

EXHIBIT D

DRAFT PROFESSIONAL SERVICES AGREEMENT BETWEEN CITY OF DORAL AND [VENDOR]

THIS AGREEMENT (this "Agreement") is made effective as of the ____ day of _____, 2024 (the "Effective Date"), by and between the **CITY OF DORAL**, a Florida municipal corporation, (the "CITY"), and [VENDOR], a Florida limited liability company (the "Contractor").

WHEREAS, the Contractor will perform [DESCRIPTION OF SERVICES] for the CITY, as further described in Exhibit "A" attached hereto (the "Services"); and

WHEREAS, the CITY desires to engage the Contractor to perform the Services and deliverables as specified herein.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Contractor and the CITY agree as follows:

1. **Scope of Services.**

1.1. Contractor shall provide the Services set forth herein and in Exhibit "A" in a professional manner and in accordance with all federal, state, and local laws.

2. **Term/Commencement Date.**

2.1. The term of this Agreement shall be from [INITIAL TERM] ("Initial Term"), unless earlier terminated in accordance with Paragraph 8. After the Initial Term, this Agreement may be renewed for [RENEWALS IF ANY] ("Renewal Terms") upon mutual agreement of the Parties.

2.2. Contractor agrees that time is of the essence and Contractor shall complete the Services within the term of this Agreement, unless extended by the City Manager in writing.

3. **Compensation and Payment.**

3.1. The CITY agrees to pay the Contractor for the Services rendered in accordance with the terms set forth in Exhibit "A", attached hereto and incorporated herein.

3.2. Contractor shall deliver an invoice, along with any other information required under this Agreement, to CITY detailing the Services completed. The CITY shall pay the Contractor in accordance with the Florida Prompt Payment Act after approval and acceptance of the Services by the City Manager. Invoices submitted without the required back-up material or information may result in delayed payment.

4. **Subcontractors.**

- 4.1. The Contractor shall be responsible for all payments to any subcontractors and shall maintain responsibility for all work related to the Services.
- 4.2. Contractor may only utilize the services of a subcontractor with the prior written approval of the City Manager, which approval may be granted or withheld in the City Manager's reasonable discretion.

5. **Contractor's Responsibilities; Representations and Warranties.**

- 5.1. The Contractor shall exercise the same degree of care, skill and diligence in the performance of the Services as is ordinarily provided by a Contractor under similar circumstances.
- 5.2. The Contractor hereby warrants and represents that, at all times during the term of this Agreement, it shall maintain in good standing all required licenses, certifications and permits required under Federal, State and local laws applicable to and necessary to perform the Services for City as an independent contractor of the City.
- 5.3. The Contractor further warrants and represents that it has the required knowledge, expertise, and experience to perform the Services and carry out its obligations under this Agreement in a professional and first-class manner.
- 5.4. The Contractor represents that is an entity validly existing and in good standing under the laws of Florida. The execution, delivery and performance of this Agreement by Contractor have been duly authorized, and this Agreement is binding on Contractor and enforceable against Contractor in accordance with its terms. No consent of any other person or entity to such execution, delivery and performance is required.

6. **Termination.**

- 6.1. The City Manager, without cause, may terminate this Agreement upon ninety (90) calendar days written notice to the Contractor, or may terminate immediately with cause if Contractor fails to cure any breach after written notice with fourteen (14) day opportunity to cure.
- 6.2. Upon receipt of the CITY's written notice of termination for convenience, Contractor shall stop providing Services effective immediately, unless otherwise directed by the City Manager.
- 6.3. The Contractor shall transfer all books, records, reports, working drafts, documents, maps, and data pertaining to the Services to the City, if any, in a hard copy and electronic format within fourteen (14) days from the date of written notice of the termination or expiration of this Agreement.

7. **Insurance.**

- 7.1. Contractor shall secure and maintain throughout the duration of this Agreement insurance of such types and in such amounts not less than those specified in the attached and incorporated Exhibit B or as the City may otherwise require in order to capture the

- 7.2. **Certificate of Insurance.** Certificates of Insurance shall be provided to the CITY, reflecting the CITY as an Additional Insured (except with respect to Worker's Compensation Insurance), prior to commencing Services. Each certificate shall include no less than (30) thirty-day advance written notice to CITY prior to cancellation, termination, or material alteration of said policies or insurance. The Contractor shall be responsible for assuring that the insurance certificates required by this Section remain in full force and effect for the duration of this Agreement, including any extensions or renewals that may be granted by the CITY. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Agreement and shall state that such insurance is as required by this Agreement. The CITY reserves the right to inspect and return a certified copy of such policies, upon written request by the CITY. If a policy is due to expire prior to the completion of the Services, renewal Certificates of Insurance shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the CITY before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the CITY.
- 7.3. **Additional Insured.** Except with respect to Worker's Compensation Insurance, the CITY is to be specifically included as an Additional Insured for the liability of the CITY resulting from Services performed by or on behalf of the Contractor in performance of this Agreement. The Contractor's insurance, including that applicable to the CITY as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the CITY shall be in excess of and shall not contribute to the Contractor's insurance. The Contractor's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured (for applicable policies) in the same manner as if separate policies had been issued to each.
- 7.4. **Deductibles.** All deductibles or self-insured retentions must be declared to and be reasonably approved by the CITY. The Contractor shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim.
- 7.5. **Waiver of Subrogation.** The Contractor's insurance policies shall include a blanket waiver of subrogation endorsement in favor of the CITY.
- 7.6. The provisions of this section shall survive termination of this Agreement.
8. **Nondiscrimination.**
- 8.1. During the term of this Agreement, Contractor shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, or national origin, and will abide by all Federal and State laws regarding nondiscrimination.
9. **Attorney's Fees and Waiver of Jury Trial.**
- 9.1. In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its 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.

9.2. IN THE EVENT OF ANY LITIGATION ARISING OUT OF THIS AGREEMENT, EACH PARTY HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY.

10. **Indemnification.**

10.1. Contractor 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, arising from Contractor's performance or non-performance of any provision of this Agreement, including, but not limited to, liabilities arising from contracts between the Contractor and third parties made pursuant to this Agreement. Contractor shall reimburse the CITY for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim up through and including any appeals, or investigation and for any judgment or damages arising from Contractor's performance or non-performance of this Agreement. It is specifically understood and agreed that this indemnification clause exempts Contractor from the above obligations to the extent caused by CITY's own negligent or intentionally wrongful acts or omissions, breaches of this agreement, or obligations arising from statue or operation of law, including, but not limited to, the duty to maintain the public right of way free from dangerous conditions.

10.2. Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by the CITY nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. The CITY is subject to section 768.28, Florida Statutes, as may be amended from time to time.

10.3. The provisions of this section shall survive termination of this Agreement.

11. **Notices/Authorized Representatives.** Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the addresses listed on the signature page of this Agreement or such other address as the party may have designated by proper notice.

12. **Governing Law and Venue.** This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any proceedings arising out of this Agreement shall be proper exclusively in Miami-Dade County, Florida.

13. **Entire Agreement/Modification/Amendment.**

13.1. This writing contains the entire Agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

13.2. No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

14. **Ownership and Access to Records and Audits.**

- 14.1. Contractor acknowledges that all inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports, compiled information, and all similar or related information (whether patentable or not) which specifically and exclusively relate to Services to the CITY which are conceived, developed or made by Contractor during the term of this Agreement ("Work Product") belong to the CITY.
- 14.2. Contractor agrees to keep and maintain public records in Contractor's possession or control in connection with Contractor's performance under this Agreement. The City Manager or her designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any records of the Contractor involving transactions related to this Agreement. Contractor additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Contractor 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.
- 14.3. Upon request from the CITY's custodian of public records, Contractor 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.
- 14.4. 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.
- 14.5. Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the Contractor shall be delivered by the Contractor to the City Manager, at no cost to the CITY, within fourteen (14) days. All such records stored electronically by Contractor 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, the Contractor shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.
- 14.6. Any compensation due to Contractor shall be withheld until all records are received as provided herein.
- 14.7. Contractor's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the CITY.
- 14.8. **IF CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTRACTOR SHALL CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (TELEPHONE NUMBER 305-693-6730, EMAIL ADDRESS:**

**CONNIE.DIAZ@CITYOFDORAL.COM, AND MAILING ADDRESS
THE CITY OF DORAL HALL, 8401 NW 53RD TERRACE, DORAL,
FL 33166.**

- 14.9. Contractor shall notify CITY and label or otherwise identify any and all materials and records which would be trade secrets or proprietary information that would be exempt as defined by Florida Statutes and provide a sworn affidavit from a person with personal knowledge attesting that the exempted documents constitute trade secrets within the meaning of Section 812.081, Florida Statutes, and stating the factual basis for the same. Pursuant to Section 815.045, F.S., the CITY shall not disclose and shall maintain the confidentiality of any records which constitute a trade secret or proprietary information as defined by Florida Statutes.
15. **Non-assignability.** This Agreement shall not be assignable by Contractor unless such assignment is first approved by the City Manager.
16. **Severability.** If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.
17. **Independent Contractor.** The Contractor and its employees, volunteers and agents shall be and remain an independent contractor and not an agent or employee of the CITY with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.
18. **Compliance with Laws.** The Contractor shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities in carrying out Services under this Agreement, and in particular shall obtain all required permits from all jurisdictional agencies to perform the Services under this Agreement at its own expense.
19. **Waiver.** The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.
20. **Survival of Provisions.** Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.
21. **Prohibition of Contingency Fees.** The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

22. **Public Entity Crimes Affidavit.** Pursuant to Florida Statutes Section 287.135, and subject to limited exceptions contained therein, a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with an agency or local governmental entity for goods or services if at the time of bidding, submitting a proposal for, or entering into or renewing a contract, the company is on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel. Contractors must certify that the company is not participating in a boycott of Israel. Any contract for goods or services of One Million Dollars (\$1,000,000) or more shall be terminated at the City's option if it is discovered that the company submitted a false certification, or at the time of bidding, submitting a proposal for, or entering into or renewing a contract, is listed on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Terrorism Sectors List, created pursuant to Florida Statute Section 215.473, or is or has been engaged in business operations in Cuba or Syria, after July 1, 2018. Contractor shall execute and provide the City with a certification, in a form acceptable to the City, certifying compliance with this provision. Additionally, the Contractor agrees to observe the above-referenced requirements for applicable subcontracts entered into for the performance of work under this Agreement.
23. **Force Majeure.** Neither party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations, or any of them, is delayed or prevented by Force Majeure. Force Majeure shall include, but not be limited to, hostility, revolution, civil commotion, epidemic, fire, flood, hurricane or tropical storm, earthquake, explosion, or any act of God; provided that the cause whether or not enumerated in this Section is beyond the reasonable control and without the fault or negligence of the party seeking relief under this Section.
24. **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.
25. **Audits.** Contractor agrees to provide access to City or any of its duly authorized representatives, to any books, documents, papers, and records of Contractor which are directly pertinent to the performance of this Agreement, for the purpose of audit, examination, excerpts, and transcripts. The City may, at reasonable times, and for a period of up to three (3) years following the date of final payment by the City to Contractor audit and inspect, or cause to be audited and inspected, those books, documents, papers, and records of Contractor which are related to Contractor's performance under this Agreement. Contractor agrees to maintain any and all such books, documents, papers, and records at its principal place of business for a period of three (3) years after final payment is made under this Agreement and all other pending matters are closed. Contractor's failure to adhere to, or refusal to comply with, this condition shall result in the immediate cancellation of this Agreement by the City.
26. **E-Verify Affidavit.** The Contractor 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 Contractor 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>.

The Contractor 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 Contractor enters into a contract with a subcontractor, the subcontractor must provide the Contractor 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, Contractor, 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 Contractor during the contract term. Further, Contractor must also require and maintain the statutorily required affidavit of its subcontractors. It is the responsibility of Contractor 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. Contractor must retain the I-9 Forms for inspection, and provide an executed E-Verify Affidavit, which is attached hereto as Exhibit "C".

In accordance with Section 448.095, Florida Statutes, the CITY requires all contractors doing business with the CITY to register with and use the E-Verify system to verify the work authorization status of all newly hired employees. The CITY will not enter into a contract unless each party to the contract registers with and uses the E-Verify system. The contracting entity must provide of its proof of enrollment in E-Verify. For instructions on how to provide proof of the contracting entity's participation/enrollment in E-Verify, please visit: <https://www.e-verify.gov/faq/how-do-i-provide-proof-of-my-participationenrollment-in-e-verify>. By entering into this Agreement, the Contractor acknowledges that it has read Section 448.095, Florida Statutes; will comply with the E-Verify requirements imposed by Section 448.095, Florida Statutes, including but not limited to obtaining E-Verify affidavits from subcontractors; and has executed the required affidavit attached hereto and incorporated herein.

[Remainder of page intentionally left blank. Signature pages follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year as first stated above.

CITY OF DORAL

By: _____
Name: _____
City Manager

Attest:

By: _____
City Clerk

Approved as to form and legal sufficiency:

By: _____
City Attorney

CONTRACTOR

By: _____
Name: _____
Title: _____

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

Acknowledged before me on this this _____ day of _____, 2024.

By: _____, on behalf of CONTRACTOR, who
☐ Is personally known to me or
☐ Has produced identification (type of ID produced): _____

Signature of Notary Public
Print or Stamp of Notary Public Expiration Date

Attachments:
Exhibit A – Scope of Services
Exhibit B – Insurance Requirements

DRAFT

EXHIBIT "A"

SCOPE OF SERVICES

DRAFT

EXHIBIT “B”

INSURANCE REQUIREMENTS

DRAFT

EXHIBIT "C"

E-VERIFY AFFIDAVIT

Florida Statute 448.095 directs all public employers, including municipal governments, to verify the employment eligibility of all new public employees through the U.S. Department of Homeland Security's E-Verify System, and further provides that a public employer 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 contractor enters into a contract with a subcontractor, the subcontractor must provide the contractor 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, all contractors doing business with the City of Doral, Florida, are required to verify employee eligibility using the E-Verify system for all existing and new employees hired by the contractor during the contract term. Further, the contractor must also require and maintain the statutorily required affidavit of its subcontractors. It is the responsibility of the awarded vendor 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. The contractor must, as usual, retain the I-9 Forms for inspection.

By affixing your signature below, you hereby affirm that you will comply with E-Verify requirements.

Company Name

Offeror Signature

Date

Print Name

Title

Federal Employer Identification Number (FEIN)

Notary Public Information

Sworn to and subscribed before me on this this ____ day of _____, 2024.

By: _____, who

☐ Is personally known to me or

☐ Has produced identification (type of ID produced): _____

Signature of Notary Public
Print or Stamp of Notary Public Expiration Date