

**FIRST AMENDMENT TO  
PROFESSIONAL SERVICES AGREEMENT**

THIS IS AN AGREEMENT ("Agreement"), dated this 9<sup>th</sup> day of April 2024, by and between:

**CITY OF COOPER CITY**, a municipal corporation organized and existing under the laws of the State of Florida and whose address is 9090 SW 50<sup>th</sup> Place, Cooper City, Florida 33328 ("City"),

and

**WITT O'BRIENS, LLC**, a consultant, a Delaware limited liability company authorized to do business in the State of Florida, with a business address of 818 Town & Country Blvd., Suite 200, Houston, Texas 77024, (hereinafter referred to as the "CONSULTANT").

City and CONSULTANT may each be referred to herein as "party" or collectively as "parties".

**WHEREAS**, on July 11, 2023, the City and CONSULTANT entered into an agreement for managing federal assistance programs (hereinafter referred to as the "Original Agreement"); and

**WHEREAS**, the initial term of the Original Agreement expires on June 5, 2024; and

**WHEREAS**, the Original Agreement provides for an option for two (2) additional 1-year renewal terms, subject to the mutual written consent of the Parties; and

**WHEREAS**, the City is satisfied with the CONSULTANT's performance pursuant to the Original Agreement, and the Parties seek to renew the Original Agreement for the first 1-year renewal term; and

**WHEREAS**, the Parties seek to further amend the Original Agreement to ensure compliance with recent amendments to Florida law; and

**WHEREAS**, the Parties agree that all remaining provisions of the Original Agreement shall remain in full force of effect.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

**Section 1.** The foregoing recitals are true and correct and are hereby incorporated into this Agreement.

**Section 2.** Section 3.1 of The Original Agreement, as set forth in Exhibit "A" is hereby amended to read, as follows:

3.1 The first renewal term of this agreement, which shall commence on June 6, 2024 and shall terminate on June 5, 2025. In accordance with the Original Agreement, as set forth in Exhibit "A", the Parties, upon mutual written consent, shall have the option to enter into one (1) final one (1) year renewal term.

**Section 3** Section 4.1 of The Original Agreement is hereby amended to read, as follows:

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 total compensation shall not exceed fifty thousand dollars and 00/100 (\$50,000.00).

**Section 4.** Scrutinized Companies. CONSULTANT, its principals or owners, certify that they are not listed on the Scrutinized Companies that Boycott Israel List, Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or are engaged in business operations with Syria. In accordance with Section 287.135, Florida Statutes, as amended, a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with any agency or local governmental entity for goods or services of:

4.1 Any amount if, at the time bidding on, submitting a proposal for, or entering into or renewing such contract, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel; or

4.2 One million dollars or more if, at the time of bidding on, submitting a proposal for, or entering into or renewing such contract, the company:

4.2.1 Is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, Florida Statutes; or

4.2.2 Is engaged in business operations in Syria.

**Section 5.** 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.

5.1 Definitions for this Section:

5.1.1 "CONSULTANT" 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. "CONSULTANT" includes, but is not limited to, CONSULTANT or consultant.

5.1.2 "SubCONSULTANT" means a person or entity that provides labor, supplies, or services to or for a CONSULTANT or another subCONSULTANT in exchange for salary, wages, or other remuneration.

5.1.3 "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.

5.2 Registration Requirement; Termination:

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

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

5.2.2 All persons (including subconsultants/subCONSULTANTs) assigned by CONSULTANT to perform work pursuant to the contract with the City of Cooper City. The CONSULTANT 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

5.2.3 The CONSULTANT 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. CONSULTANT shall also require all subCONSULTANTs to provide an affidavit attesting that the subCONSULTANT does not employ, contract with, or subcontract with, an unauthorized alien. The CONSULTANT 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 subCONSULTANT 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 CONSULTANT, the CONSULTANT may not be awarded a public contract for a period of one (1) year after the date of termination.

**Section 6.**      Public Records

6.1 The City of Cooper City is a public agency subject to Chapter 119, Florida Statutes. WITT **O'BRIENS, LLC** shall comply with Florida's Public Records Law. Specifically, WITT **O'BRIENS, LLC** shall:

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

6.1.2 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, Florida Statutes, or as otherwise provided by law;

6.1.3 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 Agreement term and, following completion of the Agreement, WITT **O'BRIENS, LLC** shall destroy all copies of such confidential and exempt records remaining in its possession after WITT **O'BRIENS, LLC** transfers the records in its possession to the CITY; and

6.1.4 Upon completion of the Agreement, WITT **O'BRIENS, LLC** shall transfer to the CITY, at no cost to the CITY, all public records in WITT **O'BRIENS, LLC**'s possession. All records stored electronically by WITT **O'BRIENS, LLC** 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.

6.2 The failure of WITT **O'BRIENS, LLC** 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 in accordance with the terms herein.

**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 SW 50<sup>th</sup> PLACE  
COOPER CITY, FL 33328  
(954) 434-4300  
[PRR@CooperCity.gov](mailto:PRR@CooperCity.gov)**

**Section 7.** That the Original Agreement, as amended and executed by the parties, shall remain in full force and effect except as specifically amended herein.

(REMAINDER INTENTIONALLY LEFT BLANK)

IN WITNESS OF THE FOREGOING, the parties have hereunto set their hands and seals on the dates written below.

ATTEST:

BY: [Signature]  
CITY CLERK

APPROVED AS TO LEGAL FORM:

BY: [Signature]  
CITY ATTORNEY

WITNESSED BY:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

**CITY OF COOPER CITY**, a Florida municipal corporation

BY: [Signature]  
CITY MANAGER

BY: [Signature]  
CITY MAYOR

**WITT O'BRIENS, LLC**, a Delaware limited liability company

BY: [Signature] April 2, 2024  
DocuSigned by: Cheryl Joiner  
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Name: Cheryl Joiner

Title: Director Contracts & Compliance

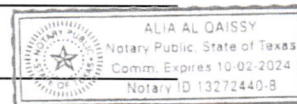
STATE OF Texas  
COUNTY OF Harris

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared Cheryl Joiner, as Director of Contracts and Compliance of **WITT O'BRIENS, LLC**, and acknowledged that she has executed the foregoing instrument for the use and purposes mentioned in it and that the instrument is the act and deed of Cheryl Joiner, as the Director of Contracts and Compliance of **WITT O'BRIENS, LLC**, and who is personally known to me or has produced her driving license as identification.

IN WITNESS WHEREOF, I have set my hand and seal in the State and County aforesaid this day 2nd of April, 2024.

NOTARY PUBLIC  
Alia Qaissy

Print or Type Name



My Commission Expires: October 2nd, 2024

**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.