

AMENDMENT TO THE DESIGN AND CONSTRUCTION ADMINISTRATION SERVICES FOR BACKUP ELECTRICAL POWER GENERATORS FOR SEWER LIFT STATIONS: E-03, E-06, AND STORMWATER PUMP STATION SW-08 (PROJECT NO. 20-8532).

THIS AMENDMENT to that certain Professional Services Agreement dated November 4, 2020 (“Agreement”) is dated effective as of the ____ day of _____, 2021 and is agreed to 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”). It is hereby mutually covenanted and agreed by and between the parties that said Agreement is amended as hereinafter set forth.

WITNESSETH:

WHEREAS, on October 7, 2020, the City Commission passed and adopted Resolution No. R-2020-253 that ranked professional consulting engineering firms and authorized the execution of consultant services agreements with the two highest ranking firms, one of them being Kimley-Horn And Associates, Inc.; and

WHEREAS, on November 4, 2020, the parties executed the professional services agreement for the Consultant to provide design and construction services for backup electrical power generators for the following sewer lift stations: E-03, E-06, and Stormwater Pump SW-08; and

WHEREAS, this project is being funded through the Hazard Mitigation Grant Program pursuant to a contract between the City and the Florida Division of Emergency Management (“Division”); and

WHEREAS, although the current Agreement between the City and Consultant provides in Section 9.16 that Consultant will comply with all applicable laws, codes rules and the provisions of the contract between the City and the Division, the Division has notified City that current Agreement with Consultant needs to be amended to include specific mandatory provisions established by the Federal FEMA, specifically set forth in Appendix II to the Uniform Rules; and

NOW, THEREFORE, in consideration of the mutual promises, terms and conditions set forth herein, the parties hereby agree as follows:

1. That Section 9.16 entitled “Compliance with Laws” of the Agreement is amended as follows:

Consultant shall comply with all applicable laws, codes, ordinances, rules, regulations and resolutions in performing its duties, responsibilities, and obligations related to this agreement, to include 2 C.F.R. §200.216, §§200.318 through 200.326 as well as Appendix II to 2 C.F.R. Part 200 (entitled “Contract Provisions for Non-Federal Entity Contracts Under Federal Awards”) of the Agreements between the City of Hollywood and Florida Division of Emergency Management. In accordance with

Appendix II and FEMA requirements, the following clauses shall also be complied with:

(a) Equal Employment Opportunity. During the performance of this Agreement, Consultant shall adhere to the following:

(1) The Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

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

(3) The Consultant will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The Consultant will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Consultant's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

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

(7) In the event of the Consultant's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Consultant will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Consultant will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event the Consultant becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

(b) Debarment and Suspension.

(1) This Agreement is a covered transaction for purposes of 2 C.F.R. Part 180 and 2.C.F.R. Part 3000. As such, the Consultant is required to verify that none of the Consultant's principals (as defined at 2 C.F.R. Section 180.995) or its affiliates (defined at 2 C.F.R. Section 180.905) are excluded (defined at 2 C.F.R. Section 180.940) or disqualified (defined at 2 C.F.R. Section 180.935).

(2) The Consultant must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon the City of Hollywood. If it is later determined that the Consultant did not comply with 2 C.F.R. part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies

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

(4) The Consultant agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C throughout the period of this Agreement. Consultant further agrees to include a provision requiring such compliance in tis lower tier covered transactions.

(c) **Byrd Anti-Lobbying Amendment.** Consultant shall file the required certification pursuant to 2. C.F.R Part 200, Appendix II(I), 31 U.S.C §1352, as amended, and 44 C.F.R. Part 18. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. §1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the City who in turn will forward the certifications to the awarding agency (Florida Division of Emergency Management).

Consultant must sign and submit to the non-federal entity the following certification pursuant to Appendix A, 44 C.F.R. Part 18 entitled "Certification Regarding Lobbying" as follows:

The undersigned certifies, to the best of his/her knowledge and belief that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Consultant, Kimley-Horn and Associates, Inc., certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification, if any.

Said certification shall be signed by the Consultant's Authorized Official, include the printed name and title of the authorized office and be dated.

d) Clean Air Act And The Federal Water Pollution Control Act

Clean Air Act

1. The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq.
2. The Consultant agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Agency Regional Office.

3. The Consultant agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

1. The Consultant agrees to comply with the applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

2. The Consultant agrees to report each violation to the City and understand and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

3. The Consultant agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

2. That Section 9.17 of the Agreement entitled “Public Records Law” is amended to add the following additional requirements:

Consultant agrees to provide the Florida Division of Emergency Management and City, the FEMA Administrator, the Comptroller of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Consultant which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions. Consultant agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. Further, Consultant agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under this Agreement.

In compliance with the Disaster Recovery Act of 2018, the City and Consultant acknowledge and agree that no language in this Agreement is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

3. All other provisions of the November 4, 2020 Contract shall be and remain in full force and effect.

AMENDMENT TO THE DESIGN AND CONSTRUCTION ADMINISTRATION SERVICES FOR BACKUP ELECTRICAL POWER GENERATORS FOR SEWER LIFT STATIONS: E-01, W-14, AND W-15(PROJECT NO. 20-8532).

EXECUTION

IN WITNESS WHEREOF, City and Consultant intending to be legally bound, have executed this Amendment to the November 4, 2020 Agreement as of the day and year first written above.

CITY OF HOLLYWOOD, a municipal corporation of the State of Florida

ATTEST:

Patricia A. Cerny, MMC
City Clerk

By: _____
Josh Levy, Mayor

Approved As To Form & Legal Sufficiency
for the use and reliance of the City of Hollywood,
Florida, only.

Douglas R. Gonzales
City Attorney

Kimley-Horn and Associates, Inc.

ATTEST:

Secretary

By: _____
Signature
Print Name: _____
Title: _____