

**CONTINUING PROFESSIONAL SERVICES FINAL AGREEMENT**

**Between**

**CITY OF DORAL, FL**

**And**

**Marlin Engineering, Inc.**

**THIS AGREEMENT** is made between CITY OF DORAL, FLORIDA, a Florida municipal corporation, (hereinafter referred to as the "CITY") and Marlin Engineering, Inc. a Florida corporation authorized to do business in the State of Florida, (hereinafter referred to as the "CONSULTANT"), whose principal place of business is 6840 NW 77th Court Miami, FL 33166. 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 with respect to assigned Work Orders; 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 referred to as "Continuing Services Agreement or Agreement"); 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**, the agreement is effective January 4<sup>th</sup>, 2021.

**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 **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.

1.3 **Work Order:** an agreement to provide services for a particular Project.

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

1.5 **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 either the CITY Council or CITY Manager as authorized by subsection 2.8. The services shall be for the following types of Projects or similar disciplines: Professional Engineering Services as 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.

2.3 The CITY and CONSULTANT shall utilize as the agreement for each Specific Project a Work Order ("Project Agreement"), a copy of which is attached and incorporated into this Agreement as Exhibit "A". Each agreement for a Specific Project will, by mutual agreement, set forth, among other things, the following:

- a. The Scope of Services;
- b. The Deliverables;
- c. The Time and Schedule of Performance and Term;
- d. The amount of Compensation;
- e. The Personnel assigned to the Specific Project;
- f. Any additional contractual requirements of Section 287.055, Florida Statutes, for consultant agreements; and
- g. Any modifications to the Project Agreement, 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 Project Agreement. 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 "B" that includes all overhead expenses, operating margin, and direct expenses. The Project Agreement 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 Project Agreement. Performance of work by CONSULTANT prior to execution of a Project Agreement shall be at Consultant's sole risk. Upon the commencement of the term of the Project Agreement, 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 Project Agreement. The number of calendar days provided in the Project Agreement for completion of

the Project or the date of actual completion of the Project, 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 Project Agreement and associated CONSULTANT Proposal.

2.7 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 mid-point and completion of the agreed upon Work Order Schedule and based on the reviews, if the CITY in its sole discretion is dissatisfied, the CITY may select another CONSULTANT in the Pool.

2.9 The CITY Manager is authorized to negotiate and execute a Project Agreement for Projects in which the CONSULTANTS' services do not exceed \$15,000.00.

2.10 The Contract Documents for each Specific Project shall incorporate this Continuing Services Agreement. In the event that any of the terms or conditions of this Agreement conflict with the Project Agreement, the provisions of the Project Agreement 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 two years with an option to renew for one (1) additional year, unless further extended by option or renewal and/or until terminated pursuant to Section 3.2 or other applicable sections

of this Agreement. Each Project Agreement shall specify the period of service agreed to by the CITY and CONSULTANT for services to be rendered under said Project Agreement.

3.2 **Termination for Convenience:** This Continuing Services Agreement may be terminated by the CITY for convenience upon fourteen (14) calendar days written notice to the CONSULTANT or on fourteen (14) days' notice with cause, which cause shall be defined as substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

3.3 **Effect on Project Agreement:** Nothing in this section shall be construed to create a right by either party to terminate any ongoing Project Agreement(s).

3.4 **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.

3.5 **For Cause:** A Project Agreement may be terminated by either party upon fourteen (14) calendar days written notice to the other party should the other party fail substantially to perform in accordance with its material terms through no fault of the party initiating the termination. In the event that CONSULTANT abandons this Project Agreement or causes it to be terminated by the CITY, the CONSULTANT shall indemnify the CITY against any loss pertaining to this termination. 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 3.6 of this Agreement and the provision of Section 3.6 shall apply.

3.6 **For Convenience:** A Project Agreement 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 Paragraph 4.1 of this Agreement. Under no circumstances shall the CITY make any payment to the CONSULTANT for services which have not been performed.

3.7 **Assignment Upon Termination:** Upon termination of a Project Agreement, a copy of all of the Consultant's work product shall become the property of the CITY and the CONSULTANT shall, within ten (10) working 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 Project Agreement. Further, upon the CITY'S request, the CONSULTANT shall assign its rights, title and interest under any subcontractor's agreements to the CITY.

**3.8 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 Project Agreement. Invoices for each phase shall not exceed amounts allocated to each phase of the Project plus reimbursable expenses accrued during each phase. 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 the Project Agreement, the CITY may withhold payment of sums then or in the future otherwise due to the CONSULTANT until the inaccuracy, or other breach of Project Agreement, and the cause thereof, is corrected

to the CITY's reasonable satisfaction.

4.4 **Retainage:** The CITY reserves the right to withhold retainage in the amount of ten percent (5%) of any payment due to the CONSULTANT until the project is completed. For projects that are divided into several phases, any retainage shall be withheld and released individually for each phase of the project. Said retainage may be withheld at the sole discretion of the CITY Manager and as security for the successful completion of the CONSULTANT'S duties and responsibilities under the Project Agreement.

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 consultants, 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 subcontractors, 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 Project Agreement consisting of additions, deletions, revisions, or any combination thereof, may be ordered by the CITY by Change Order without invalidating the Project Agreement.

5.2 **Change Order Defined.** Change Order shall mean a written order to the CONSULTANT executed by the CITY, issued after execution of a Project Agreement, 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 Change Order.

5.3 **Effect of Executed Change Order.** The execution of a Change Order 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 Change Order, 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 Change Order.

5.4 **Modifications to Scope of Services:** The CITY may request changes that would increase, decrease, or otherwise modify the Scope of Services. Such changes must be contained in a written change order executed by the parties in accordance with the provisions of the

Continuing Services Agreement, prior to any deviation from the terms of the Project Agreement, including the initiation of any extra work.

#### **SECTION 6. SURVIVAL OF PROVISIONS**

6.1 Any terms or conditions of either this Agreement or any subsequent Project Agreement 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 pertinent to the services to be provided by CONSULTANT, in possession of the CITY.

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, Chapter 112, Florida Statutes.

#### **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 Project Agreement, 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 later 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 Sub consultants 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

Project Agreement. 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 Project Agreement.

#### **SECTION 12. NO CONTINGENT FEE**

12.1 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 Project Agreement, 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**

13.1 The CONSULTANT is an independent contractor under this Agreement and any Project Agreements. 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 Project Agreements 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 or any Project Agreement, 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 in and about the defense of any such claim or investigation and for any judgment or damages to the extent caused by Consultant's negligent acts, errors, omission negligence, reckless, or intentionally wrongful conduct.

15.2 The provisions of this section shall survive termination of this agreement.

**SECTION 16. INSURANCE**

The CONSULTANT shall secure and maintain throughout the duration of this Agreement and any Project Agreement, 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 CITY's solicitation documents. 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 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.

**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 his 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 Project Agreement by court proceedings or otherwise, whether or not formal legal action is required, the prevailing party shall be entitled to recover from the other party all costs, expenses, and attorney's fees in any state or federal administrative, circuit court and appellate court proceedings.

18.2 In the event of any litigation arising out of this Agreement, each party shall be responsible for their attorneys' fees and costs, including 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.

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

#### **SECTION 19. PRIORITY OF AUTHORITY OF INSTRUMENTS**

19.1 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 Project Agreements, and the City solicitation documents. In the event of conflict between or amongst the contract documents, priority shall be as follows: Project Agreements, then this Agreement, and followed by the City's solicitation documents, 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 contract document. Accordingly it is agreed that no deviation from the terms of the 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 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 Project Agreement 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 Project Agreement or the construction of the Project for which the CONSULTANT has provided engineering, architectural landscape architectural, surveying or mapping services under a prior Project Agreement, 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 Project Agreement, 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 Paragraph 20.2 of this Agreement shall survive termination of this Agreement or any Project Agreement.

## **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 Project Agreement, the CONSULTANT must secure the prior written approval of the CITY. The CONSULTANT shall use his/her 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.

## **SECTION 22. 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 CONSULTANT:**

Marlin Engineering, Inc.  
6840 NW 77th Court  
Miami, FL 33166  
Telephone: (305) 477-7575

**FOR CITY:**

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

**WITH A COPY TO:**

City Attorney  
Luis Figueredo, Esq.  
8401 NW 53<sup>rd</sup> Terrace  
Doral, FL 33166

**SECTION 23. 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 Project Agreement are accurate, complete, and current at the time of contracting. Each Project Agreement'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 Project Agreement.

**SECTION 24. 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 Project Agreement. Venue of any action to enforce this Agreement or any Project Agreement shall be in Miami-Dade County, Florida.

**SECTION 25. GOVERNING LAW**

This Agreement and any Project Agreement shall be construed in accordance with and governed by the laws of the State of Florida.

**SECTION 26. HEADINGS**

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

**SECTION 27. 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 28. SEVERABILITY**

If any provision of this Agreement or any Project Agreement 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 29. 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 30. 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 31. Interpretation.**

- 31.1 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.
- 31.2 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 32. 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 33. 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 34. Florida Statute 558.0035**

**PURSUANT TO FLORIDA STATUTES CHAPTER 558.0035 AN INDIVIDUAL EMPLOYEE OR AGENT OF CONSULTANT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR DAMAGES RESULTING FROM NEGLIGENCE.**

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

**IN WITNESS WHEREOF**, the parties execute this Agreement on the respective dates under each signature: The CITY, signing by and through its CITY Manager, attested to by its CITY Clerk, duly authorized to execute same and by CONSULTANT by and through its \_\_\_\_\_, whose representative has been duly authorized to execute same through a resolution of the corporation or partnership.

**ATTEST:**

**CITY OF DORAL**



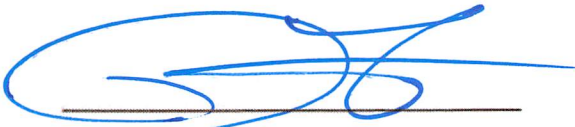
Connie Diaz, City Clerk



Albert P. Childress, City Manager

Date: Dec 29, 2020

Approved as to form and legality  
for the sole use and reliance of the  
City of Doral:



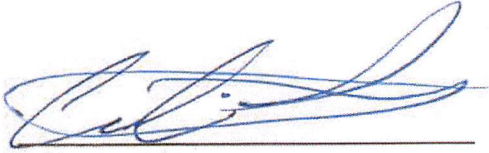
Luis Figueredo

City of Doral

City Attorney

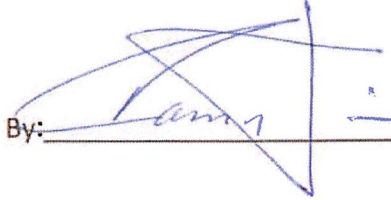
**ATTEST:**

**CONSULTANT**



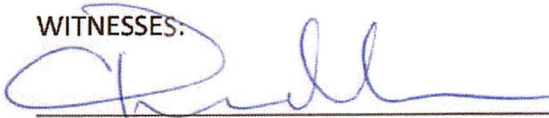
Secretary

\_\_\_\_\_

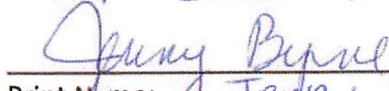
By:  \_\_\_\_\_

Date: 12/17/2020

**WITNESSES:**

  
\_\_\_\_\_

Print Name: Chloe Kemble

  
\_\_\_\_\_

Print Name: Jenny Byrne



# CERTIFICATE OF LIABILITY INSURANCE

4/11/2021

DATE (MM/DD/YYYY)

9/2/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

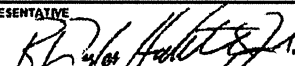
|  |                       |                |
|--|-----------------------|----------------|
| PRODUCER Lockton Companies<br>3280 Peachtree Road NE, Suite #250<br>Atlanta GA 30305<br>(404) 460-3600 | CONTACT NAME:         |                |
|  | PHONE (A/C, No, Ext): | FAX (A/C, No): |
| E-MAIL ADDRESS:  |                       |                |
| INSURER(S) AFFORDING COVERAGE  |                       | NAIC #         |
| INSURER A : Hartford Casualty Insurance Company  |                       | 29424          |
| INSURER B : Trumbull Insurance Company   |                       | 27120          |
| INSURER C : Lexington Insurance Company  |                       | 19437          |
| INSURER D : Hartford Insurance Co of the Southeast   |                       | 38261          |
| INSURER E : Hartford Fire Insurance Company  |                       | 19682          |
| INSURER F :  |                       |                |

COVERAGES CERTIFICATE NUMBER: 15055563 REVISION NUMBER: XXXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE   | ADDL INSD | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS  |
|----------|---|-----------|----------|---------------|-------------------------|-------------------------|---|
| E        | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY<br><input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR<br>GEN'L AGGREGATE LIMIT APPLIES PER:<br><input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC<br>OTHER: | N         | N        | 21UUN OL5114  | 9/1/2020                | 9/1/2021                | EACH OCCURRENCE \$ 1,000,000<br>DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000<br>MED EXP (Any one person) \$ 10,000<br>PERSONAL & ADV INJURY \$ 1,000,000<br>GENERAL AGGREGATE \$ 2,000,000<br>PRODUCTS - COMP/OP AGG \$ 2,000,000<br>\$ |
| B        | <input type="checkbox"/> AUTOMOBILE LIABILITY<br><input type="checkbox"/> ANY AUTO<br><input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS<br><input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY            | N         | N        | 21 UEN OL5112 | 9/1/2020                | 9/1/2021                | COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000<br>BODILY INJURY (Per person) \$ XXXXXXXX<br>BODILY INJURY (Per accident) \$ XXXXXXXX<br>PROPERTY DAMAGE (Per accident) \$ XXXXXXXX<br>\$ XXXXXXXX   |
| A        | <input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR<br><input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE<br><input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000  | N         | N        | 21 XHU OL5113 | 9/1/2020                | 9/1/2021                | EACH OCCURRENCE \$ 5,000,000<br>AGGREGATE \$ 5,000,000<br>\$ XXXXXXXX   |
| D        | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY<br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)<br>If yes, describe under DESCRIPTION OF OPERATIONS below  | Y/N       | N/A      | 21 WB OL6H2E  | 9/1/2020                | 9/1/2021                | <input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER<br>E.L. EACH ACCIDENT \$ 1,000,000<br>E.L. DISEASE - EA EMPLOYEE \$ 1,000,000<br>E.L. DISEASE - POLICY LIMIT \$ 1,000,000                                       |
| C        | Professional Liability  | N         | N        | 032834125     | 4/11/2020               | 4/11/2021               | Each Claim Limit: \$2,000,000<br>Aggregate Limit: \$2,000,000<br>Scheduled Limit: \$394,190   |
| E        | Inland Marine   |           |          | 21 UUN OL5114 | 9/1/2020                | 9/1/2021                | Each Claim Limit: \$2,000,000<br>Aggregate Limit: \$2,000,000<br>Scheduled Limit: \$394,190   |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

|  |   |
|--|---|
| <b>CERTIFICATE HOLDER</b><br>15055563<br>City of Doral<br>8401 NW 53rd Terrace<br>Doral FL 33166 | <b>CANCELLATION</b> See Attachment<br>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.<br>AUTHORIZED REPRESENTATIVE<br> |
|--|---|

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City of Doral  
8401 NW 53rd Terrace  
Doral, FL 33166

**To whom it may concern:**

In our continuing effort to provide timely certificate delivery, Lockton Companies is transitioning to paperless delivery of Certificates of Insurance.

To ensure electronic delivery for future renewals of this certificate, we need your email address. Please contact us via the method listed below, referencing Certificate ID **15055563**.

Email: [SE-EDelivery@lockton.com](mailto:SE-EDelivery@lockton.com)

- - Please include the above Certificate ID number and "Email Address for E-Deliver" in the subject line.

In the event your mailing address has changed, will change in the future, or you no longer require this certificate, please let us know using the method above.

***The above inbox is for automating electronic deliver of certificates only. Please do NOT send future certificate requests to this inbox.***

Thank you for your cooperation and willingness in reducing our environmental footprint.

Lockton Companies

Lockton Companies  
3280 Peachtree Road NE, Ste. 250  
Atlanta, GA 30305

**EXHIBIT "B"**

**CONSULTANT'S BILLING RATE**

| <b>Job Classification</b>                  | <b>Rate / Hour</b> |
|--|--------------------|
| Principal Engineer                         | \$210.00           |
| Project Manager                            | \$185.00           |
| Senior Engineer                            | \$169.00           |
| Project Engineer                           | \$132.00           |
| Engineering Technician                     | \$95.00            |
| CADD Technician                            | \$97.00            |
| GIS Technician                             | \$106.00           |
| Construction Sr. Inspector/Sr. Engineer    | \$90.00            |
| CEI Inspector                              | \$80.00            |
| Land Planner                               | \$130.00           |
| Planner                                    | \$77.00            |
| Senior Economist                           | \$165.00           |
| Economist                                  | \$125.00           |
| Senior Urban Designer                      | \$120.00           |
| Urban Designer                             | \$80.00            |
| Certified Arborist                         | \$130.00           |
| Environmental Specialist                   | \$80.00            |
| Plan Review – Structural                   | \$95.00            |
| Plan Review – MEP/General Building/Roofing | \$70.00            |
| MEP/Roofing/Trade Inspectors               | \$70.00            |
| All Building/Threshold Inspectors          | \$85.00            |
| Senior Architect                           | \$180.00           |
| Architect                                  | \$116.00           |
| Landscape Architect                        | \$105.00           |
| Clerical                                   | \$58.00            |
| Senior Surveyor and Mapper                 | \$155.00           |
| Surveyor and Mapper                        | \$110.00           |
| Survey Technician                          | \$90.00            |
| Survey Field Crew (8HR Day)                | \$1,050.00         |

**RESOLUTION No. 20-243**

**A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND ENTER INTO PROFESSIONAL SERVICES AGREEMENTS WITH 300 ENGINEERING GROUP, A&P CONSULTING TRANSPORTATION ENGINEERS CORP., BCC ENGINEERING, EAC CONSULTING, GANNETT FLEMING, HW LOCHNER, KIMLEY-HORN, MARLIN ENGINEERING, STANTEC, AND THE CORRADINO GROUP; FOR THE PROVISION OF PROFESSIONAL ENGINEERING AND ARCHITECTURAL SERVICES; AUTHORIZING THE CITY MANAGER TO EXPEND BUDGETED FUNDS ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, in response to RFQ #2020-22 titled “Professional General Engineering and Architectural Services”, the City of Doral received twenty-five (25) submittals by the August 7, 2020, 10:00 a.m. deadline; and

**WHEREAS**, the selected firms will be used to create a “pool” of pre-qualified consultants to provide professional general engineering and architectural services thereby reducing the costly and time-consuming process of individual solicitations; and

**WHEREAS**, this expedited process would follow the City of Doral Procurement Ordinance #2004-03 whereby any work in excess of the stated minimum is brought before the City Council for approval; and

**WHEREAS**, funding for the tasks assigned under these contracts will be budgeted each fiscal year; and

**WHEREAS**, Staff respectfully recommends that the City Council authorize the City Manager to negotiate and enter into professional service agreements with the following ten (10) firms: 300 Engineering Group, A&P Consulting Transportation Engineers, BCC Engineering, EAC Consulting, Gannett Fleming, H W Lochner, Kimley-Horn, Marlin

Engineering, Stantec, and The Corradino Group for the provision of professional engineering and architectural services;

**WHEREAS**, in the event the City cannot successfully negotiate with one of/or any of the firms recommended, staff and the City Manager are authorized to move onto the next highest ranked firm and commence negotiations, and so forth, until ten (10) firms have executed contracts.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DORAL AS FOLLOWS:**

**Section 1. Recitals.** The above recitals are confirmed, adopted, and incorporated herein and made a part hereof by this reference.

**Section 2. Approval of Rankings.** The City Council hereby approves the rankings of the ten (10) firms, attached as Exhibit "A", as provided by the proposals submitted.

**Section 3. Authorization.** The City Manager is authorized to expend budgeted funds for professional services associated with this Professional Services Agreement.

**Section 4. Implementation.** The City Manager and the City Attorney are hereby authorized to take such further action as may be necessary to implement the purpose and the provisions of this Resolution.

**Section 5. Effective Date.** This Resolution shall take effect immediately upon adoption.



The foregoing Resolution was offered by Councilmember Mariaca who moved its adoption. The motion was seconded by Councilmember Puig-Corve and upon being put to a vote, the vote was as follows:

|                              |     |
|------------------------------|-----|
| Mayor Juan Carlos Bermudez   | Yes |
| Vice Mayor Pete Cabrera      | Yes |
| Councilwoman Digna Cabral    | Yes |
| Councilwoman Claudia Mariaca | Yes |
| Councilman Oscar Puig-Corve  | Yes |

PASSED AND ADOPTED this 16 day of December, 2020.

  
\_\_\_\_\_  
JUAN CARLOS BERMUDEZ, MAYOR

ATTEST:

  
\_\_\_\_\_  
CONNIE DIAZ, MMC  
CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY  
FOR THE USE AND RELIANCE OF THE CITY OF DORAL ONLY:

  
\_\_\_\_\_  
LUIS FIGUEREDO, ESQ.  
CITY ATTORNEY