

**CONTINUING PROFESSIONAL SERVICES AGREEMENT**

**Between  
CITY OF DORAL, FL  
And  
EXP U.S. SERVICES INC.**

**THIS AGREEMENT** is made between CITY OF DORAL, FLORIDA, a Florida municipal corporation, (hereinafter referred to as the "CITY") and EXP U.S. SERVICES INC., a foreign profit corporation authorized to do business in the State of Florida, (hereinafter referred to as the "CONSULTANT"), whose principal place of business is 205 North Michigan Avenue, Suite 3600, Chicago, IL 60601, with FEIN 46-0523964. CITY and CONSULTANT may be referred to individually as "Party" or collectively as "Parties."

RECITALS

**WHEREAS**, pursuant to Section 287.055, Florida Statutes, the CITY requested qualifications from qualified engineers and selected the CONSULTANT to provide professional engineering services on an as-need/project basis, as may be more particularly described in an assigned Work Order; and

**WHEREAS**, the CITY solicited proposals from qualified consultants on October 5, 2023, pursuant to the CITY's Request for Qualifications ("RFQ") No. 2023-08, which RFQ and all addenda thereto is attached hereto as Exhibit "A" and is incorporated into this Agreement by reference and made a part hereof; and

**WHEREAS**, the CONSULTANT has submitted a Response to the RFQ, dated November 6, 2023, which Response ("Response to RFQ") is attached hereto as Exhibit "B" and incorporated into this Agreement by reference and made a part hereof; and

**WHEREAS**, the CONSULTANT is willing and able to perform such professional services for the CITY within the basic terms and conditions set forth in this agreement (hereinafter "Continuing Services Agreement" or "Agreement"); and

**WHEREAS**, the CITY selected the CONSULTANT to provide said Continuing Professional Civil Engineering Services to the CITY based on the representations of CONSULTANT in their Response to RFQ; and

**WHEREAS**, the purpose of this Continuing Services Agreement is not to authorize the Consultant to perform a specific project, but to set forth certain general terms and conditions, which shall govern the relationship between CITY and CONSULTANT and which shall be incorporated into subsequent supplemental agreements/work orders for specific projects or services when required; and

**WHEREAS**, this Agreement shall become effective upon the full execution of the Agreement

below.

## AGREEMENT

**NOW THEREFORE**, in consideration of the foregoing recitals, which are incorporated herein and made a part hereof by this reference, the mutual terms, conditions, promises and covenants set forth below, and other good and valuable consideration, the sufficiency of which the Parties hereby acknowledge, the CITY and CONSULTANT agree as follows:

### **SECTION 1. DEFINITIONS.**

The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning:

1.1 **Compensation:** The total amount paid by the CITY for the CONSULTANT'S professional services for a specific project, exclusive of reimbursable expenses.

1.2 **Contract Time:** The number of calendar days provided in the Work Order for completion of a specific project or any extension date, whichever shall last occur.

1.3 **Reimbursable Expenses:** the direct non-salary expenses directly attributable to the Project. Reimbursable expenses include application and permit fees paid for securing approval of authorities having jurisdiction over the specific project; travel expenses; and Subconsultant's fees. CONSULTANT shall only be reimbursed for the direct cost of the item without additional mark-up. Reimbursable Expenses must be substantiated by actual invoices and require prior written authorization of the CITY.

1.4 **Work Order:** A supplementary agreement to provide services for a particular project, which shall be subject to the terms of this Agreement. Work Orders will be issued in substantially the same form as that provided in the attached and incorporated herein as Exhibit "C".

1.5 **Subconsultant Fee:** the direct and actual cost of the Subconsultant with no markup, as reflected by actual invoices of the Subconsultant.

1.6 **Travel Expenses:** Travel expenses, whether within or outside of Miami-Dade County, and whether to the Specific project or otherwise, shall not be reimbursed unless CONSULTANT has secured advance written authorization for such travel from the CITY Manager. All approved travel expenses will be reimbursed in accordance with the CITY's adopted travel policy.

### **SECTION 2. SPECIFIC PROJECTS/SCOPE OF SERVICES.**

2.1 In accordance with the Consultants' Competitive Negotiation Act, the CONSULTANT may provide professional services to the CITY for specific projects as authorized

from time to time by the CITY as authorized by subsection 2.9. The services shall be for the types of projects or similar disciplines set forth in the RFQ, and as more particularly described in assigned Work Orders.

2.2 When the need for services for a specific project occurs, the CITY Manager may enter into negotiations with the CONSULTANT for that specific project under the terms and conditions of this Agreement. The CITY shall initiate said negotiations by providing the CONSULTANT with a "Scope of Services Request," requesting from the CONSULTANT a proposal to provide professional services for the specific project. The CONSULTANT shall prepare a proposal which includes those subjects specified in Subsection 2.3 (a) through (g). The CITY Manager, or their designee, and CONSULTANT shall negotiate the terms of the specific project in accordance with the provisions of Subsection 2.3. The City may also require additional provisions be incorporated into such Work Order in order to comply with restrictions set forth in the funds available for the specific project, including but not limited to additional requirements or limitations imposed for the use of State or Federal funds. To the extent applicable, CONSULTANT agrees to comply with the Federal Grant Terms and Conditions set forth in Exhibit "F".

2.3 The CITY and CONSULTANT shall utilize a Work Order as the agreement for each specific project. Each Work Order will, by mutual agreement, set forth, among other things, the following:

- a. The Scope of Services;
- b. The Deliverables (e.g. drawings, specifications, cost estimates, etc.);
- c. The Time and Schedule of Performance and Term;
- d. The method and amount of Compensation;
- e. The Personnel assigned to the specific project, including, but not limited to: Consultant's project manager, other staff and subconsultants, which the City shall have the right to reject in its sole discretion;
- f. Any additional contractual requirements of Section 287.055, Florida Statutes, for consultant agreements; and
- g. Any modifications to the Work Order, if mutually agreed upon by the parties.

2.4 It is at the CITY's sole discretion to determine the most appropriate method of compensation for each Work Order. The CONSULTANT will submit an estimate of work effort that lists the number of hours needed for each job classification under each work type. The estimate of work effort will include the hourly professional service rates for each job classification listed in Exhibit "D" that includes all overhead expenses, operating margin, and direct expenses. The Work Order shall specify the CONSULTANT's method of compensation with a maximum amount of compensation that may not be exceeded without additional approval.

2.5 The professional services to be rendered by the CONSULTANT shall commence subsequent to the execution of each Work Order. Performance of work by CONSULTANT prior to execution of a Work Order shall be at Consultant's sole risk. Upon the commencement of the term of the Work Order, the CONSULTANT shall commence services to the CITY on the Commencement Date, and shall continuously perform services to the CITY, without interruption, in accordance with the time frames set forth in the Work Order. It is the CONSULTANT's sole

responsibility to seek an extension from the CITY of the timeframe to complete a project, if necessary. The number of calendar days provided in the Work Order for completion of the Project or any extension date, whichever shall last occur, shall constitute the Contract Time.

2.6 The CONSULTANT shall submit to the CITY all final deliverables within the Contract Time as noted in each Work Order and associated CONSULTANT Proposal.

2.7 Depending on the nature of a specific project, the City may request that a liquidated damages provision be included in the Work Order for said project. In the event the City will require a liquidated damages provision in a Work Order, the term of the liquidated damages clause shall be in substantially the below form: "Unless otherwise excused by the CITY in writing, in the event that the CONSULTANT fails to meet to the Contract Time for completion of services as determined by the Project Schedule, the CONSULTANT shall pay to the CITY the sum of dollars identified below per day for each and every calendar day unexcused delay beyond the completion date, plus approved time extensions, until completion of the project: \$200.00 per day. The CONSULTANT may request an extension if the factors involved are not under their direct control. Any sums due and payable hereunder by the CONSULTANT shall be payable, not as a penalty, but as liquidated damages representing an estimate at or before the time of executing this Agreement. When the CITY reasonably believes that completion will be inexcusably delayed, the CITY shall be entitled, but not required, to withhold from any amounts otherwise due the CONSULTANT an amount then believed by the CITY to be adequate to recover liquidated damages applicable to such delays. If and when the CONSULTANT overcomes the delay in achieving completion, or any part thereof, for which the CITY has withheld payment, the CITY shall promptly release to the CONSULTANT the remainder of the funds withheld, but no longer applicable, as liquidated damages."

2.8 The CITY reserves the right, at its sole discretion, to suspend the methods of equitable distribution for any CONSULTANT that has not performed to the CITY's expectations on current or past projects. The CITY will provide performance reviews at the midpoint and completion of the agreed upon Work Order, and based on the reviews, if the CITY in its sole discretion is dissatisfied, the CITY may select another consultant.

2.9 The CITY Manager is authorized to negotiate and execute a Work Order for Projects in which the CONSULTANTS' services do not exceed the Manager's purchasing authority under City Code Section 2-318, as may be amended, which is currently set at \$30,000.00. City Council approval is required for Work Orders exceeding such purchasing authority.

2.10 The Work Order for each specific project shall incorporate this Continuing Services Agreement. If any of the terms or conditions of this Agreement conflict with the Work Order, the provisions of the Work Order shall apply.

### **SECTION 3. TERM/TERMINATION/SUSPENSION.**

3.1 **Term of Agreement:** This Continuing Agreement shall commence on the date this

instrument is fully executed by all parties and shall continue in full force and effect for a period of three (3) years with an option to renew for one (1) additional year, unless further extended by option or renewal and/or until terminated pursuant to Subsections 3.4, 3.5, or other applicable sections of this Agreement. Each Work Order shall specify the period of service agreed to by the CITY and CONSULTANT for services to be rendered under said Work Order. Notwithstanding the above, this Agreement shall not commence before the effective date hereof.

3.2 **Effect on Work Order:** Nothing in this section shall be construed to limit the City's right to terminate any ongoing Work Order(s).

3.3 **Non-Exclusive Agreement:** Notwithstanding the provisions of Subsection 3.1, the CITY Manager may issue requests for proposals for this professional discipline at any time and may utilize the services of any other consultants retained by the CITY under similar continuing services agreements. Nothing in this Agreement shall be construed to give the CONSULTANT a right to perform services for a specific project.

3.4 **Termination For Cause:** This Agreement or Work Order may be terminated by either party for cause as set forth herein. Cause shall be defined as a substantial failure by the other party to perform in accordance with the terms and conditions contained in this Agreement and/or any Work Order through no fault of the terminating party. Upon the occurrence of an event giving rise to a termination for cause, the non-breaching party shall provide notice to the breaching party of the specific nature of the material breach, and upon receipt of said notice, the breaching party shall have seven (7) calendar days to cure the breach. If the breach is not cured to the reasonable satisfaction of the non-breaching party within said seven (7) day period, the non-breaching party may terminate this Agreement or the Work Order by providing written notice. If the CONSULTANT abandons this Agreement or a Work Order, or the CITY terminates the Agreement or Work Order for cause, the CONSULTANT shall indemnify the CITY against any loss pertaining to this termination. The aforementioned indemnification shall be in addition to, and shall not be construed to limit, the indemnification set forth in the RFQ, attached and incorporated as Exhibit "A". In the event that the CONSULTANT is terminated by the CITY for cause, and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a termination for convenience under Section 3.5 of this Agreement and the provision of Section 3.5 shall apply.

3.5 **Termination For Convenience:** This Agreement or a Work Order may be terminated by the CITY for convenience upon fourteen (14) calendar days' written notice to the CONSULTANT. In the event of termination, the CONSULTANT shall incur no further obligations in connection with the Project and shall, to the extent possible, terminate any outstanding subconsultant obligations. The CONSULTANT shall be compensated for all services performed to the satisfaction of the CITY and for reimbursable expenses incurred prior to the date of termination. The CONSULTANT shall promptly submit to the CITY its invoice for final payment and reimbursement and the invoice shall comply with the provisions of Section 4.1 of this Agreement. Under no circumstances shall the CITY make any payment to the CONSULTANT for profit or overhead for services which have not been performed.

3.6 **Assignment Upon Termination:** Upon termination of this Agreement or a Work Order, a copy of all of the CONSULTANT's work product shall become the property of the CITY and the CONSULTANT shall, within five (5) days of receipt of written direction from the CITY, transfer to either the CITY or its authorized designee, a copy of all work product in its possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the CONSULTANT pertaining to this Agreement or Work Order. Further, upon the CITY'S request, the CONSULTANT shall assign its rights, title and interest under any subcontractor's agreements to the CITY. All work product provided under this Agreement shall be used solely for its intended purpose.

3.7 **Suspension for Convenience:** The CITY shall have the right at any time to direct the CONSULTANT to suspend its performance, or any designated part thereof, for any reason whatsoever or without reason, for a cumulative period of up to thirty (30) calendar days. If any such suspension is directed by the CITY, the CONSULTANT shall immediately comply with same. In the event the CITY directs a suspension of performance as provided for herein through no fault of the CONSULTANT, the CITY shall pay to the CONSULTANT its reasonable costs, actually incurred and paid, of demobilization and remobilization, as full compensation for any such suspension.

#### **SECTION 4. BILLING & PAYMENT TO THE CONSULTANT.**

4.1 **Billing:** CONSULTANT shall submit invoices which are identified by the specific Work Order number on a monthly basis in a timely manner. These invoices shall identify the nature of the work performed, the phase of work, and the estimated percent of work accomplished in accordance with the Fee Schedule set forth in the Work Order. Invoices for each phase shall not exceed amounts allocated to each phase of the Project plus reimbursable expenses accrued during each phase. Requests for payment of reimbursable expenses shall be remitted with supporting documentation to substantiate the same. The statement shall show a summary of fees with accrual of the total and credits for portions previously paid by the CITY. The CITY shall pay CONSULTANT within thirty (30) calendar days of approval by the CITY Manager of any invoices submitted by CONSULTANT to the CITY.

4.2 **Disputed Invoices:** In the event that all or a portion of an invoice submitted to the CITY for payment to the CONSULTANT is disputed, or additional backup documentation is required, the CITY shall notify the CONSULTANT within fifteen (15) working days of receipt of the invoice of such objection, modification or additional documentation request. The CONSULTANT shall provide the CITY with additional backup documentation within five (5) working days of the date of the CITY'S notice. The CITY may request additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the CONSULTANT. The CITY shall pay to the CONSULTANT the undisputed portion of the invoice. The parties shall endeavor to resolve the dispute in a mutually agreeable fashion.

4.3 **Suspension of Payment:** In the event that the CITY becomes credibly informed that any representations of the CONSULTANT are wholly or partially inaccurate, or in the event

that the CONSULTANT is not in compliance with any term or condition of this Agreement and/or any Work Order, the CITY may withhold payment of sums then or in the future otherwise due to the CONSULTANT until the inaccuracy, or other breach of the Agreement(s), and the cause thereof, is corrected to the CITY's reasonable satisfaction.

4.4 **Reserved.**

4.5 **Final Payment:** Submission of the CONSULTANT'S invoice for final payment and reimbursement shall constitute the CONSULTANT'S representation to the CITY that, upon receipt from the CITY of the amount invoiced, all obligations of the CONSULTANT to others, including its subconsultants, incurred in connection with the Project, shall be paid in full. The CONSULTANT shall deliver to the CITY all documents requested by the CITY evidencing payments to any and all subconsultants, and all final specifications, plans, or other documents as dictated in the Scope of Services and Deliverable. Acceptance of final payment shall constitute a waiver of any and all claims against the CITY by the CONSULTANT.

**SECTION 5. ADDITIONAL SERVICES AND CHANGES IN SCOPE OF SERVICES.**

5.1 **Changes Permitted.** Changes in the Scope of Services of a Work Order consisting of additions, deletions, revisions, or any combination thereof, may be ordered by the CITY by Work Order Amendment, without invalidating the Work Order.

5.2 **Work Order Amendment Defined.** A Work Order Amendment shall mean a written amendment to the Work Order, executed by the CONSULTANT and the CITY, issued after execution of a Work Order, authorizing and directing a change in the Scope of Services or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The Contract Price and/or the Contract Time may be changed only by a Work Order Amendment.

5.3 **Effect of Executed Work Order Amendment.** The execution of a Work Order Amendment by the CITY and the CONSULTANT shall constitute conclusive evidence of the CONSULTANT'S agreement to the ordered changes in the Scope of Services or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The CONSULTANT, by executing the Work Order Amendment, waives and forever releases any claim against the CITY for additional time or compensation for matters relating to or arising out of or resulting from the Services included within or affected by the executed Work Order Amendment.

5.4 **Modifications to Scope of Services:** The CITY may request changes that would increase, decrease, or otherwise modify the Scope of Services of this Agreement. Such changes must be contained in a written agreement executed by the parties in accordance with the provisions of the Continuing Services Agreement, prior to any deviation from the terms of the Agreement, including the initiation of any extra work.

**SECTION 6. SURVIVAL OF PROVISIONS.** Any terms or conditions of either this Agreement or any subsequent Work Order that require acts beyond the date of the term of either agreement,

shall survive termination of the agreements, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

**SECTION 7. CITY'S RESPONSIBILITIES.**

7.1 Assist CONSULTANT by placing at its disposal all available information as may be requested in writing by the CONSULTANT and allow reasonable access to all pertinent information relating to the services to be performed by CONSULTANT.

7.2 Furnish to CONSULTANT, at the CONSULTANT'S written request, all available maps, plans, existing studies, reports and other data, in the CITY'S possession, pertinent to the services to be provided by CONSULTANT.

7.3 Arrange for access to and make all provisions for CONSULTANT to enter upon public property as required for CONSULTANT to perform services.

**SECTION 8. CODE OF ETHICS.**

8.1 The code of ethics of the Florida Engineering Society shall be incorporated in this Agreement by this reference.

8.2 CONSULTANT warrants and represents that its employees shall abide by the Code of Ethics for Public Officers and Employees as set forth in Chapter 112, Florida Statutes.

8.3 CONSULTANT warrants and represents that it shall abide by the provisions of Miami-Dade County Code Section 2-11.1 (County Code of Ethics), and the provisions of Article VII of Chapter 2 of the City of Doral Code of Ordinances related to ethical conduct of CITY vendors.

**SECTION 9. POLICY OF NON-DISCRIMINATION/WAGES.**

9.1 The CONSULTANT shall comply with all federal, state, and local laws and ordinances applicable to the work or payment for work and shall not discriminate on the grounds of race, color, religion, sex, age, marital status, national origin, physical or mental disability in the performance of work under this Agreement.

9.2 If the project is subject to federal and grant funding that requires specific wage and non-discrimination provisions, CONSULTANT shall be required to comply with the same.

**SECTION 10. OWNERSHIP OF DOCUMENTS/DELIVERABLES.**

10.1 All finished or unfinished documents, including but not limited to, detailed reports, studies, plans, drawings, surveys, maps, models, photographs, specifications, digital files, and all other data prepared for the CITY or furnished by the CONSULTANT pursuant to any Work Order, shall become the property of the CITY, whether the Project for which they are made is



completed or not, and shall be delivered by CONSULTANT to the CITY within five (5) calendar days after receipt of written notice requesting delivery of said documents or digital files. The CONSULTANT shall have the right to keep one record set of the documents upon completion of the Project, however, in no event shall the CONSULTANT, without the CITY'S prior written authorization, use, or permit to be used, any of the documents except for client or educational presentations or seminar use.

10.2 All subcontracts for the preparation of reports, studies, plans, drawings, specifications, digital files or other data, entered into by the CONSULTANT for each Specific project shall provide that all such documents and rights obtained by virtue of such contracts shall become the property of the CITY.

10.3 All final plans and documents prepared by the CONSULTANT shall bear the endorsement and seal of a person duly registered as a Professional Engineer, Architect, Landscape Architect, Professional Geologist, or Land Surveyor, as appropriate, in the State of Florida and date approved and/or sealed.

10.4 All deliverables should be provided in hard copy format as well as electronic format to the CITY. Drawings should be provided in CADD, spread sheets in Excel, and written documentation should be provided in Microsoft Word. The date of submittal to the CITY shall be deemed to be the latter of delivery of hard copies and delivery of electronic copies, as applicable.

10.5 Any modifications by the City to any of the CONSULTANT'S documents, without written authorization by the CONSULTANT will be at the City's sole risk and without liability to the CONSULTANT.

**SECTION 11. RECORDS/AUDITS.**

11.1 CONSULTANT shall maintain and require subconsultants to maintain, complete and correct records, books, documents, papers and accounts pertaining to the Specific project. Such records, books, documents, papers and accounts shall be available at all reasonable times for examination and audit by the CITY Manager or any authorized CITY representative with reasonable notice and shall be kept for a period of three (3) years after the completion of each Work Order. Incomplete or incorrect entries in such records, books, documents, papers or accounts will be grounds for disallowance by or reimbursement to the CITY of any fees or expenses based upon such entries. Disallowed fees will be paid when incomplete or incorrect entries are remedied to the satisfaction of the CITY.

11.2 The CONSULTANT shall comply with Chapter 119, Florida Statutes, as applicable.

11.3 Refusal of the CONSULTANT to comply with the provisions of Sections 11.1 or 11.2 shall be grounds for termination for cause by the CITY of this Agreement or any Work Order.

**SECTION 12. NO CONTINGENT FEE.** CONSULTANT warrants that it has not employed or retained

any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. In the event the CONSULTANT violates this provision, the CITY shall have the right to terminate this Agreement or any Work Order, without liability, and at its sole discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

**SECTION 13. INDEPENDENT CONTRACTOR.** The CONSULTANT is an independent contractor under this Agreement and any Work Orders. Personal services provided by the CONSULTANT shall be by employees of the CONSULTANT and subject to supervision by the CONSULTANT, and not as officers, employees, or agents of the CITY. Personnel policies, tax responsibilities, social security, health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement or any Work Orders shall be those of the CONSULTANT.

**SECTION 14. ASSIGNMENT; AMENDMENTS.**

14.1 This Agreement shall not be assigned, transferred or otherwise encumbered, under any circumstances, by CONSULTANT, without the prior written consent of the CITY.

14.2 No modification, amendment or alteration in the terms or conditions of this Agreement shall be effective unless contained in a written document executed with the same formality as this Agreement.

**SECTION 15. INDEMNIFICATION/HOLD HARMLESS.**

15.1 Pursuant to Section 725.08, Florida Statutes, the CONSULTANT shall indemnify, and hold harmless the City, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, to the extent caused by CONSULTANT's, or any persons employed or utilized by the CONSULTANT in the performance of this Agreement or any Work Order, negligent acts, errors, omission negligence, reckless, or intentionally wrongful conduct under this Agreement. Consultant shall reimburse the City for all its expenses including reasonable attorneys' fees and costs incurred, up though and inclusive of any appeals, in and about the defense of any such claim or investigation and for any judgment or damages to the extent caused by CONSULTANT's and/or and of the CONSULTANT'S subconsultant's negligent acts, errors, omission negligence, reckless, or intentionally wrongful conduct.

15.2 The provisions of this section shall survive termination of this Agreement. Nothing contained herein shall in any way alter or diminish the City's statutory or common law protections related to Sovereign Immunity.

15.3 Except as otherwise explicitly provided herein, in no event shall either Party, its parents, affiliates and subsidiaries or their respective directors officers or employees be liable to

the other for any indirect, incidental, special, consequential or punitive damages whatsoever (including without limitation, loss of revenue, loss of use, or interruption of business) arising out of or related to this Agreement, even if advised of the possibility of such damages, and CONSULTANT hereby releases CITY and CITY hereby releases CONSULTANT from any such liability.

**SECTION 16. INSURANCE.** The CONSULTANT shall secure and maintain throughout the duration of this Agreement and any Work Order, insurance of such type and in such amounts necessary to protect its interest and the interest of the CITY against hazards or risks of loss as specified in the RFQ. The underwriter of such insurance shall be qualified to do business in Florida and have agents upon whom service of process may be made in the State of Florida. The CITY shall be listed as an additional insured on all policies, with the exception of professional liability and workers' compensation coverage, if applicable. The insurance coverage shall be primary insurance with respect to the CITY, its officials, employees, agents and volunteers. Any insurance maintained by the CITY shall be in excess of the CONSULTANT'S insurance and shall not contribute to the CONSULTANT'S insurance. Additionally, CONSULTANT shall obtain additional insurance coverage as the CITY may require for a specific Work Order.

**SECTION 17. REPRESENTATIVE OF CITY AND CONSULTANT.**

17.1 **CITY Representative:** It is recognized that questions in the day-to-day conduct of this Agreement will arise. The CITY designates the CITY Manager or their designee, as the person to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.

17.2 **CONSULTANT Representative:** CONSULTANT shall inform the CITY Representative, in writing, of the representative of the CONSULTANT to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.

**SECTION 18. COST AND ATTORNEY'S FEES/WAIVER OF JURY TRIAL.**

18.1 If either the CITY or CONSULTANT is required to enforce the terms of this Agreement or any Work Order by court proceedings or otherwise, whether or not formal legal action is required, each party shall be responsible for their own costs and expenses, including attorneys' fees and costs, the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.

18.2 In the event of any litigation arising out of this Agreement or Work Order, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

**SECTION 19. PRIORITY OF AUTHORITY OF INSTRUMENTS.** The relationship between the Parties shall be governed by several contract documents, all of which, when read together, shall constitute one agreement between the Parties. The contract documents include this Agreement, one or more ensuing Work Orders, and the City solicitation documents. In the event of conflict

between or amongst the contract documents, priority shall be as follows:

- a. Work Order Amendment;
- b. Work Order;
- c. this Agreement;
- d. the RFQ, including any addenda thereto.

Otherwise, there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in the aforementioned contract documents. Accordingly, it is agreed that no deviation from the terms of this Agreement shall be predicated upon any prior representations or agreements whether oral or written.

## **SECTION 20. CONSULTANT'S RESPONSIBILITIES.**

20.1 Any and all drawings, studies, plans, specifications, or other construction or contract documents prepared by the CONSULTANT shall be accurate, coordinated and adequate for construction and shall comply with all applicable CITY Codes, state, county, and federal laws, rules and regulations.

20.2 The CONSULTANT shall exercise the same degree of care, skill and diligence in the performance of the services for each Work Order as is ordinarily provided by a professional engineer, architect, landscape architect, surveyor or mapper under similar circumstances. If at any time during the term of any Work Order or the construction of the Project for which the CONSULTANT has provided engineering, architectural landscape architectural, surveying or mapping services under a prior Work Order, it is determined that the CONSULTANT'S documents are incorrect, defective or fail to conform to the Scope of Services of the particular Project, upon written notification from the CITY, the CONSULTANT shall immediately proceed to correct the work, re-perform services which failed to satisfy the foregoing standard of care, and shall pay all costs and expenses associated with correcting said incorrect or defective work, including any additional testing, inspections, and construction and reimbursements to the CITY for any other services and expenses made necessary thereby, save and expect any costs and expenses which the CITY would have otherwise paid absent the CONSULTANT'S error or omission. The CITY'S rights and remedies under this section are in addition to, and are cumulative of, any and all other rights and remedies provided by this Agreement, the Work Order, by law, equity or otherwise.

20.3 The Consultant shall, all times during the term of the Agreement, maintain in good standing all required licenses, certifications and permits required under federal, state, and local laws necessary to perform the services.

20.4 The CONSULTANT'S obligations under subsection 20.2 of this Agreement shall survive termination of this Agreement or any Work Order.

**SECTION 21. SUBCONSULTANTS.**

21.1 In the event the CONSULTANT requires the services of any subconsultants or other professional associates in connection with services covered by any Work Order, the CONSULTANT must secure the prior written approval of the CITY. The CONSULTANT shall comply with City Code Section 2-325, except where state or federal law, regulations, or grant requirements mandate to the contrary, to use best efforts to utilize subconsultants whose principal place of business is located within the CITY or Miami-Dade County, Florida and adhere to all local CITY ordinances.

21.2 Any subcontract with a subconsultant shall afford to the CONSULTANT rights against the subconsultant which correspond to those rights afforded to the CITY against the CONSULTANT herein, including but not limited to those rights of termination as set forth herein.

21.3 No reimbursement shall be made to the CONSULTANT for any subconsultants that have not been previously approved by the CITY for use by the CONSULTANT.

21.4 Any subconsultant shall be bound by the terms and conditions of this Agreement and comply with the same insurance requirements as described in Section 16.

**SECTION 22. EMPLOYMENT ELIGIBILITY VERIFICATION (E-VERIFY).**

22.1 CONSULTANT must comply with the Employment Eligibility Verification Program ("E-Verify Program") developed by the federal government to verify the eligibility of individuals to work in the United States and 48 CFR 52.222-54 (as amended) is incorporated herein by reference. If applicable, in accordance with Subpart 22.18 of the Federal Acquisition Register, the CONSULTANT must (1) enroll in the E-Verify Program, (2) use E-Verify to verify the employment eligibility of all new hires working in the United States; (3) use E-Verify to verify the employment eligibility of all employees assigned to the Agreement; and (4) include this requirement in certain subcontracts, such as construction. Information on registration for and use of the E-Verify Program can be obtained via the internet at the Department of Homeland Security Web site: <http://www.dhs.gov/E-Verify>.

22.2 CONSULTANT shall also comply with Florida Statute 448.095, which directs all public employers, including municipal governments, and private employers with 25 or more employees to verify the employment eligibility of all new employees through the U.S. Department of Homeland Security's E-Verify System, and further provides that a public entity may not enter into a contract unless each party to the contract registers with and uses the E-Verify system. Florida Statute 448.095 further provides that if a CONSULTANT enters into a contract with a subcontractor, the subcontractor must provide the CONSULTANT with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. In accordance with Florida Statute 448.095, CONSULTANT, if it employs more than 25 employees, is required to verify employee eligibility using the E-Verify system for all existing and new employees hired by CONSULTANT during the contract term. Further,

CONSULTANT must also require and maintain the statutorily required affidavit of its subcontractors. It is the responsibility of CONSULTANT to ensure compliance with E-Verify requirements (as applicable). To enroll in E-Verify, employers should visit the E-Verify website (<https://www.e-verify.gov/employers/enrolling-in-e-verify>) and follow the instructions. CONSULTANT must retain the I-9 Forms for inspection, and provide an executed E-Verify Affidavit, which is attached hereto as Exhibit "E".

**SECTION 23. SCRUTINIZED COMPANIES.** Provider certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, F.S., the Customer may immediately terminate this Agreement at its sole option if the Provider or its subcontractors are found to have submitted a false certification; or if the Provider, or its subcontractors are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement. If this Agreement is for more than one million dollars, the Provider certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S. Pursuant to Section 287.135, F.S., the Customer may immediately terminate this Agreement at its sole option if the Provider, its affiliates, or its subcontractors are found to have submitted a false certification; or if the Provider, its affiliates, or its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.

**SECTION 24. COMPLIANCE WITH FLORIDA PUBLIC RECORD LAW.** Pursuant to Section 119.0701, Florida Statutes, CONSULTANT agrees to:

- i. Keep and maintain public records in CONSULTANT's possession or control in connection with CONSULTANT's performance under this agreement. CONSULTANT shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the CITY.
- ii. Upon request from the CITY's custodian of public records, CONSULTANT shall provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.
- iii. Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the CITY. Notwithstanding, it is understood that at all times CONSULTANT's workpapers shall remain the sole property of CONSULTANT and are not subject to the terms of this Agreement.

- iv. Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to this Agreement in the possession of CONSULTANT shall be delivered by CONSULTANT to the CITY Manager, at no cost to the CITY, within seven (7) days. All such records stored electronically by CONSULTANT shall be delivered to the CITY in a format that is compatible with the CITY's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, CONSULTANT shall destroy any and all duplicate records that are exempt or confidential and exempt from public records disclosure requirements. Notwithstanding the terms of this Section, the Parties agree and it is understood that CONSULTANT will maintain a copy of any information, confidential or otherwise, necessary to support its work product generated as a result of its engagement for services, solely for reference and archival purposes in accordance with all applicable professional standards, which will remain subject to the obligations of confidentiality herein.
- v. Any compensation due to CONSULTANT shall be withheld until all records are received as provided herein.
- vi. CONSULTANT'S failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the CITY.

IF THE PROVIDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE PROVIDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, THE PROVIDER SHALL CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (TELEPHONE NUMBER: 305-593-6730 E-MAIL ADDRESS: CONNIE.DIAZ@CITYOFDORAL.COM, AND MAILING ADDRESS: THE CITY OF DORAL HALL 8401 NW 53RD TERRACE, DORAL, FL 33166.

**SECTION 25. NOTICES.** Whenever either party desires to give notice to the other, it must be given by hand delivery or written notice, sent by certified United States mail, with return receipt requested or a nationally recognized private mail delivery service, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice, to-wit:

**FOR CITY:**

CITY of Doral  
Attention: City Manager  
8401 NW 53<sup>rd</sup> Terrace  
Doral, FL 33166  
T (305) 593-6725  
F (305) 593-6619

**FOR CONSULTANT:**

EXP U.S. Services, Inc.  
Kyle Henry, VP Business Development  
60601201 Alhambra Circle, Suite 800  
Coral Gables, FL  
Telephone: (305) 216-3790

**WITH A COPY TO:**

City Attorney  
8401 NW 53<sup>rd</sup> Terrace  
Doral, FL 33166

**SECTION 26. TRUTH-IN-NEGOTIATION CERTIFICATE.** Signature of this Agreement by CONSULTANT shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement or any Work Order are accurate, complete, and current at the time of contracting. Each Work Order's contract prices and any additions shall be adjusted to exclude any significant sums by which the CITY determines the Project's contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such adjustments shall be made within one year following the end of each Work Order.

**SECTION 27. CONSENT TO JURISDICTION.** The parties submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of relating to this Agreement or any Work Order. Venue of any action to enforce this Agreement or any Work Order shall be in the courts of the 11<sup>th</sup> Judicial Circuit in and for Miami-Dade County, Florida or in the event of federal jurisdiction the United States District Court for the Southern District of Florida.

**SECTION 28. GOVERNING LAW.** Notwithstanding any conflict of laws, this Agreement and any subsequent Work Order shall be construed in accordance with and governed by the laws of the State of Florida.

**SECTION 29. HEADINGS.** Headings are for convenience of reference only and shall not be considered in any interpretation of this Agreement.

**SECTION 30. EXHIBITS.** Each Exhibit referred to in this Agreement forms an essential part of this Agreement. The Exhibits if not physically attached, should be treated as part of this Agreement, and are incorporated by reference.

**SECTION 31. SEVERABILITY.** If any provision of this Agreement or any Work Order or the application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the



fullest extent permitted by law.

**SECTION 32. COUNTERPARTS.** This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

**SECTION 33. FORCE MAJEURE.** It is understood that performance of any act by the City or Consultant hereunder may be delayed or suspended at any time while, but only so long as, either party is hindered in or prevented from performance by acts of God, the elements, war, rebellion, strikes, lockouts, pandemics or any cause beyond the reasonable control of such party, provided however, the City shall have the right to provide substitute service from third parties or City forces as may be necessary to meet City needs. If the condition of force majeure exceeds a period of fourteen (14) days, the City may, at its option and discretion, cancel or renegotiate the Agreement.

**SECTION 34. INTERPRETATION.**

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

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

**SECTION 35. THIRD PARTY BENEFICIARY.** CONSULTANT and the CITY agree that it is not intended that any provision of this Agreement establishes a third-party beneficiary giving or allowing any claim or right of action whatsoever by any third party under this Agreement.

**SECTION 36. NO ESTOPPEL.** Neither the CITY's review, approval and/or acceptance of, or payment for services performed under this Agreement shall be construed to operate as a waiver of any rights under this Agreement of any cause of action arising out of the performance of this Agreement, and CONSULTANT shall be and remain liable to the CITY in accordance with applicable laws for all damages to the CITY caused by CONSULTANT's negligent performance of any of the services under this Agreement. The rights and remedies provided for under this Agreement are in addition to any other rights and remedies provided by law.

**SECTION 37. FLORIDA STATUTE 558.0035.** PURSUANT TO FLORIDA STATUTES CHAPTER 558.0035 A DESIGN PROFESSIONAL EMPLOYED BY CONSULTANT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR DAMAGES RESULTING FROM NEGLIGENCE OCCURRING WITHIN THE COURSE AND SCOPE OF A PROFESSIONAL SERVICES.

***[THIS AREA INTENTIONALLY LEFT BLANK. SIGNATURES TO FOLLOW.]***

