

**PROFESSIONAL SERVICES AGREEMENT**

**THIS IS AN AGREEMENT**, dated the 11<sup>th</sup> day of July, **2023** by and between:

**THE CITY OF COOPER CITY**, a municipal corporation of the State of Florida with a business address of **9090 S.W. 50<sup>th</sup> Place, Cooper City, Florida 33328** (hereinafter referred to as the "CITY")

and

**WITT O'BRIEN'S, LLC** ("Consultant"), a Delaware limited liability company, having an office at 818 Town & Country Blvd., Suite 200, Houston, Texas 77024 USA. CITY and CONSULTANT may hereinafter be referred to collectively as the "Parties."

**WITNESSETH:**

In consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, CITY and CONSULTANT agree as follows:

**ARTICLE 1**  
**PREAMBLE**

In order to establish the background, context and form of reference for this Agreement and to generally express the objective, and intention of the respective parties herein, the following statements, representations and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions which follow and may be relied upon by the parties as essential elements of the mutual considerations upon which this Agreement is based.

Section 2-258(g) of the City's Code of Ordinances provides an exception to the City's competitive solicitation requirements for "professional services," which are defined as "contracts for the service of professionals, including but not limited to the practice of law, management consulting, medicine, real estate appraisal, or other area of expertise as determined by the City Manager or designee to be in the best interests of the City." In accordance with this provision, the City has reviewed qualifications, work history, and other relevant data provided by the CONSULTANT and determined that the CONSULTANT is being engaged to provide a professional service.

**SERVICES AND RESPONSIBILITIES**

2.1 CONSULTANT hereby agrees to perform the services related to federal assistance programs, including the American Rescue Plan Act, as more particularly described in **Exhibit "A"** attached hereto and by this reference made a part hereof. In the event of any conflicts between this Agreement, Exhibit A, this Agreement shall prevail.

2.2 CONSULTANT shall furnish all services, labor, equipment, and materials necessary and as may be required in the performance of this Agreement, except as otherwise specifically provided for herein, and all work performed under this Agreement shall be done in a professional manner.

2.3 CONSULTANT hereby represents to CITY, with full knowledge that CITY is relying upon these representations when entering into this Agreement with CONSULTANT, that CONSULTANT has the professional expertise, experience and manpower to perform the services to be provided by CONSULTANT pursuant to the terms of this Agreement.

2.4 CONSULTANT assumes professional and technical responsibility for performance of its services to be provided hereunder in accordance with recognized professional standards of good engineering practice. If within one year following completion of its services, such services fail to meet the aforesaid standards, and the CITY promptly advises CONSULTANT thereof in writing, CONSULTANT agrees to re-perform such deficient services without charge to the CITY.

2.5 CONSULTANT shall not utilize the services of any sub-consultant without the prior written approval of CITY.

### **ARTICLE 3** **TERM AND TERMINATION**

3.1 The term of this Agreement shall commence upon execution by both Parties and shall terminate upon the completion of the scope of work, as set forth in Exhibit "A."

3.2 This Agreement may be terminated by either party for cause, or by the CITY for convenience, upon seven (7) days' written notice by the CITY to CONSULTANT in which event the CONSULTANT shall be paid its compensation for services performed to termination date. [NOTE: CONSULTANT may not terminate existing assignments for convenience after they have been accepted.] In the event that the CONSULTANT abandons this Agreement or causes it to be terminated,, the CITY shall provide written notification of default and provide the CONSULTANT seven (7) days to cure such default prior to the termination. If the CITY is in default of the Agreement the CONSULTANT shall provide written notification of such default to the CITY and provide the CITY seven (7) days to cure such default prior to termination. All finished or unfinished documents, data, studies, plans, surveys, and reports prepared by CONSULTANT shall become the property of CITY and shall be delivered by CONSULTANT to CITY immediately.

3.4 SCRUTINIZED COMPANIES. CONSULTANT certifies that it and any of its affiliates are not scrutinized companies as identified in Section 287.135, F.S. In addition, CONSULTANT agrees to observe the requirements of Section 287.135, F.S., for applicable sub-agreements entered into for the performance of work under this Agreement. Pursuant to Section 287.135, F.S., the CITY may immediately terminate this Agreement for cause if the CONSULTANT, its affiliates, or its subConsultants are found to have submitted a false certification; or if the CONSULTANT, its affiliates, or its subConsultants are placed on any applicable scrutinized companies list or engaged in prohibited contracting activity during the term of the Agreement. As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions then they shall become inoperative.

**ARTICLE 4**  
**COMPENSATION AND METHOD OF PAYMENT**

4.1 CONSULTANT shall be entitled to invoice CITY on a monthly basis for services performed, in accordance with the proposed fee schedule included in Exhibit "A.". The invoice shall include, but not be limited to, date of service, the amount of time spent, a description of the service, and any other information reasonably required by CITY. The compensation shall not exceed ten thousand dollars and 00/100 (\$10,000.00).

4.2 CITY will make its best efforts to pay CONSULTANT within thirty (30) days of receipt of proper invoice the total shown to be due on such invoice.

4.3 All payments shall be governed by the Florida Prompt Payment Act, as set forth in Part VII, Chapter 218, Florida Statutes.

4.4 Payment will be made to CONSULTANT at:

Witt O'Brien's LLC \_\_\_\_\_  
P.O. BOX 736155 \_\_\_\_\_  
Dallas, TX 75373-6155 \_\_\_\_\_

**ARTICLE 5**  
**CHANGES TO SCOPE OF WORK AND ADDITIONAL WORK**

5.1 CITY or CONSULTANT may request changes that would increase, decrease, or otherwise modify the Scope of Services, as described in **Exhibit "A,"** to be provided under this Agreement as described in Article 2 of this Agreement. These changes will affect the monthly compensation accordingly. Such changes or additional services must be in accordance with the provisions of the Code of Ordinances of the CITY, and must be contained in a written amendment, executed by the parties hereto, with the same formality, equality and dignity herewith prior to any deviation from the terms of this Agreement, including the initiation of any additional or extra work.

5.2 In no event will the CONSULTANT be compensated for any work which has not been described in a separate written agreement executed by the parties hereto.

**ARTICLE 6**  
**INDEMNIFICATION**

6.1 CONSULTANT shall indemnify and save harmless and defend the CITY, its trustees, elected and appointed officials, agents, servants and employees from and against any and all claims, demands, or causes of action of whatsoever kind or nature sustained by the CITY or any third party directly resulting from acts, error, omission, or negligent act of CONSULTANT, its agents, servants or employees in the performance under this Agreement, for all costs, losses and expenses, including but not limited to, damages to persons or third party property, judgments and reasonable attorneys' fees in connection with the performance by CONSULTANT pursuant to this Agreement.

6.2 CONSULTANT shall indemnify CITY for all loss, damage, expense or liability including, without limitation, court costs and reasonable attorneys' fees that may result by reason of any infringement or claim of infringement of any patent, trademark, copyright, trade secret or other proprietary right due to services furnished pursuant to this Agreement. CONSULTANT will defend and/or settle at its own expense any action brought against the CITY to the extent that it is based on a claim that products or services furnished to CITY by CONSULTANT pursuant to this Agreement, or if any portion of the services or goods furnished in the performance of the service becomes unusable as a result of any such infringement or claim.

6.3 CONSULTANT'S aggregate liability shall not exceed the proceeds of insurance required to be placed pursuant to this Agreement plus the compensation received by CONSULTANT, or extend to any claims brought subsequent to the expiration of warranty period outlined above. The CITY's rights and remedies and CONSULTANT's liabilities as set forth in this Agreement, are exclusive, and the CITY hereby releases CONSULTANT from all further or subsequent liability, whether based in contract or tort and irrespective of fault, negligence, or strict liability.

6.4 The parties recognize that various provisions of this Agreement, including but not necessarily limited to this Section, provide for indemnification by the CONSULTANT. Furthermore, the parties understand and agree that the covenants and representations relating to this indemnification provision shall serve the term of this Agreement and continue in full force and effect as to the party's responsibility to indemnify.

## **ARTICLE 7** **INSURANCE**

7.1 The CONSULTANT shall indemnify and hold harmless the CITY and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including reasonable attorneys' fees and costs of defense, which the CITY or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind directly resulting from the performance of this Agreement by the CONSULTANT or its employees, agents, servants, partners principals or subConsultants. The CONSULTANT shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the CITY, where applicable, including appellate proceedings, and shall pay all costs, judgments, and reasonable attorney's fees which may issue thereon. The CONSULTANT expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the CONSULTANT shall in no way limit the responsibility to indemnify, keep and save harmless and defend the CITY or its officers, employees, agents and instrumentalities as herein provided.

7.2 CONSULTANT shall not commence work under this Agreement until it has obtained all insurance required under this paragraph and such insurance has been approved by the Risk Manager of the CITY nor shall the CONSULTANT allow any subConsultant to commence work on his subcontract until all similar such insurance required of the subConsultant has been obtained and similarly approved.

7.3 Certificates of Insurance, reflecting evidence of the required insurance, shall be filed with the City's Risk Manager prior to the commencement of this Agreement. Policies shall be issued by companies authorized to do business under the laws of the State of Florida. The insurance company shall be rated no less than "A" as to management, and no less than "Class VI" as to financial strength according to the latest edition of Best's Insurance Guide published by A.M. Best Company.

7.4 Policies shall be endorsed to provide the CITY with notice of cancellation or the CONSULTANT shall obtain written agreement from its Agent to provide the CITY with notice of cancellation.

7.5 Insurance shall be in force until all obligations required to be fulfilled under the terms of the Agreement are satisfactorily completed as evidenced by the formal acceptance by the CITY. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, then in that event, the CONSULTANT shall furnish, at least forty-five (45) days of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Agreement and extension thereunder is in effect. The CONSULTANT shall not commence nor continue to provide any services pursuant to this Agreement unless all required insurance remains in full force and effect. CONSULTANT shall be liable to CITY for any lapses in service resulting from a gap in insurance coverage.

#### 7.6 REQUIRED INSURANCE

7.6.1 Comprehensive General Liability Insurance written on an occurrence basis including, but not limited to: coverage for bodily injury and property damage, personal & advertising injury, products & completed operations, and contractual liability. Coverage must be written on an occurrence basis, with limits of liability no less than:

1. Each Occurrence Limit - \$1,000,000
2. Fire Damage Limit (Damage to rented premises) - \$100,000
3. Personal & Advertising Injury Limit - \$1,000,000
4. General Aggregate Limit - \$2,000,000
5. Products & Completed Operations Aggregate Limit - \$2,000,000

Products & Completed Operations Coverage shall be maintained for one (1) years after the final payment under this contract.

**The City of Cooper City must be shown as an additional insured with respect to this coverage, to the extent of the liabilities assumed by Consultant under this Agreement.**

7.6.2 Worker's Compensation and Employers Liability Insurance covering all employees, and/or volunteers of the CONSULTANT engaged in the performance of the scope of work associated with this Agreement. In the case any work is sublet, the CONSULTANT shall require the subConsultants similarly to provide Workers Compensation Insurance for all the latter's employees unless such employees are covered by the protection afforded by the CONSULTANT. Coverage for the CONSULTANT and

his subConsultants shall be in accordance with applicable state and/or federal laws that may apply to Workers' Compensation Insurance with limits of liability no less than:

1. Workers' Compensation: Coverage A – Statutory
2. Employers Liability: Coverage B \$500,000 Each Accident  
\$500,000 Disease – Policy Limit  
\$500,000 Disease – Each Employee

If CONSULTANT claims to be exempt from this requirement, CONSULTANT shall provide CITY proof of such exemption along with a written request for CITY to exempt CONSULTANT, written on CONSULTANT letterhead.

7.6.3 Comprehensive Auto Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the performance of work under this Agreement, with a combined single limit of liability for bodily injury and property damage no less than:

1. Any Auto (Symbol 1)  
Combined Single Limit (Each Accident) - \$1,000,000
2. Hired Autos (Symbol 8)  
Combined Single Limit (Each Accident) - \$1,000,000
3. Non-Owned Autos (Symbol 9)  
Combined Single Limit (Each Accident) - \$1,000,000

7.6.4 Professional Liability/Errors & Omissions Insurance, when applicable, with a limit of liability no less than \$1,000,000 per wrongful act. This coverage shall be maintained for a period of no less than one (1) years after final payment of the contract.

7.6.5 Sexual Abuse may not be excluded from any policy.

## 7.7 REQUIRED ENDORSEMENTS

7.7.1 The City of Cooper City shall be named as an Additional Insured on each of the General Liability policies required herein, to the extent of the liabilities assumed by Consultant under this Agreement

7.7.1 Waiver of all Rights of Subrogation against the CITY

7.7.3 30 Day Notice of Cancellation or Non-Renewal to the CITY

7.7.4 CONSULTANTS' policies shall be Primary & Non-Contributory

7.7.5 All policies shall contain a "severability of interest" or "cross liability" liability clause without obligation for premium payment of the CITY

7.7.6 The City of Cooper City shall be named as a Loss Payee on all Property and/or Inland Marine Policies as their interest may appear.

7.8 CONSULTANT shall name the CITY, as an additional insured on each of the General Liability policies required herein to the extent of the liabilities assumed by Consultant under this Agreement and shall hold the CITY, its agents, officers and employees harmless on account of claims for damages to persons, property or premises directly related to the services provided hereunder.

7.9 Any insurance required of the CONSULTANT pursuant to this Agreement must also be required by any subConsultant in the same limits and with all requirements as provided herein, including naming the CITY as an additional insured, in any work that is subcontracted unless such subConsultant is covered by the protection afforded by the CONSULTANT and provided proof of such coverage is provided to CITY. The CONSULTANT and any subConsultants shall maintain such policies during the term of this Agreement.

7.10 The City reserves the right to require any other additional types of insurance coverage and/or higher limits of liability it deems necessary based on the nature of work being performed under this Contract.

**ARTICLE 8**  
**INDEPENDENT CONSULTANT**

8.1 This Agreement does not create an employee/employer relationship between the parties. It is the intent of the parties that the CONSULTANT is an independent Consultant under this Agreement and not the CITY's employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers' Compensation Act, and the State unemployment insurance law. The CONSULTANT shall retain sole and absolute discretion in the judgment of the manner and means of carrying out CONSULTANT's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of CONSULTANT, which policies of CONSULTANT shall not conflict with CITY, State, H.U.D., or United States policies, rules or regulations relating to the use of CONSULTANT's Funds provided for herein. The CONSULTANT agrees that it is a separate and independent enterprise from the CITY, that it has full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the CONSULTANT and the CITY and the CITY will not be liable for any obligation incurred by CONSULTANT, including but not limited to unpaid minimum wages and/or overtime premiums.

**ARTICLE 9**  
**VENUE**

9.1 This Agreement shall be governed by the laws of the State of Florida as now and hereafter in force. The venue for actions arising out of this agreement shall be in Broward County, Florida.

**ARTICLE 10**  
**PUBLIC RECORDS**

10.1 The City of Cooper City is public agency subject to Chapter 119, Florida Statutes. The CONSULTANT shall comply with Florida's Public Records Law. Specifically, the CONSULTANT shall:

10.1.1 Keep and maintain public records required by the CITY to perform the service;

10.1.2 Upon request from the CITY's custodian of public records, 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 in chapter 119, Fla. Stat., or as otherwise provided by law;

10.1.3 Ensure that public records that are exempt or that are confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and, following completion of the contract, CONSULTANT shall destroy all copies of such confidential and exempt records remaining in its possession after the CONSULTANT transfers the records in its possession to the CITY; and

10.1.4 Upon completion of the contract, CONSULTANT shall transfer to the CITY, at no cost to the CITY, all public records in CONSULTANT's possession. All records stored electronically by the CONSULTANT must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the CITY.

10.2 The failure of CONSULTANT to comply with the provisions set forth in this Article shall constitute a Default and Breach of this Agreement, for which, the City may terminate the Agreement.

**IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT**

**CITY CLERK  
9090 S.W. 50<sup>th</sup> PLACE  
COOPER CITY, FL 33328  
(954) 434-4300  
[tallen@coopercityfl.org](mailto:tallen@coopercityfl.org)**

**ARTICLE 11  
FEDERAL REQUIREMENTS**

**Any reference made to CONSULTANT in this section shall also apply to any SubConsultant under the terms of this Contract. CONSULTANT shall be responsible for the compliance by any subConsultant or lower tier subConsultant with all of these contract clauses:**

11.1 CONSULTANT shall assist CITY in completing any and all forms necessary for reimbursements from state or federal agencies, including but not limited to FEMA, relating to costs arising out of the services provided pursuant to this Agreement. This may include, but is not limited to, the timely completion and submittal of reimbursement requests, preparation and submittal of any and all necessary cost substantiation and preparing replies to any and all agency denial or inquiries.



11.2 If reimbursement is denied to CITY due to CONSULTANT's negligence, including failure to comply with this Article, CONSULTANT upon notification from FEMA or the Florida Division of Emergency Management of such denial and upon written demand by the CITY. The CITY shall provide CONSULTANT written notice of denial, and provide the CONSULTANT seven (7) days of written notice to cure if CONSULTANT does not cure in such timeframe the CONSULTANT shall reimburse CITY for amounts denied due to CONSULTANT's negligence. This obligation shall survive the term or termination of this Agreement.

11.3 Notwithstanding anything to the contrary set forth herein, CONSULTANT shall comply with the following federally required standard provisions, as set forth in 2 C.F.R. Sec.200.326 and 2 C.F.R. Part 200. In the event of any conflicts, the provisions of this section shall prevail.

11.3.1 Equal Employment Opportunity: During the performance of this contract, CONSULTANT agrees as follows:

- (1) CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. CONSULTANT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- (2) CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) CONSULTANT will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with CONSULTANT's legal duty to furnish information.

- (4) CONSULTANT will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of CONSULTANT's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) CONSULTANT will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) CONSULTANT will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of CONSULTANT's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and CONSULTANT may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) CONSULTANT will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subConsultant or vendor. CONSULTANT will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided*, however, that in the event CONSULTANT becomes involved in, or is threatened with, litigation with a subConsultant or vendor as a result of such direction, CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

11.3.2 Davis-Bacon Act: Consultant shall comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor Regulations (29 CFR Part 5). In accordance with the statute, Consultants must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Consultants must be required to pay wages

not less than once a week.

11.3.3 Copeland "Anti-Kickback" Act: CONSULTANT shall comply with the Copeland "Anti-Kickback" Act, ( 40 U.S.C. 3145), as supplemented by Department of Labor regulations ( 29 CFR Part 3, "Consultants and SubConsultants on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). CONSULTANT must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. CITY must report all suspected or reported violations to the Federal awarding agency.

11.3.4 Contract Work Hours and Safety Standards Act. (40 U.S.C. 3701- 3708). Where applicable, pursuant to 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations ( 29 CFR Part 5) CONSULTANT must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous.

- (1) Overtime requirements. No Consultant or subConsultant contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Consultant and any subConsultant responsible therefor shall be liable for the unpaid wages. In addition, such Consultant and subConsultant shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. CITY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Consultant or subConsultant under any such contract or any

other Federal contract with the same prime Consultant, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Consultant, such sums as may be determined to be necessary to satisfy any liabilities of such Consultant or subConsultant for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

- (4) Subcontracts. The Consultant or subConsultant shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subConsultants to include these clauses in any lower tier subcontracts. The prime Consultant shall be responsible for compliance by any subConsultant or lower tier subConsultant with the clauses set forth in paragraphs (1) through (4) of this section.”

11.3.5 Clean Air Act: Pursuant to 42 U.S.C. 7401- 7671q. and the Federal Water Pollution Control Act ( 33 U.S.C. 1251- 1387), as amended CONSULTANT agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act ( 42 U.S.C. 7401- 7671q) and the Federal Water Pollution Control Act as amended ( 33 U.S.C. 1251- 1387). CITY will report violations to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).  
Clean Air Act.

- (1) The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The Consultant agrees to report each violation to CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to the State, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (3) The Consultant agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

#### Federal Water Pollution Control Act

- (1) The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The Consultant agrees to report each violation to the CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to the State, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

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

11.3.6. Suspension and Debarment. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Consultant is required to verify that none of the Consultant, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

- (1) The Consultant must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. This certification is a material representation of fact relied upon by CITY. If it is later determined that the Consultant did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to State and CITY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (2) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

11.3.7. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended). Consultants who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.”

11.3.8 Compliance with State Energy Policy and Conservation Act. Consultant shall comply with all mandatory standards and policies relating to energy efficiency contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163, 89 Stat. 871).

11.3.9 Recovered Materials.

- (1) In the performance of this Contract, the Consultant shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired

- (i) Competitively within a timeframe providing for compliance with the contract performance schedule
- (ii) Meeting Contract performance requirements; or
- (iii) At a reasonable price.

(2) Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <http://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

11.3.10 Pursuant to 44 CFR 13.36(i)(7), Consultant shall comply with FEMA requirements and regulations pertaining to reporting, including but not limited to those set forth at 44 CFR 40 and 41

11.3.11 Pursuant to 44 CFR 13.36(i)(8), Consultant agrees that if this Agreement results in any copyrightable materials or inventions, in accordance with 44 CFR 13.34, FEMA reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use the copyright of said materials or inventions for Federal Government purposes

11.3.12 Access to Records. In accordance with 44 CFR 13.36(i)(11) and Chapters 119 and 257, Florida Statutes,

- (1) The Consultant agrees to provide the City, State, FEMA, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Consultant which are directly pertinent to the contract for the purposes of making audits, examinations, excerpts and transcriptions.
- (2) The Consultant agrees to maintain all books, records, accounts and reports required under the contract for a period of not less than five (5) years after the date of termination or expiration of the contract, except in the event of litigation or settlement of claims arising from the performance of the contract, in which case Consultant agrees to maintain same until the City, the State, FEMA, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

#### 11.3.13 No Obligation by the Federal Government

- (1) Absent the express written consent by the Federal Government, the Federal Government or FEMA is not a party to the contract and shall not be subject to any obligations or liabilities to the City, Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- (2) The Consultant agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further

agreed that the clause shall not be modified, except to identify the subConsultant who will be subject to its provisions.

11.3.14 DHS Seal, Logo, and Flags. The Consultant shall not use DHS(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

11.3.15 Compliance with Federal Law, Regulations, and Executive Orders. This is an acknowledgement that FEMA financial assistance will be used to fund the Contract only. The Consultant will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

11.3.16 Fraudulent Statements. The Consultant acknowledges that 31 U.S.C. Chap. 38 applies to the Consultant's actions pertaining to this Contract.

## **ARTICLE 12** **MISCELLANEOUS**

12.1 **Ownership of Documents.** Reports, surveys, plans, studies and other data provided in connection with this Agreement are and shall remain the property of CITY whether or not the project for which they are made is completed. City hereby agrees to use CONSULTANT's work product for its intended purposes.

12.2 **Records.** CONSULTANT shall keep such records and accounts and require any and all subConsultants to keep records and accounts as may be necessary in order to record complete and correct entries as to personnel hours charged to this engagement, and any expenses for which CONSULTANT expects to be reimbursed. Such books and records will be available at all reasonable times for examination and audit by CITY and shall be kept for a period of seven(7) years after the completion of all work to be performed pursuant to this Agreement. Incomplete or incorrect entries in such books and records will be grounds for disallowance by CITY of any fees or expenses based upon such entries. All records shall be maintained and available for disclosure, as appropriate, in accordance with Chapter 119, F.S.

12.3 **Assignments; Amendments.** This Agreement, and any interests herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by CONSULTANT without the prior written consent of CITY. For purposes of this Agreement, any change of ownership of CONSULTANT shall constitute an assignment which requires CITY approval. However, this Agreement shall run to the benefit of CITY and its successors and assigns.

It is further agreed that no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

12.4 **No Contingent Fees.** 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. For the breach or violation of this provision, CITY shall have the right to terminate the Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

12.5 **Notice.** Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. For the present, CONSULTANT and CITY designate the following as the respective places for giving of notice:

CITY Ryan Eggleston, City Manager  
City of Cooper City  
9090 S.W. 50<sup>th</sup> Place  
Cooper City, Florida 33328  
Telephone No. (954) 434-4300  
Email: [reggleston@coopercityfl.gov](mailto:reggleston@coopercityfl.gov)

Copy To: Jacob G. Horowitz, City Attorney  
Goren, Cherof, Doody & Ezrol, P.A.  
3099 East Commercial Boulevard, Suite 200  
Fort Lauderdale, Florida 33308  
Telephone No. (954) 771-4500  
Facsimile No. (954) 771-4923  
Email: [jhorowitz@gorencherof.com](mailto:jhorowitz@gorencherof.com)

Consultant: Director of Contracts & Compliance  
818 Town & Country Blvd., Suite 200  
Houston Texas 77024  
Telephone No. 281-320-9796  
Email: [contractrequests@wittobriens.com](mailto:contractrequests@wittobriens.com)  
[cjoiner@wittobriens.com](mailto:cjoiner@wittobriens.com)

Copy to: Witt O'Brien's, LLC  
2200 Eller Drive  
Fort Lauderdale, FL 33316  
Email: [blong@ckor.com](mailto:blong@ckor.com)  
[cjoiner@wittobriens.com](mailto:cjoiner@wittobriens.com)

12.6 **Binding Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.



12.7 **Headings.** Headings herein are for convenience of reference only and shall not be considered on any interpretation of this Agreement.

12.8 **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 herein by reference.

12.9 **Severability.** If any provision of this Agreement or 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.

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

12.11 **Legal Representation.** It is acknowledged that each party was represented by counsel in the preparation of and contributed equally to the terms and conditions of this Agreement and, accordingly, the rule that a contract shall be interpreted strictly against the party preparing same shall not apply herein due to the joint contributions of both parties.


12.12 **Counterparts and Execution.** This Agreement may be executed in multiple originals or counterparts, each of which shall be deemed to be an original and together shall constitute one and the same agreement. Execution and delivery of this Agreement by the Parties shall be legally binding, valid and effective upon delivery of the executed documents to the other party through facsimile transmission, email, or other electronic delivery.

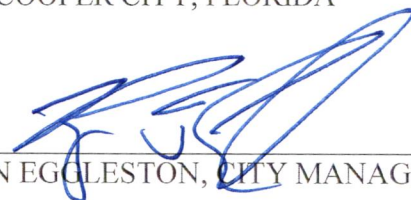
**IN WITNESS OF THE FOREGOING,** the parties have set their hands and seals the day and year first written above.

**CITY:**

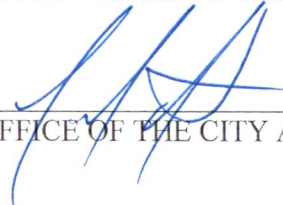
CITY OF COOPER CITY, FLORIDA

ATTEST:

  
\_\_\_\_\_  
TEDRA ALLEN, CITY CLERK

By:   
\_\_\_\_\_  
RYAN EGGLESTON, CITY MANAGER

APPROVED AS TO FORM:

  
\_\_\_\_\_  
OFFICE OF THE CITY ATTORNEY

**CONSULTANT:**

