes from vendors may be acceptable if adequate supporting documentation (name and telephone numbers of the person furnishing the price quote) is provided. The acquisition of any individual item costing more than \$1,000 shall be supported by at least two quotes, when competition exists.

1.2.8 Each Work Order shall be subject to a separate written "Notice to Proceed" to be issued by CITY. Work shall not commence until issuance of the appropriate written "Notice to Proceed."

1.2.9 An amendment to a Work Order must be completed if the project schedule, project scope or the construction budget is changed. This document will also be used to authorize additional services if required.

1.2.10 Services by Consultant's Own Staff: The services to be performed hereunder shall be performed by CONSULTANT's own staff, unless otherwise authorized in writing by the CITY. The employment of, contract with, or use of the services of any other person or firm by CONSULTANT, as independent consultant or otherwise, shall be subject to the prior written approval of the CITY. No provision of this Agreement shall, however, be construed as constituting an agreement between the CITY and any such other person or firm. Nor shall anything contained herein be deemed to give any such party or any third party any claim or right of action against the CITY beyond such as may otherwise exist without regard to this Agreement.

1.2.11 CONSULTANT shall cooperate with CITY, its designees, and Contractor in furthering the interests of CITY.

1.2.12 CONSULTANT shall assist and support the Department of Public Utilities with the research, upgrades, acquisition, and implementation of a departmental-wide asset management software and the likes.

1.3 TERM OF AGREEMENT

1.3.1 This Agreement shall be a continuing service Agreement. The term of this Agreement shall be for a period of four (4) years. CITY shall have the option to renew this Agreement for two additional two (2) year periods. To exercise this option, CITY shall give CONSULTANT, not later than thirty (30) days prior to the expiration of the initial or renewal term of this Agreement, written notice of CITY's exercise of the option to renew.

Notwithstanding expiration of this Agreement, Consultant shall continue to work on each Project for which CITY issued a Notice to Proceed to CONSULTANT prior to expiration, except any Project on which CITY advises CONSULTANT in writing to cease working. With respect to any Project on which CITY advises CONSULTANT in writing to cease working, CONSULTANT shall promptly deliver to the CITY all original papers, records, documents, drawings, models, and other material set forth and described in this Agreement.

1.3.2 Services to be rendered by CONSULTANT shall be commenced subsequent to the execution of this Agreement and upon written Notice to Proceed from CITY for each Work Order issued. Work shall be performed and completed in accordance with the Project Schedule attached to the Work Order and made a part thereof.

1.3.3 Should CONSULTANT be obstructed or delayed in the prosecution or completion of its services as a result of condition herein defined in Paragraph 1.1.5 as a Force Majeure, and not due to its own fault or neglect, then CONSULTANT shall notify CITY in writing within five (5) working days after commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which CONSULTANT may have had to request a time extension.

1.3.4 No interruption, interference, inefficiency, suspension or delay in the commencement or progress of CONSULTANT's services from any cause whatsoever, including those for which CITY may be responsible in whole or in part, shall relieve CONSULTANT of its duty to perform or give rise to any right to damages or additional compensation from CITY. CONSULTANT's sole remedy against CITY will be the right to seek an extension of time to its schedule. Provided, however, if through no fault or neglect of the CONSULTANT, the services to be provided hereunder have not been completed within twelve (12) months of the estimate within the Work Order schedule, the CONSULTANT's compensation shall be equitably adjusted, with respect to those services that have not yet been performed, to reflect the incremental increase in costs experienced by CONSULTANT after expiration of said twelve-month period.

1.3.5 Should the CONSULTANT fail to commence, provide, perform or complete any of the services to be provided hereunder in a timely and reasonable manner, in addition to any other rights or remedies available to the CITY hereunder, the CITY at its sole discretion and option may withhold any and all payments due and owing to the CONSULTANT until such time as the CONSULTANT resumes performance of its obligations hereunder in such a manner so as to reasonably establish to the CITY's satisfaction that the CONSULTANT's performance is or will shortly be back on schedule.

1.4 DEFINITIONS

Unless defined differently herein, terms used in this Agreement shall have the same meaning as those used in the CITY's General Conditions (Exhibit "A").

1.4.1 As-Builts (As-built Drawings and Specifications). The term "As-Builts" shall mean the record copy of the Contract Documents prepared by the Construction Contractor to record as-built conditions, field changes, and selections made during construction.

1.4.2 Construction Budget. The term "Construction Budget" shall mean CITY's written statement of funds available to pay for the cost of construction.

1.4.3 Construction Cost Index. (ENR) The term "Construction Cost Index" shall mean the Engineering News Record's Construction Cost Index for the time period designated by CITY. The 20 cities average is used as a benchmark.

1.4.4 Contract Documents. The term "Contract Documents" shall mean the Notice to Bidders, Instruction to Bidders, Supplementary Instructions to Bidders, Bid Form, Construction Contract Agreement, General Conditions, Supplementary Conditions, Affirmative Action Program, Exhibits to the Construction Documents, Specifications, List of Drawings, Drawings, Addenda, Notice to Proceed, Change Orders, Notice of Completion and all other items identified in the Construction Contract Agreement.

1.4.5 Coordination. The term "Coordination" shall mean that the documents shall be consistent and in conformance each part with all other parts.

1.4.6 Estimated Project Construction Cost. The term "Estimated Project Construction Cost" shall mean CONSULTANT's written estimate in the form specified by CITY, of the total Construction Cost of a project, updated to reflect the most accurate values at the various stages of the design process.

1.4.7 Project Phase. The term "Project Phase" means the portion of the project described within the scope of a Work Order.

1.4.8 PROJECT MANAGER: The term "PROJECT MANAGER" shall mean the specific CITY-approved individual named in a Work Order issued under this Agreement who is assigned to the Project, and is CONSULTANT's designated principal or staff member, as the designated person in charge of providing all services required by this Agreement.

1.4.9 Project. The term "Project" is the overall project, including all phases from inception to completion.

1.4.10 Project Schedule. The term "Project Schedule" shall mean the schedule prepared by Consultant showing project milestones, funding, design, design review, construction, and other deadlines applicable to the Project.

1.4.11 Bidding Documents. The term "Bidding Documents" shall mean those documents prepared and furnished by CITY for the purpose of obtaining bids from contractors to construct the Project, including without limitation, the General Conditions and General Requirements attached as Exhibit A.

1.4.12 CITY: The term "CITY" shall mean the City of Hollywood, Florida.

1.4.13 CITY Representative: The term "CITY Representative" shall mean the person or entity providing CITY Representative services pursuant to paragraph 2.5.3.

1.4.14 CITY's Designated Project Coordinator. The term "CITY's Designated Project Coordinator" shall mean the individual acting as CITY's Designated Project Coordinator pursuant to paragraph 4.1.1.

1.5 CONTRACT SERVICE AREAS

The City will issue Work Orders based on the type of work desired, timing and the firm deemed most capable of providing the services by the City staff. There are no guarantees of a specific volume or amount of work. The CONSULTANT, under this agreement is authorized to receive Work Orders in the following service areas:

Water and Wastewater Treatment Plant Projects: These services would generally include projects for the potable water transmission and distribution system, and wastewater collection system components. Projects under this contract would include, but not be limited to, the following: evaluation, pre-design, design, improvements, permitting and upgrades for existing and/or proposed sewer lift stations, and water and sewer pipelines networks. Services for these projects would include, but not be limited to, design, permitting, construction management and administration, and field services.

1.5.1 Service Area 1 – Wastewater Treatment Plant Projects: These services would generally include projects for the wastewater treatment plant. Projects under this contract would include, but not be limited to, the following: wastewater treatment plant and process improvements, upgrade/replacement of effluent pump station, increase in oxygenation basin capacity, repair and/or replacement of oxygen generation system, additional effluent storage tanks, annual capacity analysis report updates, effluent disposal evaluations and permitting. Services for these projects would include, but not be limited to, design, permitting, construction management and administration, and field services. Administrative services needed for the stormwater program such as grants applications, the NPDES program, and similar projects will be included in this area in order to standardize the City's consultant working with the state's Wastewater/ Stormwater regulatory personnel.

1.5.2 Service Area 2 – Water Supply and Treatment Projects: These services would generally include projects for the water treatment plant, and raw water well systems. Projects under this contract would include, but not be limited to, water treatment plant and process improvements, installation of back-up power at the plant and in the wellfields, installation of additional membrane treatment skids, modifications or improvements to existing chemical processes, design and oversight of the installation of additional wells and requisite piping. Services for these projects would include, but not be limited to, design, permitting, construction management and administration, and field services.

1.5.3 Service Area 3 – Infrastructure Projects: These services would generally include projects for the potable water transmission and distribution system, wastewater collection system, reuse, and stormwater system components. Projects under this

contract would include, but not be limited to, the following: design and/or upgrades to pump stations and pipelines, septic-to-sewer conversions, and permitting. Services for these projects would include, but not be limited to, design, permitting, construction management and administration, and field services.

1.5.4 Service Area 4 – Quality Assurance, Quality Control and Value Engineering Services: The general consulting services that could include, but not be limited to, value engineering, constructability reviews, and quality assurance/quality control review of projects to be let by the City. Proposers awarded a contract for services under this section shall be limited to receiving an agreement for services only within this area. This approach is to limit the possibility of a conflict of interest in the review of a project.

1.6 PROJECT PHASES

1.6.1 Work Orders issued under this Agreement shall follow the following project phase organization:

- a) Pre-Design Phase
- b) Engineering Design Phase
- c) Bidding/Pre-Construction Phases
- d) Construction Phase
- e) Post-Construction Phase

1.6.2 In general, the scope of services in each phase may include, but not be limited to, some or all of the tasks as outlined in Articles 2 and 3 of this Agreement.

1.6.3 The work done under each phase shall be a separate task area in a Work Order, or be authorized under separate Work Orders at the option of the CITY. Work on each phase shall be based on documents, if any, from the prior phases approved by CITY in writing, any written directives by CITY with respect thereto, and any adjustments authorized by CITY in the Project Program or Construction Budget.

ARTICLE 2 CONSULTANT'S SERVICES AND RESPONSIBILITIES

Basic Services to be provided by CONSULTANT consist of the services described in this Article 2.

2.1 GENERAL

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 70% 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 70% 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 70% completed Construction Documents, a single marked-up set of the CITY's "Supplementary General Conditions" showing the recommended changes.

2.3.6 Upon 30, 70% 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%, 70% 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 AutoDesk's AutoCAD 2010 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-Built's 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-Built's, 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 GUARANTEE TO REPAIR PERIOD

2.6.1 CONSULTANT shall review the Work at 11 months after Substantial Completion or Final Completion, as applicable, and shall make written recommendations to CITY for the correction of any deficiencies within 15 days after the inspection date. CONSULTANT shall be accompanied by CITY during these inspections. Dates for inspections shall be as mutually agreed by the parties within the 11th month time frame.

2.7 INDEPENDENT REVIEWS

2.7.1 Work Orders under this agreement are subject to an independent design review conducted by CITY, at the CITY's option, and at CITY's expense. CONSULTANT shall cooperate with this design review. As part of the review CONSULTANT shall present the current status of the design. CONSULTANT shall present Drawings and other items as necessary to describe the Project design.

2.7.2 Work Orders under this agreement are subject to independent cost estimates conducted by an estimator designated by CITY, at the CITY's option, and at CITY's expense. If requested, CONSULTANT shall provide 3 copies of the current Drawings and Specifications at the following points in the design process:

1. End of the pre-design phase.
2. Construction Documents phase at 30%, 70% and 100% of completion.
3. Construction Documents phase at final 100% completion of correction by CONSULTANT and back-check by CITY.

ARTICLE 3 ADDITIONAL SERVICES

The following shall only become part of a Work Order if specifically requested prior to the Work Order approval. If not included in the initial Work Order, these items will require an amendment to the Work Order for additional work. CONSULTANT shall provide Additional Services only when and as authorized in a written Work Order Amendment signed by CITY. No Additional Services shall be compensable unless so authorized.

3.1.1 Provide planning surveys, site evaluations, environmental studies, or comparative studies of prospective Project sites.

3.1.2 Provide services to investigate existing conditions or facilities, to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by CITY beyond those reasonably and customarily provided as part of a normal design process.

3.1.3 Provide financial feasibility studies or other special studies.

3.1.4 Prepare special surveys, environmental studies, and submissions required for review or approval by governmental authorities or others having jurisdiction over the Project outside of the submittals required for approval of the Construction Documents or as required to prepare Change Orders under basic services, if applicable.

3.1.5 Provide services related to future facilities, systems, and equipment that are not intended to be constructed during the construction phase or that are not anticipated in the Project.

3.1.6 Make investigations and/or take inventories of materials or equipment, provide detailed quantity surveys or inventories of material, equipment, and labor or make valuations and detailed appraisals of existing facilities.

3.1.7 Provide analyses of owning and operating costs, except as needed to prepare an energy analysis or to participate in Value Engineering sessions.

3.1.8 Provide perspective drawings, models, and mock-ups, including slides thereof except as indicated in Article 2.

3.1.9 Provide services as necessary to correct major defects or deficiencies in the Work of Contractor when such defects or deficiencies require services in excess of those reasonably expected on a project of this type, size, and complexity, excluding warranty items.

3.1.10 Provide extensive assistance in the utilization of any equipment or system, prepare operation and maintenance manuals, train personnel for operation and maintenance, and consulting during operation.

3.1.11 Provide services after the issuance of the final Certificate for Payment, provided that these services do not relate to the guarantee or warranty services described in Article 2 or to corrections of design errors or omissions.

3.1.12 Provide services regarding replacement of any Work damaged by fire or other cause (excluding any cause resulting from the negligent acts, errors, or omissions by CONSULTANT).

3.1.13 Provide services in connection with a public hearing, mediation, arbitration proceeding, or legal proceeding, except where CONSULTANT is a party thereto.

3.1.14 Provide services made necessary by the termination of Contractor but only to the extent such services exceed the level of service that would have been provided in the absence of a termination of Contractor.

3.1.15 Investigation of alternative projects and feasibility studies.

3.1.16 Other assistance as may be required.

ARTICLE 4 CITY RIGHTS AND RESPONSIBILITIES

4.1 ADMINISTRATION

4.1.1 The CITY shall designate in writing a project coordinator to act as CITY's representative with respect to the services to be rendered on a Work Order under this Agreement (hereinafter referred to as the "Project Coordinator"). The Project Coordinator shall have authority to transmit instructions, receive information, interpret and define CITY's policies and decisions with respect to CONSULTANT's services for the Project. However, the Project Coordinator is not authorized to issue any verbal or written orders or instructions to the CONSULTANT that would have the effect, or be interpreted to have the effect, of modifying or changing in any way whatever:

- (a) The time the CONSULTANT is obligated to commence and complete all such services; or
- (b) The amount of compensation the CITY is obligated or committed to pay the CONSULTANT.

4.1.2 The Project Coordinator shall:

- (a) Review and make appropriate recommendations on all requests submitted by the CONSULTANT for payment for services and work provided and performed in accordance with this Agreement;
- (b) Provide all criteria and information requested by CONSULTANT as to CITY's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations;
- (c) Arrange for access to and make all provisions for CONSULTANT to enter the Project site to perform the services to be provided by CONSULTANT under this Agreement; and
- (d) Provide notice to CONSULTANT of any deficiencies or defects discovered by the CITY with respect to the services to be rendered by CONSULTANT hereunder.

4.2 PROVISION OF INFORMATION, SURVEYS, AND REPORTS

4.2.1 Upon request from CONSULTANT, the CITY shall assist CONSULTANT by placing at CONSULTANT's disposal all available information in the CITY's possession pertinent to the Project, including existing drawings, specifications, shop drawings, product literature, previous reports and any other data relative to design or construction of the Project.

4.2.2 CITY shall be responsible for the acquisition of all easements, property sites, rights-of-way, and other property rights required for a project and for the costs thereof, including the costs of any required land surveys in connection with such acquisition.

4.2.3 CITY shall have the right to make changes to the Project. When such changes increase the duties of CONSULTANT beyond those reasonably and customarily

provided in Basic Services, CONSULTANT shall be compensated in accordance with this Agreement.

4.2.4 CITY shall have the right to make reasonable changes to its Bidding Documents and CONSULTANT shall be bound by such changes. When such changes increase the duties of CONSULTANT, beyond those reasonably and customarily provided in Basic Services, CONSULTANT shall be compensated in accordance with this Agreement.

4.2.5 CITY shall furnish structural, mechanical, electrical, chemical, soils, and other tests, inspections, and reports as required by law or by the Contract Documents, which are not required to be furnished by Contractor under the Contract Documents.

4.2.6 CITY shall provide updated information to the CONSULTANT regarding the Project Schedule as dates and durations applicable to the Project such as funding deadlines, review periods, anticipated periods of Project suspension, and construction deadlines become known.

4.2.7 If required for the performance of CONSULTANT's services, and not included within the scope of the Work Order, CITY shall furnish an accurate land survey of the Project site, giving, as applicable, grades and lines of streets, alleys, pavements, and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries, and contours of the site; locations, dimensions, and floor elevations pertaining to existing buildings, other improvements, and trees; and information in CITY's possession concerning available service and utility lines, both public and private.

4.2.8 The services, information, surveys, and reports required by this Article 4 shall be furnished at CITY's expense.

ARTICLE 5 COMPENSATION

CITY will compensate CONSULTANT for the scope of services provided, in accordance with this Article 5 and with the other terms and conditions of this Agreement, as follows:

5.1 COMPENSATION FOR BASIC SERVICES

The fee for services rendered in accordance with this Agreement shall be computed in the method selected by the CITY as follows:

5.1.1 If the basis for compensation, identified in the Work Order, is a "LUMP-SUM", it shall list amounts by, and payable with respect to each milestone, after the review and approval by CITY. Monthly pay requisitions documenting the Work Order progress and requested payment shall be submitted in accordance with, and include, the attached Rate Schedule (Exhibit B). Payment shall not exceed the amount authorized through the completed milestones or for the amount of work completed to date. Requisitions shall be payable after the review and approval by CITY. Payment for work indicated shall include all work necessary to accomplish the work component, whether specified, indicated in the Work Order or necessary to complete the work as described. Payments to CONSULTANT shall follow the schedule that shall include the milestones indicated in the Work Order, and updated through the pay request date.

5.1.2 If the basis for compensation, identified in the Work Order, is TIME AND MATERIALS BASIS, work components to be paid shall be indicated in the Work Orders issued to CONSULTANT.

- (1) Time payments shall be computed based on CONSULTANT's Hourly Rate Schedule as shown on Exhibit B.
- (2) Materials shall be paid as reimbursable costs in accordance with paragraph 5.3. Reimbursable costs shall mean the actual expenditures made by the CONSULTANT while providing services under the Work Order in the interest of the Project. An estimate of reimbursable costs shall be included in the Work Order the amount of which will not be exceeded without CITY's approval. Items which may be considered for reimbursement are listed below:
 - a. Expenses for transportation and subsistence incidental to out-of-town travel required by CONSULTANT and directed by CITY, other than visits to the project site or CITY's office;
 - b. Expenses for preparation, reproduction, photographic production techniques, postage and handling of drawings, specifications and documents;
 - c. Expenses for renderings, models and mock-ups requested by CITY.

5.2 COMPENSATION FOR ADDITIONAL SERVICES

5.2.1 For the Additional Services of CONSULTANT, as described in Article 3, including the Additional Services of sub-consultants, compensation shall be in accordance with the attached Rate Schedule, (Exhibit B).

5.3 REIMBURSABLE EXPENSES

5.3.1 For Reimbursable Expenses, as described in this paragraph 5.3, only actual costs plus a 10% mark-up fee will be reimbursed. Paid invoices or other proof of payment shall be submitted when requesting reimbursement.

5.3.2 Reimbursable Expenses are paid in addition to the compensation for Basic and Additional Services and are actual expenditures made by CONSULTANT and Sub-consultants in the interest of the Project, for the following expenses:

1. Unless otherwise identified in a Work Order, transportation and living expenses while traveling outside the South Florida area. Transportation, lodging, and per diem expenses for travel between various CONSULTANT's offices and between CONSULTANT's offices and CITY's facility are not reimbursable. Transportation expenses shall be paid on the same basis and shall be subject to the same conditions as those in effect for employees of CITY. These expenses shall not be compensable unless authorized, in writing, in advance by CITY.
2. Expenses for reproductions, postage, handling and delivery for Drawings, Specifications, and other documents, excluding reproductions for office use by CONSULTANT and sub-consultants; copies specified herein for the schematic design, design development, and Construction Documents phases; and other sets as required under Basic Services (Article 2).

5.3.3 The CITY shall approve all miscellaneous expenditures necessary for the completion of the Work Order not included in items above, in advance.

5.4 PAYMENT PERIOD

Payments will be made for services rendered, no more than on a monthly basis, within forty-five (45) days of receipt of an approved invoice. The number of the Work Order by which authority the services have been made shall appear on all invoices, project name and number, original contract amount, consecutive invoice number for that project, and Work Order amount. All invoices shall be reasonably substantiated, and shall identify the services rendered and required by CITY. Invoices shall be broke out by task, and shall include a breakdown of hours and expenses within that task.

5.5 SUB CONSULTANT ADMINISTRATION FEE

As compensation for coordinating sub-consultant activities for CITY, CONSULTANT shall be allowed an administrative fee not to exceed ten percent (10%) of the actual cost of services rendered. For the purposes of this provision, the actual cost of services rendered shall not include any mark-up between the vendor who actually performed the services and any sub-consultant. No administrative fee or mark-up shall be paid in conjunction with reimbursable costs.



5.6 RATE SCHEDULE UPDATES

5.6.1 The Hourly Rate Schedule (Exhibit B) may be adjusted annually on the anniversary date of this agreement. Any adjustments to the Hourly Rate Schedule shall be mutually agreed upon between the CITY and CONSULTANT, and shall reflect actual increases in CONSULTANT's costs. The CONSULTANT shall provide a completed copy of a Hourly Rate Schedule (Exhibit B) for review and approval by the CITY one month prior to the anniversary date of the Agreement. Adjusted rates shown by the CONSULTANT in Exhibit B shall be subject to negotiation prior to approval.

5.6.2 The adjusted Hourly Rate Schedule shall be used solely for the preparation of proposals for new Work Orders. The adjusted rates shall not be used to adjust previously authorized Work Orders.

5.6.3 The original rate schedule and any additions thereto will be adjusted to exclude any significant sums by which the CITY determines the rate schedule was increased due to inaccurate, incomplete, or non current wage rates and other factual unit costs.

ARTICLE 6 PAYMENTS

6.1 PAYMENTS FOR BASIC SERVICES

6.1.1 Payments for Basic Services, as defined in Article 2, shall be made as stipulated in Article 5.

6.2 PAYMENTS FOR ADDITIONAL SERVICES AND REIMBURSABLE EXPENSES

6.2.1 Payments for CONSULTANT's Additional Services, as defined in Article 3, and for Reimbursable Expenses, as defined in Article 5, shall be made monthly after presentation of CONSULTANT's statement of services rendered, or expenses incurred, with invoices, receipts and other justification thereof.

6.2.2 Payments related to paragraph 5.2 shall be made monthly after presentation of CONSULTANT's statement of services rendered, or expenses incurred, with invoices, receipts and other justification thereof unless otherwise agreed by the parties thereto.

6.3 PROJECT SUSPENSION

6.3.1 If the Project is suspended or abandoned for more than six consecutive months, and such suspension was not scheduled at the beginning of the Work Order, CONSULTANT shall be compensated for all authorized services performed prior to the receipt of written notice from CITY of such suspension or abandonment, together with Reimbursable Expenses then due. If the Project is resumed after being suspended for more than six consecutive months, CONSULTANT's compensation shall be adjusted to compensate CONSULTANT for any additional costs reasonably incurred as the result of the suspension.

ARTICLE 7 MAINTENANCE OF RECORDS AND FILES

7.1 BOOKS AND RECORDS:

Books and records relating to this Agreement shall be maintained in accordance with generally accepted accounting principles. CONSULTANT's records shall include but not be limited to accounting records (hard copy, as well as computer readable data); contracts; payroll records; sub-consultant agreements; vendor agreements; purchase orders; leases; original estimates; estimating work sheets; correspondence; receipts; memoranda; and any other supporting evidence deemed necessary to substantiate charges under this agreement. All such books and records shall be preserved for a period of at least seven years from the date of Final Payment under this Agreement.

7.2 FILES:

CONSULTANT and sub-consultants shall make their CITY project files available for inspection and copying by CITY upon reasonable notice. Such files shall be maintained for a period of at least seven years from the date of Final Payment under this Agreement. CONSULTANT shall include appropriate language in sub-consultant's agreements to enforce the provision of this paragraph 7.2.

7.3 RIGHT TO ACCESS:

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 necessary during the period of this Agreement and during the seven (7) year period noted above; provided, however, such activity shall be conducted only during normal business hours.

ARTICLE 8 OWNERSHIP AND USE OF DOCUMENTS

8.1 UPON COMPLETION OR TERMINATION

8.1.1 Upon completion or termination of each Work Order, all records, documents, tracings, plans, specifications, maps, evaluations, reports, computer assisted design or drafting disks and other technical data, other than working papers, prepared or developed by CONSULTANT, and the designs depicted in them, under this Agreement shall be delivered to and shall become the property of CITY whether the Project for which they are made is executed or not.

8.1.2 CONSULTANT shall be permitted, at its own expense, to retain copies, including reproducible copies, of Drawings and Specifications for information and reference. CONSULTANT shall not use as a whole or in substantial part, these Drawings and Specifications on other projects without written approval of the CITY.

8.1.3 All presentation drawings, slides, and models shall be and remain the property of CITY.

8.2 CONSTRUCTION DOCUMENTS

8.2.1 CONSULTANT, upon request, shall provide copies of the Construction Documents for bidding and construction purposes in the number required by CITY. The expense of reproduction shall be borne by CITY. CITY reserves the right to select the type of reproduction and to establish where the reproduction of documents will be accomplished.

8.2.2 CITY may use the Construction Documents, the Drawings and Specifications and the designs depicted in them without CONSULTANT's consent and without additional compensation to CONSULTANT, for whatever purpose it deems fit including, without limitation:

- a. On or in connection with the Project, including without limitation, future additions, alterations, connections, repairs, information, reference, use or occupancy; and
- b. On other projects.

8.3 INDEMNIFICATION ON USE OF DOCUMENTS

8.3.1 To the extent permitted by law, CITY will defend, indemnify and save harmless CONSULTANT, its officers, agents and employees from any costs or claims for damages arising from CITY's use, on other projects, of the Construction Documents, the Drawings and Specifications, or the designs depicted in them. As used in this Article 8, the "use, on other projects" does not include any of the uses specified in subparagraph 8.2.2.a.

8.3.2 Notwithstanding paragraph 8.3.1, CITY will not defend, indemnify or save harmless CONSULTANT, its officers, agents, or employees from any costs or claims asserted or imposed by any person or entity claiming that CITY's use of the Construction Documents, the Drawings and Specifications, or the designs depicted in them is contrary

to or in violation of any copyright, patent, trade secret, trade name, trademark, or any proprietary, contractual or legal right pertaining to their use.

ARTICLE 9 DISPUTES

9.1 NEGOTIATION

9.1.1 The parties will attempt in good faith to resolve any controversy or Claim arising out of or relating to this Agreement by negotiation.

9.2 MEDIATION

9.2.1 Within 60 days, but no earlier than 30 days, following the earlier of (1) receipt of notice by the other party from the American Arbitration Association (AAA) of the disputing party's demand for arbitration or (2) receipt by the other party of the disputing party's notice of election to litigate, the parties shall submit the matter to non-binding mediation administered by the AAA under its construction industry mediation rules, unless waived by mutual stipulation of both parties.

9.3 ARBITRATION OR LITIGATION

Disputes arising from this Agreement between CONSULTANT and CITY which cannot be settled through negotiation or mediation shall be subject to arbitration or litigation as follows:

9.3.1 Arbitration with Contractor. If any claim arises under the Construction Contract Documents for the Project and is submitted to arbitration, and either Contractor or CITY claims that the acts or omissions of CONSULTANT are involved, in whole or in part, any claim by CITY against CONSULTANT arising out of or in connection therewith may be asserted, at the option of CITY, against CONSULTANT in the same arbitration proceeding which shall be conducted under the procedures specified in the General Conditions of the construction contract.

9.3.2 Litigation with Contractor. If any claim arises under the Construction Contract Documents for the Project and is submitted to litigation, and either Contractor or CITY claims that the acts or omissions of CONSULTANT are involved, in whole or in part, any claim by CITY against CONSULTANT arising out of or in connection therewith may be asserted, at the option of CITY, against CONSULTANT in the same litigation.

9.3.3 Arbitration without Contractor. Disputes arising from this Agreement between CONSULTANT and CITY which cannot be settled through negotiation or mediation, and which are not resolved by arbitration or litigation pursuant to subparagraphs 9.3.1. and 9.3.2 shall be subject to arbitration without Contractor conducted in accordance with the Construction Industry Arbitration Rules of the AAA then in effect. The following additional modifications shall be made to the aforesaid Rules of the AAA:

1. Civil discovery shall be permitted for the production of documents and taking of depositions. Other discovery may be permitted in the discretion of the arbitrator. All disputes regarding discovery shall be decided by the arbitrator.
2. CITY's Representative and/or CITY's consultants, shall if required by agreement with CITY, upon demand by CITY join in and be bound by the arbitration.

3. Concurrent disputes subject to this subparagraph 9.3.3 shall be consolidated into a single arbitration unless the parties otherwise agree in writing.
4. No hearing shall be held prior to final completion of the Project unless CITY and CONSULTANT otherwise agree in writing.
5. The exclusive forum for determining arbitrability shall be the Circuit Court of the State of Florida.
6. If total claims are less than \$50,000, AAA expedited procedures as modified by this Article 9 shall apply. If total claims are between \$50,000 and \$100,000 they shall be heard by a single arbitrator who shall be an attorney. If total claims are in excess of \$100,000 and are submitted to arbitration, the controversy shall be heard by a panel of 3 arbitrators, one of which shall be an attorney.
7. The AAA shall submit simultaneously to each party to the dispute an identical list of at least 10 names of persons chosen from the National Panel of Commercial Arbitrators, and each party to the dispute shall have 10 days from the date of receipt in which to cross off any names objected to, number the remaining names in order of preference and return the list to AAA. If the expedited procedures of the AAA are applicable, the AAA shall submit simultaneously to each party an identical list of 5 proposed arbitrators drawn from the National Panel of Commercial Arbitrators, and each party may strike 3 names from the list on a peremptory basis and return the list to AAA within 10 days from the date of receipt. Unless CITY and CONSULTANT otherwise agree in writing, the arbitration decision shall be made under and in accordance with the laws of the State of Florida, supported by substantial evidence. If the total of all claims or cross claims submitted to arbitration is in excess of \$50,000, the award shall contain the basis for the decision, findings of fact, and conclusions of law. Any arbitration award shall be subject to confirmation, vacation or correction under the procedures and on the grounds specified in the Florida Arbitration Code (Chapter 682, F.S.). The expenses and fees of the arbitrators and the administrative fees of the AAA shall be divided among the parties equally. Each party shall pay its own counsel fees, witness fees, and other expenses incurred for its own benefit.

9.4 PERSONAL INJURY, WRONGFUL DEATH OR PROPERTY DAMAGE

9.4.1 Claims for personal injury, wrongful death, or property damage (other than property damage to CITY) shall not be subject to arbitration under Paragraph 9.3.3.

9.5 - WAIVER OF CLAIMS

9.5.1 CONSULTANT's acceptance of final payment shall constitute a full waiver of any and all claims, except for insurance company subrogation claims, by it against CITY arising out of this Agreement or otherwise related to a project, except those previously made in writing and identified by CONSULTANT as unsettled at the time of the final payment. Neither the acceptance of CONSULTANT's services nor payment by CITY shall be deemed to be a waiver of any of CITY's rights against CONSULTANT.

9.5.2 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 and shall not be construed to be a modification of the terms of this Agreement.

ARTICLE 10 INDEMNIFICATION AND INSURANCE

10.1 INDEMNIFICATION

10.1.1 The CONSULTANT indemnifies and holds harmless the CITY, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the CONSULTANT and persons employed or utilized by the CONSULTANT in the performance of this Agreement.

10.1.2 Nothing in this Article shall be deemed to affect the rights, privileges and immunities of the CITY under the doctrine of sovereign immunity and as set forth in Section 768.28, F.S.

10.1.3 CITY and CONSULTANT acknowledge that the conditions of any construction contract shall include language, satisfactory to the CITY's attorney, in which the contractor indemnifies and holds harmless the CITY, its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the contractor and persons employed or utilized by the contractor in the performance of said construction contract.

10.2 INSURANCE REQUIREMENTS

10.2.1 No work shall commence at the CONSULTANT's office unless and until the required Certificates of Insurance are received and the CITY issues the written Notice to Proceed to the CONSULTANT.

10.2.2 CONSULTANT shall procure and maintain insurance of the types and to the limits specified below.

10.2.3 CONSULTANT shall require each of its sub-consultants and subcontractors to procure and maintain, until the completion of that sub-consultant's or subcontractor's work, insurance of the types and to the limits specified, unless such insurance requirement for the sub-consultant or subcontractor is expressly waived in writing by the CITY. Said waiver shall not be unreasonably withheld upon CONSULTANT representing in writing to CITY that CONSULTANT's existing coverage includes and covers the sub-consultants and subcontractors for which a waiver is sought, and that such coverage is in conformance with the types and limits of insurance specified.

10.2.4 All liability insurance policies, other than the Professional Liability, Worker's Compensation and Employer's Liability policies, obtained by CONSULTANT to meet the requirements of this Agreement shall include CITY as an additional insured as to the operations of the CONSULTANT under this Agreement and the Contract Documents and shall contain severability of interests provisions.

10.2.5 If any insurance provided pursuant to this Agreement expires prior to the completion of the work, renewal Certificates of Insurance and, if requested by CITY, certified, true copies of the renewal policies shall be furnished by CONSULTANT thirty (30) days prior to the date of expiration.

10.2.6 Should at any time the CONSULTANT not maintain the insurance coverages required in this Agreement, the CITY may cancel this Agreement or at its sole discretion shall be authorized to purchase such coverages and charge the CONSULTANT for such coverages purchased. The CITY shall not be under any obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company or companies used. The decision of the CITY to purchase such insurance coverages shall in no way be construed to be a waiver of its rights under this Agreement.

10.2.7 The amounts and types of insurance shall conform to the following minimum requirements with the use of Insurance Service Office (ISO) forms and endorsements or broader where applicable:

- (a) Workers' Compensation: Insurance covering all employees meeting Statutory Limits in compliance with applicable State and Federal laws. The coverage must include Employer's Liability with a minimum limit of \$1,000,000 for each accident.
- (b) Comprehensive General Liability: Coverage shall have minimum limits of \$1,000,000 Per Occurrence, Combined Single Limit for Bodily Injury Liability and Property Damage Liability. This shall include Premises and Operations, Independent Contractors, Products and Completed Operations, Broad Form Property Damage, XCU Coverage, and Contractual Liability.
- (c) Business Auto Liability: Coverage shall have minimum limits of \$1,000,000 Per Occurrence, Combined Single Limit for Bodily Injury Liability and Property Damage Liability. This shall include Owned Vehicles, Hired and Non-owned Vehicles and Employee Non-CITY ownership.
- (d) Professional Liability: Coverage shall have minimum limits of \$1,000,000 Per Occurrence, Combined Single Limits. If any liability insurance obtained by CONSULTANT or its sub-consultants and subcontractors to comply with the insurance requirements contained herein is issued on a "claims made" form as opposed to an "occurrence" form, the CONSULTANT or its sub-consultants and subcontractors shall, subject to reasonable continued availability, renew its coverage for three years following completion of the Work Order and acceptance by the CITY.

ARTICLE 11 STATUTORY REQUIREMENTS

11.1 NONDISCRIMINATION

11.1.1 In connection with the performance of CONSULTANT pursuant to this Agreement, CONSULTANT will conform to the provisions of the Federal Civil Rights Act of 1964, as amended. The CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, age, physical disability, veteran's status, medical condition, or any other basis prohibited by law relating to discrimination in employment, except where there is a bona-fide occupational qualification reasonably necessary to the normal operation of the CONSULTANT. This equal treatment shall apply, but shall not be limited to, the following: upgrade, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. In addition:

- a. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- b. The CONSULTANT, in all solicitations for advertisements for employees placed in behalf of the CONSULTANT, will state that such CONSULTANT is an equal opportunity employer.
- c. The CONSULTANT will include the provisions set above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each sub-consultant or vendor.

11.1.2 Notices, advertisements and solicitations placed in accordance with Federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

11.2 PAYROLL RECORDS

11.2.1 CONSULTANT and all subcontractors or consultants shall keep an accurate payroll record, showing the name, address, social security number, job classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each employee employed in connection with the Covered Services hereunder. All payroll records shall be certified as being true and correct by CONSULTANT or subcontractors or consultants keeping such records; and the payroll records shall be available for inspection at all reasonable hours at the principal office of CONSULTANT on the following basis:

1. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or the employee's authorized representative on request.
2. A certified copy of all payroll record shall be made available for inspection upon request to CITY, and/or the State of Florida.

3. A certified copy of all payroll records shall be made available upon request by the public for inspection or copies thereof made; provided, however, the request by the public shall be made to the CITY. The public shall not be given access to such records at the principal offices of CONSULTANT or subcontractors or consultants. Any copy of the records made available for inspection as copies and furnished upon request to the public or any public agency by CITY shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of CONSULTANT awarded the Agreement or performing the Agreement shall not be marked or obliterated.

11.2.2 CONSULTANT shall file a certified copy of the payroll records with the entity that requested the records within 10 days after receipt of a written request. CONSULTANT shall inform CITY of the location of such payroll records for the Project, including the street address, city, and county; and CONSULTANT shall, within 5 working days, provide notice of change of location of such records. In the event of noncompliance with the requirements of this Paragraph, CONSULTANT shall have 10 days in which to comply following receipt of notice specifying in what respects CONSULTANT must comply. Should noncompliance still be evident after the 10-day period, CONSULTANT shall forfeit to CITY, as a penalty, \$25 for each day, or portion thereof, for each worker, until strict compliance is accomplished. Such forfeiture amounts may be deducted from the CONSULTANT's fee.

11.3 LAWS AND REGULATIONS:

It shall be understood and agreed that any and all services, materials and equipment shall comply fully with all Local, State and Federal laws and regulations.

ARTICLE 12 EXTENT OF AGREEMENT

12.1 AUTHORITY OF AGREEMENT

12.1.1 This Agreement represents the entire and integrated agreement between CITY and CONSULTANT and supersedes all prior negotiations, representations, or agreements, either written or oral.

12.2 EXHIBITS

12.2.1 This Agreement includes the following exhibits attached hereto:

Exhibit A: General Conditions of CITY's Bidding Documents; Specifications

Exhibit B: CONSULTANT Hourly Rate Schedule

Exhibit C: Truth in Negotiation Certificate

Exhibit D: Contingent Fee Certificate

12.3 THIRD-PARTY BENEFICIARIES

12.3.1 Nothing contained in this Agreement is intended to make the construction Contractor or any construction Sub-contractor (regardless of tier), any employee or agent of the construction Contractor or any Subcontractor or any person, including any sub-consultant of CONSULTANT (regardless of tier), a third-party beneficiary of any obligations between CITY and CONSULTANT.

12.4 MODIFICATION

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

ARTICLE 13 FEDERAL AND STATE GRANTS

13.1 In the event that a federal or state grant or other federal or state financing is used in the funding of a project under this agreement, CONSULTANT shall permit the funding agency or its designee access to, and grant the funding agency the right to examine, documents covering the services performed under this Agreement. CONSULTANT shall comply with applicable federal or state agency requirements including, but not limited to, the requirements regarding hours, overtime compensation, nondiscrimination, and contingent fees.

ARTICLE 14 NOTICES

14.1 CITY

All notices required or made pursuant to this Agreement to be given by the CONSULTANT to the CITY shall be in writing and shall be delivered by hand or by the United States Postal Service, certified mail service, postage prepaid, return receipt requested, addressed to the following CITY's address of record: Notice is effective only if and when it is actually received.

ATTN: Clece Aurelus, P.E.
Engineering Support Services Division Manager
City of Hollywood - Department of Public Utilities
1621 N. 14th Avenue, Hollywood, FL 33022-9045

14.2 CONSULTANT

All notices required or made pursuant to this Agreement to be given by the CITY to the CONSULTANT shall be made in writing and shall be delivered by hand or by the United States Postal Service, certified mail service, postage prepaid, return receipt requested, addressed to the following CONSULTANT's address of record. Notice is effective only if and when it is actually received.

ATTN: EDWARD R. BALCHON, PE
8701 PETERS RD
SUITE 2400
PLANTATION, FL 33324

14.3 Either party may change its address of record by written notice to the other party given in accordance with requirements of this Article.

ARTICLE 15 SUCCESSORS AND ASSIGNS

15.1 This Agreement shall be binding upon CITY and CONSULTANT and their respective successors and assigns.

15.2 CONSULTANT'S DEATH OR INCAPACITATION

15.2.1 If CONSULTANT transacts business as an individual, upon CONSULTANT's death or incapacitation, CITY may, at its option, terminate this Agreement as of the date of such event. If so terminated, neither CONSULTANT nor CONSULTANT's estate shall have any further right to perform hereunder and CITY shall pay CONSULTANT or the estate the compensation payable under Article 5 for any services rendered prior to this termination not theretofore paid. This compensation shall be reduced by the amount of additional costs that will be incurred by CITY by reason of this termination.

15.2.2 If there is more than one CONSULTANT, and any one of them dies or becomes incapacitated, and the others continue to render the services covered herein, CITY will make payments to those continuing as though there had been no such death or incapacitation; CITY will not be obliged to take any account of the person who died or became incapacitated, or to make any payment to this person or this person's estate. These provisions shall apply in the event of progressive or simultaneous occasions of death or incapacitation among any group of persons named as CONSULTANT herein. If death or incapacitation befalls the last member of this group before the services under this Agreement are fully performed, then the rights set forth under subparagraph 15.2.1 shall apply.

15.3 ASSIGNMENT:

CONSULTANT shall not assign, transfer, convey, sublet or otherwise dispose of this Agreement, or of any or all of its rights, title or interest therein, or his or its power to execute such contract to any person, company or corporation without prior written consent of the CITY.

ARTICLE 16 TERMINATION OR SUSPENSION OF AGREEMENT

16.1 CITY - INITIATED TERMINATION

16.1.1 CONSULTANT shall be considered in material default of this Agreement and such default will be considered cause for CITY to terminate this Agreement, in whole or in part, as further set forth in this section, for any of the following reasons:

- a. Failure to begin work under the Agreement within the times specified under the Notice(s) to Proceed, or
- b. Failure to properly and timely perform the services to be provided hereunder or as directed by CITY, or
- c. The bankruptcy or insolvency or a general assignment for the benefit of creditors by CONSULTANT or by any of CONSULTANT's principals, officers or directors, or
- d. Failure to obey laws, ordinances, regulations or other codes of conduct, or
- e. Failure to perform or abide by the terms or spirit of this Agreement, or
- f. For any other documented just cause.

This termination shall be effective if CONSULTANT does not cure its failure to perform within 10 calendar days (or more, if authorized in writing by CITY) after receipt of a notice of intention to terminate from CITY specifying the failure in performance. If a termination for cause does occur, CITY will have the right to withhold monies otherwise payable to CONSULTANT until the Project is completed. If CITY incurs additional costs, expenses, or other damages due to the failure of CONSULTANT to properly perform pursuant to the Agreement, these costs, expenses, or other damages shall be deducted from the amounts withheld. Should the amounts withheld exceed the amounts deducted, the balance will be paid to CONSULTANT upon completion of the Project. If the costs, expenses, or other damages incurred by CITY exceed the amounts withheld, CONSULTANT shall be liable to CITY for the difference.

16.1.2 If, after notice of termination of this Agreement as provided for in paragraph 16.1.1 above, it is determined for any reason that CONSULTANT was not in default, or that its default was excusable, or that CITY otherwise was not entitled to the remedy against CONSULTANT provided for in paragraph 16.1.1, then the notice of termination given pursuant to paragraph 16.1.1 shall be deemed to be the notice of termination provided for in paragraph 16.1.3 below and CONSULTANT's remedies against CITY shall be the same as and limited to those afforded CONSULTANT under paragraph 16.1.3 below.

16.1.3 CITY shall have the right to terminate this Agreement, in whole or in part, without cause upon seven (7) calendar days written notice to CONSULTANT. In the event of such termination for convenience, CONSULTANT's recovery against CITY shall be limited to that portion of the fee earned through the date of termination, together with any retainage withheld and any costs reasonably incurred by CONSULTANT that are directly attributable to the termination, but CONSULTANT shall not be entitled to any other or further recovery against CITY, including, but not limited to, anticipated fees or profits on work not required to be performed.

16.2 CONSULTANT - INITIATED TERMINATION

CONSULTANT may terminate this Agreement for cause if CITY fails to cure a material default in performance within a period of 30 days, or such longer period as CONSULTANT may allow, after receipt from CONSULTANT of a written notice of intention to terminate specifying the default in performance. In the event of termination for cause by CONSULTANT, CITY will pay CONSULTANT in accordance with subparagraph 16.1.2.

16.3 DOCUMENTS AND MATERIALS

In the event of Agreement termination by either party for any reason, CONSULTANT shall promptly deliver to the CITY all original papers, records, documents, drawings, models, and other material set forth and described in this Agreement. In the event of termination, any dispute regarding the amount to be paid under Article 16 shall not derogate from the right of CITY to receive and use any such documents or materials.

16.4 SUSPENSION

The CITY shall have the power to suspend all or any portions of the services to be provided by CONSULTANT hereunder upon giving CONSULTANT two (2) calendar days prior written notice of such suspension. If all or any portion of the services to be rendered hereunder are so suspended, the CONSULTANT's sole and exclusive remedy shall be to seek an extension of time to its schedule in accordance with the procedures set forth in Section 1.3.3 herein.

ARTICLE SEVENTEEN - MISCELLANEOUS

17.1 CONSULTANT, in representing CITY, shall promote the best interest of CITY and assume towards CITY a duty of the highest trust, confidence, and fair dealing.

17.2 The headings of the Articles, Schedules, Parts and Attachments as contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions in such Articles, Schedules, Parts and Attachments.