

AMENDED AND RESTATED PROFESSIONAL SERVICES AGREEMENT

THIS IS AN AGREEMENT, dated the _____ day of _____, **2021**, by and between:

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

and

HORACE MCHUGH, an **INDIVIDUAL** authorized to do business in the State of Florida, with a business address of **9351 NW 35th Place, Sunrise, Florida 33351**, (hereinafter referred to as the "CONSULTANT"). CITY and CONSULTANT may hereinafter be referred to collectively as the "Parties."

WITNESSETH:

WHEREAS, on September 29, 2021, the CITY and CONSULTANT entered into a Professional Services Agreement ("Original Agreement") whereby CONSULTANT agreed to provide consulting services related to the American Rescue Plan Act ("ARPA"); and

WHEREAS, the Original Agreement expires on January 28, 2022; and

WHEREAS, the expenditure of public funds authorized pursuant to the Original Agreement have been exhausted, and the Parties seek to terminate the Original Agreement and enter into this Amended and Restated Professional Service Agreement to govern the relationship between the Parties; and

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 objectives, and intentions 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 interest of the city.” In accordance with this provision, the CITY has reviewed the qualifications, work history, and other relevant data provided by the CONSULTANT and determined that the CONSULTANT is being engaged to provide a professional service.

Negotiations pertaining to the services to be performed by the CONSULTANT were undertaken and this Agreement incorporates the results of such negotiation.

The Original Agreement is hereby terminated and replaced with this Amended and Restated Professional Services Agreement.

ARTICLE 2

SERVICES AND RESPONSIBILITIES

2.1 CONSULTANT hereby agrees to perform program management consulting services, as more particularly described in **Exhibit "A"** attached hereto and by this reference made a part hereof.

2.2 Unless otherwise provided for herein, 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. CITY shall provide CONSULTANT with a laptop and IT support necessary to ensure that CONSULTANT has access to the information needed to perform the duties and responsibilities set forth herein.

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 be for approximately three (3) months, commencing on December 15th, 2021 and terminating on March 31st, 2022. The Agreement may be extended on a month-to-month basis by mutual agreement of the parties and appropriation of funds by the Commission.

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. In the event that the CONSULTANT abandons this Agreement or causes it to be terminated, CONSULTANT shall indemnify the CITY against any loss pertaining to this termination up to a maximum of the full contracted fee amount. 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 compensated at the hourly rate of \$60.00, and the total compensation for this Agreement shall not exceed \$30,000 unless additional funds are appropriated by the City Commission. CONSULTANT shall submit invoices to the CITY on a monthly basis for services performed. The invoices 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.

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:

Horace McHugh
9351 NW 35th Place
Sunrise, Florida 33351

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 arising out of, or by reason of, or 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 attorneys' fees arising out of or 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 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 and that Florida Statutes §725.06 requires a specific consideration be given therefor. The parties therefore agree that the sum of **Ten Dollars and 00/100 (\$10.00)**, receipt of which is hereby acknowledged, is the specific consideration for such indemnities, and the providing of such indemnities is deemed to be part of the specifications with respect to the services to be provided by 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 – NOT USED
INSURANCE

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. 50th PLACE
COOPER CITY, FL 33328
(954) 434-4300
PRR@CooperCityFL.org**

**ARTICLE 11
E-VERIFY**

CONSULTANT certifies that it is aware of and complies with the requirements of Section 448.095, Florida Statutes, as may be amended from time to time and briefly described herein below.

11.1 Definitions for this Section:

11.1.1 "Contractor" means a person or entity that has entered or is attempting to enter into a contract with a public employer to provide labor, supplies, or services to such employer in exchange for salary, wages, or other remuneration. "Contractor" includes, but is not limited to, CONSULTANT.

11.1.2 "Subcontractor" means a person or entity that provides labor, supplies, or

services to or for a contractor or another subcontractor in exchange for salary, wages, or other remuneration.

11.1.3 "E-Verify system" means an Internet-based system operated by the United States Department of Homeland Security that allows participating employers to electronically verify the employment eligibility of newly hired employees.

11.2 Registration Requirement; Termination:

Pursuant to Section 448.095, Florida Statutes, effective January 1, 2021, Contractors, shall register with and use the E-verify system in order to verify the work authorization status of all newly hired employees. Contractor shall register for and utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of:

11.2.1 All persons employed by a Contractor to perform employment duties within Florida during the term of the contract;

11.2.2 All persons (including subconsultants/subcontractors) assigned by Contractor to perform work pursuant to the contract with the City of Cooper City. The Contractor acknowledges and agrees that registration and use of the U.S. Department of Homeland Security's E-Verify System during the term of the contract is a condition of the contract with the City of Cooper City; and

11.2.3 The Contractor shall comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes, but is not limited to registration and utilization of the E-Verify System to verify the work authorization status of all newly hired employees. Contractor shall also require all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The Contractor shall maintain a copy of such affidavit for the duration of the contract. Failure to comply will lead to termination of this Contract, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination. Termination of this Contract under this Section is not a breach of contract and may not be considered as such. If this contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of one (1) year after the date of termination.

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 ten (10) 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 City Manager
 City of Cooper City
 9090 S.W. 50th Place
 Cooper City, Florida 33328
 Telephone No. (954) 434-4300

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

Consultant **Horace McHugh**
9351 NW 35th Place
Sunrise, Florida 33351
E-mail: Horace.mchugh@gmail.com
Phone: 954 940-1972

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:

KATHRYN SIMS, CITY CLERK

By: _____
JOSEPH NAPOLI, CITY MANAGER

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

CONSULTANT:

HORACE MCHUGH

By: _____
Name: _____ Horace McHugh _____
Title: _____

STATE OF _____)
COUNTY OF _____)

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared _____ as _____ of **Horace McHugh**, a company authorized to conduct business in the State of Florida, and acknowledged execution of the foregoing Agreement as the proper official of **Horace McHugh** for the use and purposes mentioned in it and affixed the official seal of the corporation, and that the instrument is the act and deed of that corporation.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at in the State and County aforesaid on this _____ day of _____, **2021**.

NOTARY PUBLIC

(Name of Notary Typed, Printed or Stamped)