

## EXHIBIT 2

### RESOLUTION NO. 2020 - 054

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF HALLANDALE BEACH, FLORIDA AUTHORIZING CONTINUING SERVICE AGREEMENTS TO BE AWARDED IN ACCORDANCE WITH THE CONSULTANTS COMPETITIVE NEGOTIATION ACT; AUTHORIZING THE CITY MANAGER TO EXECUTE ALL RELATED DOCUMENTS; AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, to meet the demands of the Community and City departments for prompt professional services, the assistance of outside qualified professional services is often necessary; and

**WHEREAS**, having continuing services agreements (CSAs) in place for projects that fall below the current Consultants Competitive Negotiation Act, Section 287.055, F.S. ("CCNA") threshold amounts provides flexibility in the selection of services as needs occur, while decreasing the selection time as services and vendors retained through these agreements have already been evaluated by staff during the CCNA prequalification process; and

**WHEREAS**, the areas of design professional expertise needed include architecture, engineering, transportation consulting, surveying services, construction management, and planning; and

**WHEREAS**, the City utilizes professional services, as might be needed, through CSAs to be awarded under a Request for Proposals (RFP); and

**WHEREAS**, following best practices, the City released a new RFP to test the design professional industries and reviewed and ranked the proposals; and

**WHEREAS**, the City Manager/Executive Director will be authorized to approve Projects/Tasks/Services with a cost of less than their delegated spending authority; and

**WHEREAS**, pursuant to Chapter 23, Section 23-3 Competitive Bidding Required, Section 23-4 Formal Contract Procedure, and Section 23-5 Award of Contract, of the City

38 of Hallandale Beach Code of Ordinances, the City Manager shall solicit formal proposals  
39 when the estimated design professional costs shall exceed their delegated spending  
40 authoritys; and  
41

42 **WHEREAS** staff recommends that the City Commission authorize award RFP# FY  
43 2018-2019-012, Continuing Professional Architectural and Engineering Services, and  
44 authorize the City Manager to execute all related documents, including a main agreement  
45 outlining insurance and performance requirements.  
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47 **NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE CITY**  
48 **COMMISSION OF THE CITY OF HALLANDALE BEACH, FLORIDA:**  
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50 **SECTION 1.** The foregoing "Whereas" clauses are incorporated herein.  
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52 **SECTION 2.** The Mayor and City Commission hereby authorize award of  
53 RFP# FY 2018-2019-012, Continuing Professional Architectural and Engineering  
54 Services, and authorize the City Manager to execute all related documents, including a  
55 main agreement outlining insurance and performance requirements.  
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57 **SECTION 3. Effective Date.** This Resolution shall take effect immediately upon  
58 its passage and adoption.  
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60 APPROVED AND ADOPTED this 5<sup>th</sup> day of August, 2020.  
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SPONSORED BY:

ATTEST:

NORGEN M. GUILLEN, CMC  
CITY CLERK

**FINAL VOTE ON ADOPTION**

|                        |     |
|------------------------|-----|
| Mayor Cooper           | YES |
| Vice Mayor Javellana   | YES |
| Commissioner Butler    | YES |
| Commissioner Lazarow   | YES |
| Commissioner Lima-Taub | YES |

APPROVED AS TO LEGAL SUFFICIENCY  
AND FORM

A handwritten signature in cursive script, appearing to read "Jennifer Merino", is written over a horizontal line.

JENNIFER MERINO  
CITY ATTORNEY

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70

**AGREEMENT**

**Between**

**CITY of HALLANDALE BEACH, FLORIDA**

**and**

**R.J. Behar & Company, Inc.**

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**(TYPE NAME OF FIRM AS IT APPEARS IN SUNBIZ)**

**for**

**RFP # FY 2018-2019-012 CONSULTANT COMPETITIVE NEGOTIATION ACT (CCNA)  
CONTINUING PROFESSIONAL ARCHITECTURAL AND ENGINEERING SERVICES AND OTHER  
SERVICES**

This is an Agreement, made and entered into by and between the CITY OF HALLANDALE BEACH (the "CITY"), a Florida municipal corporation,

AND

**R.J. Behar & Company, Inc.**, a Florida corporation, hereinafter referred to as "CONSULTANT." (TYPE THE NAME OF THE FIRM AS IT APPEARS IN SUNBIZ)

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

## **ARTICLE 1**

### **DEFINITIONS**

**"City's Project Manager"** means the City's representative duly authorized by the City Manager to provide direction to the Consultant regarding services provided pursuant to the RFP and the Agreement.

**"Consultant"** means the individual(s) or Firm(s) to whom the award is made and who executes the Agreement and future Work Authorizations.

**"Notice to Proceed"** means the written notice given by the City to the Consultant of the date and time for work to start.

**"Sub-contractor or Sub-consultant"** Any person or business entity employed to perform part of a contractual obligation under the control of the Consultant. Any supplier, distribution, vendor, or Firm that furnishes, supplies, or services to the Consultant.

**"Project"** means a temporary endeavor designed to produce a unique product, service or result with a defined beginning and end (usually time-constrained), and often constrained by funding or deliverables undertaken to meet unique goals and objectives, typically to bring about beneficial change or added value. A Project may include providing comprehensive research, study, analysis and related administrative services on a project specific basis. Those comprehensive project specific services may include conducting and preparing documentation studies, investigations, and assessments. These activities may include general investigative or exploratory reports concerning sites, buildings, infrastructure and other facilities or portions thereof; feasibility studies; existing facility and site documentation; budget development and forecasting; design and construction market analysis; facility assessments and evaluations; alternative site selection analysis; schedule development and analysis; building and zoning code analysis and investigations; bid/award analysis; negotiation support; inspections; testing and analysis; post-occupancy evaluations and studies; forensic studies; independent claims support and other similar miscellaneous study activities. Consultant(s) shall provide all

architectural, engineering, landscape architectural, interior design or specialty support (through either in-house or subconsultant firms) as required to complete an assigned report or study activity. Project specific services may also include project team facilitation and support; project status reporting and performance/compliance reporting. A project may include providing assistance in development of Building Information Modeling (BIM) graphics and data for City buildings; assistance in the development of SIM-related data structures for inter-departmental use by the City; condition documentation and measured drawings of existing facilities; programming, site assessments and associated pre-design services for City facility needs; facilitation of meetings concerning facility needs, budgeting, scheduling, providing independent analysis of design and construction issues, facilitating value engineering sessions and providing related recommendation reports; and providing independent claims analysis. Consultant may be tasked to provide computer-aided and manually generated graphics support; preparation of narratives and other textual project/program support; photographic and video-graphic project/program support; geographic information systems (GIS) support; and other data and information system project/program support. Project specific services may also include project team facilitation and support; project status reporting and performance/compliance reporting.

**“Work Authorization”** means the documents issued pursuant to this Agreement, referencing an agreed upon scope of work, payment, schedule, deliverables and other project requirements established by the City’s Project Manager. A Work Authorization Form shall be issued for joint execution as more fully described in Article 4. A draft Work Authorization was included in the solicitation as Exhibit C for informational purposes only. The Work Authorization form is subject to change.

## **ARTICLE 2**

### **TERM**

1. The term of this Agreement is from December 15, 2020 to TBD.
2. At the **August 5, 2020** City Commission meeting the City Commission adopted **Resolution No. 2020-054** awarding through **RFP # FY 2018-2019-012 CONSULTANT COMPETITIVE NEGOTIATION ACT (CCNA) CONTINUING PROFESSIONAL ARCHITECTURAL AND ENGINEERING SERVICES AND OTHER SERVICES.**

## **ARTICLE 3**

### **SCOPE OF SERVICES TO BE PROVIDED TO THE CITY**

3.1 The services to be provided include the scope of work in **RFP # FY 2018-2019-012 CONSULTANT COMPETITIVE NEGOTIATION ACT (CCNA) CONTINUING PROFESSIONAL ARCHITECTURAL AND ENGINEERING SERVICES AND OTHER SERVICES**, which is hereby incorporated and made part of this Agreement by reference and the Proposal submitted by CONSULTANT, which is hereby incorporated and made part of this Agreement by reference.

3.2 Consultant's specific project services shall be agreed upon in a written Work Authorization, with an individual Scope of Services for each Project to be developed by Consultant and City's Project Manager. Consultant shall provide all services including all necessary, incidental, and related activities and services required by the Work Authorization and contemplated in Consultant's level of effort.

3.3 The Scope of Services for a Work Authorization does not delineate every detail and minor work task required to be performed by Consultant to complete the Project. If, during the course of the performance of the services included in the Work Authorization, Consultant determines that work should be performed to complete the Project which is in Consultant's opinion outside the level of effort originally anticipated, whether or not the Scope of Services identifies the work items, Consultant shall notify the City's Project Manager in writing in a timely manner before proceeding with the work. If Consultant proceeds with said work without notifying the City's Project Manager, said work shall be deemed to be within the original level of effort, whether or not specifically addressed in the Scope of Services. Notice to the City's Project Manager does not constitute authorization or approval by City to Consultant to perform the work. Performance of work by Consultant outside the originally anticipated level of effort without prior written City approval is at Consultant's sole risk.

3.4 Consultant agrees to meet with City at reasonable times after reasonable notice.

3.5 Consultant acknowledges that it is aware of all the duties and responsibilities and agrees to perform such duties and responsibilities as set forth in the RFP, the City's Agreement, and the City's Work Authorization.

3.6 Notwithstanding any other remedy otherwise available to City, where the work product of Consultant is found to be deficient for the purpose for which it was produced, Consultant shall correct the deficiency at no cost to City.

3.7 Consultant shall pay its subconsultants, subcontractors, and suppliers, within fifteen (15) days following receipt of payment from City for such subcontracted work or supplies. Consultant agrees that if it withholds an amount as retainage from subconsultants, subcontractors, or suppliers that it will release such retainage and pay same within fifteen (15) days following receipt of payment of retained amounts from City. The City may, at its option, increase allowable retainage or withhold progress payments unless and until Consultant demonstrates timely payments of sums due to all Subcontractors and suppliers.

**ARTICLE 4**  
**WORK AUTHORIZATION**

4.1 All work to be performed by Consultant pursuant to the terms of the Agreement shall first be authorized in writing by a Work Authorization, Exhibit C, in accordance with the requirements of this Article.

4.2 Before any Project is commenced pursuant to a Work Authorization, Consultant shall supply the City's Project Manager with a written estimate for all charges expected to be incurred for such Project, which estimate shall be reviewed and approved by the City's Project Manager and other appropriate City officials as required by the City's Code of Ordinances and administrative policies. Projects estimated at costs that exceed administrative spending authority require City Commission approval.

4.3 All Work Authorizations shall be on a form approved by the City's Project Manager and Department Director and/or as required by City's policies and procedures and Code of Ordinances and contain, at a minimum, the following information and requirements:

4.3.1.1 A statement of the method of compensation and Consultant's proposed written scope of work and any required deliverables.

4.3.1.2 A budget establishing the amount of compensation and reimbursables to be paid upon the establishment of a negotiated lump sum fee or the application of appropriate billing rates as set forth in Exhibit B – Hourly Billing Rates for Task Orders, which amount shall constitute a maximum and shall not be exceeded unless prior written approval of City is obtained. In the event City does not approve an increase in the maximum amount, and the need for such action is not the fault of Consultant, the Work Authorization shall be terminated, and Consultant shall be paid in full for all work completed to that point, however, in no case exceed the maximum amount. The information contained in the budget shall be in sufficient detail so as to identify the various elements of costs.

4.3.1.3 A time established for completion of the work or services undertaken by Consultant or for the submission to City of documents, reports, and other information pursuant to the Work Authorization and a negotiated daily amount for liquidated damages, if applicable.

4.3.1.4 Any other additional instructions or provisions relating to the Work Authorization.

4.3.1.5 For each Project the Project Manager will contact the awarded Firm to provide a Cost Proposal. Once the cost proposal has been accepted the Project Manager will route the Work Authorization for execution and approval.

- 4.3.1.6 The Firm receiving the Work Authorization will have five (5) business days to return the completed Work Authorization to the Project Manager via email.
- 4.3.1.7 The Work Authorization must include all costs for the Project utilizing a Fee Worksheet with hours and fees per Exhibit B - Hourly Billing Rates for Tasks Orders. The Cost Proposal must include a narrative schedule of deliverables and a summary of compensation which could be through an excel worksheet.
- 4.3.1.8 The costs for the Project must include all meetings and all costs required for the Project.
- 4.3.1.9 In the event that Consultant is unable to complete the services because of delays resulting from untimely review and approval by City or other governmental authorities having jurisdiction over the Project, and such delays are not the sole fault of Consultant, the City's Project Manager shall grant a reasonable extension of time for the completion of the services. It shall be the responsibility of Consultant to notify the City's Project Manager promptly in writing whenever a delay in approval by a governmental agency is anticipated or experienced, and to inform the City's Project Manager of all facts and details related to the delay.
- 4.3.1.10 Consultant shall provide all architectural, engineering, landscape architectural, interior design or specialty professional services support (through either in-house or Subconsultant firms) as required to complete an assigned Project.
- 4.3.1.11 Work Authorizations may be issued for various facility types including but not limited to general governmental, cultural, parks and recreation, library, law enforcement, vehicle maintenance, transit, human services, educational, retail, food service, parking, and infrastructure/public works facilities. Upon acceptance of the City's Project Manager, all Work Authorizations will be authorized through the City's approval process.
- 4.3.1.12 Work Authorizations shall depict projects in their entirety and in no case shall Work Authorizations be split in order to meet lower City's authorization and thresholds.
- 4.3.1.13 In the event of termination for convenience by City under Article 10, Consultant shall be paid its compensation for all work performed and expenses incurred for reimbursement as permitted under the terms of this Agreement prior to termination. Compensation shall be withheld until all documents are provided to the City pursuant to this Agreement and Work Authorizations.

4.4 **CHANGES.** Any change of scope requiring charges in excess of the amount approved in the original Work Authorization and/or any change in the contract price, scope of work or time shall be by a written change order, approved by the City Manager and executed with the same formalities as the Agreement. The City Manager may approve and execute change orders without City Commission approval only in accordance with City Code. No change order shall materially change the scope of the work unless approved by the City Commission. Consultant's compensation shall not exceed the amount approved in the Work Authorization, excluding any amount designated as contingency, unless such additional amount received the prior written City approval required herein. Amounts designated as contingency in the work authorization, project budgets or estimates are subject to the change order authorization provisions of this paragraph.

## **ARTICLE 5**

### **TIME FOR PERFORMANCE**

5.1 The Consultant shall be instructed to commence the work by a written Notice to Proceed after full execution of the Work Authorization. The Time for Performance of the project shall be specified in the Work Authorization.

5.2 Consultant shall perform the services described in the Work Authorization within the time periods specified therein; said time periods shall commence from the date of the Notice to Proceed for such services.

5.3 In the event Consultant is unable to complete the above services because of delays resulting from untimely review by City or other governmental authorities having jurisdiction over the Project, and such delays are not the fault of Consultant, or because of delays which were caused by factors outside the control of Consultant, City shall grant a reasonable extension of time for completion of the services. It shall be the responsibility of Consultant to notify the City promptly in writing whenever a delay in approval by a governmental agency is anticipated or experienced, and to inform the City of all facts and details related to the delay.

5.4 If designated as such on the Work Authorization, in the event Consultant fails to complete the services identified in the Work Authorization on or before the applicable Time for Performance, Consultant shall pay to City the sum of dollars identified in the Work Authorization for each calendar day after the applicable Time for Performance, plus approved time extensions thereof, until completion of the project. These amounts are not penalties but are liquidated damages to City for its inability to proceed with, and complete, the service in a timely manner pursuant to the agreed upon Schedule. Liquidated damages are fixed and agreed upon by the parties, recognizing the impossibility of precisely ascertaining the amount of damages that will be sustained by City as a consequence of such delay, and both parties desiring to obviate any question or dispute concerning the amount of said damages and the cost and effect of the failure of Consultant to complete the services within the applicable Time for Performance. This provision shall not affect the rights and obligations of either party as set forth in Article 6, INDEMNIFICATION.

**ARTICLE 6**  
**INDEMNIFICATION**

6.1 To the fullest extent permitted by law, the CONSULTANT agrees to indemnify and hold-harmless the City, its officers and employees from any claims, liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney fees to the extent caused, in whole or in part, by the professional negligence, error or omission of the CONSULTANT or persons employed or utilized by the CONSULTANT in performance of the Agreement.

6.2 To the fullest extent permitted by law, the CONSULTANT agrees to indemnify and hold-harmless the City, its officers and employees from any claims, liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney fees to the extent caused, in whole or in part, by the recklessness or intentionally wrongful conduct, of the CONSULTANT or persons employed or utilized by the CONSULTANT in performance of the Agreement.

CONSULTANT agrees to indemnify, save harmless and, at the City Attorney's option, defend or pay for an attorney selected by the City Attorney to defend CITY, their officers, agents, servants and employees against any and all claims, losses, liabilities and expenditures of any kind, including attorney's fees, court costs, and other expenses, caused by negligent act or omission of CONSULTANT, any sub-contractors, their employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, demands, or causes of action of any nature, whatsoever, resulting from injuries or damages sustained by any person or property. In the event that any action or proceeding is brought against CITY by reason of any such claim or demand, CONSULTANT, upon written notice from CITY, shall defend such action or proceeding.

6.3 To the extent considered necessary by the City Attorney, any sums due to CONSULTANT under this Agreement may be retained by CITY until all of CITY's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by CITY.

6.4 In the event that any action or proceeding is brought by CONSULTANT against CITY, CONSULTANT hereby waives the right to a jury trial. Venue shall be Broward County, Florida. The provisions of this Article shall survive the expiration or early termination of this Agreement.

6.5 CONSULTANT acknowledges that it has received adequate consideration concerning the monetary limitation on the indemnification provided to City, which shall not be less than \$1 million per occurrence.

6.6 Nothing in this Agreement is intended to serve as a waiver of sovereign immunity, or of any other immunity, defense, or privilege enjoyed by the City pursuant to Section 768.28 Florida Statutes.

**ARTICLE 7**  
**PERSONNEL**

**Competence of Staff:** In the event that any of CONSULTANT's employee is found to be unacceptable to the CITY, including, but not limited to, demonstration that he or she is not qualified, the CITY shall notify the CONSULTANT in writing of such fact and the CONSULTANT shall immediately remove said employee unless otherwise agreed and, if requested by the CITY, promptly provide a replacement acceptable to the CITY.

**ARTICLE 8**  
**INSURANCE REQUIREMENTS**

CONSULTANT agrees to maintain, on a primary basis and at its sole expense, at all times during the life of any resulting contract the following insurance coverages, limits, including endorsements described herein. The requirements contained herein, as well as City's review or acceptance of insurance maintained by Consultant is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Consultant under any resulting contract.

**Commercial General Liability** Consultant agrees to maintain Commercial General Liability at a limit of liability not less than **\$1,000,000** Each Occurrence, **\$2,000,000** Annual Aggregate.

Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Cross Liability.

**Business Automobile Liability** Consultant agrees to maintain Business Automobile Liability at a limit of liability not less than \$1,000,000 Each Occurrence. Coverage shall include liability for Owned, Non-Owned & Hired automobiles. In the event Consultant does not own automobiles, Consultant agrees to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

**Worker's Compensation Insurance & Employers Liability** Consultant agrees to maintain Worker's Compensation Insurance & Employers Liability in accordance with Florida Statute Chapter 440.

**Professional Errors & Omissions Liability.** Consultant agrees to maintain Professional Error's & Omissions Liability at a limit of liability not less than \$1,000,000 Each Occurrence \$2,000,000 Annual Aggregate... The Consultant agrees the policy shall include a minimum three (3) year Discovery (tail) reporting period, and a Retroactive Date that equals or precedes the effective of the Contract, or the performance of services hereunder. The Consultant agrees the Self-Insured-Retention shall not exceed \$25,000. This coverage may be provided on a Per-Project Basis.

Additional Insured Consultant agrees to endorse City as an Additional Insured with a CG 2026 07 04 Additional - Insured – Designated Person or Organization endorsement or CG 2010 19 01

**Additional Insured** - Owners, Lessees, or Consultants – Scheduled Person or Organization or CG 2010 07 04 Additional Insured - Owners, Lessees, or Consultants – Scheduled Person or organization in combination with CO 2037 07 04 Additional Insured - Owners. Lessees Consultants- Completed Operations, or similar endorsements, to the Commercial General Liability. The Additional Insured shall read "City of Hallandale Beach."

**Waiver of Subrogation** Consultant agrees by entering into this contract to a Waiver of Subrogation for each required policy herein. When required by the insurer, or should a policy condition not permit Consultant to enter into an pre-loss agreement to waive subrogation without an endorsement, then Consultant agrees to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should Consultant enter into such an agreement on a pre-loss basis.

**Certificate(s) of Insurance** Consultant agrees to provide City a Certificate(s) of Insurance evidencing that all coverage's, limits and endorsements required herein are maintained and in full force and effect. Said Certificate(s) of Insurance shall include a minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage. The Certificate Holder address shall read:

**City of Hallandale Beach  
Risk Manager  
400 South Federal Highway  
Halladale Beach, FL 33009**

**Umbrella or Excess Liability.** Consultant may satisfy the minimum liability limits required above for Commercial General Liability or Business Auto Liability under an Umbrella or Excess Liability policy. There is no minimum Per Occurrence limit of liability under the Umbrella or Excess Liability; however, the Annual Aggregate limit shall not be less than the highest "Each Occurrence" limit for either Commercial General Liability or Business Auto Liability. Consultant agrees to endorse City as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance states the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.

**Right to Revise or Reject** City reserves the right, but not the obligation, to revise any insurance requirement, not limited to limits, coverage's and endorsements, or to reject any insurance policies which fail to meet the criteria stated herein. Additionally, City reserves the right, but not the obligation, to review and reject any insurer providing coverage due of its poor financial condition or failure to operating legally.

**ARTICLE 9**  
**COMPENSATION**

- 9.1 CITY agrees to pay CONSULTANT, in the manner specified in the Work Authorization for work actually performed and completed.

**METHOD OF BILLING AND PAYMENT**

9.1.1 Payment shall be due within thirty (30) days of date stipulated on the invoice, provided, invoice is accepted for payment. Payment shall be made only for approved invoices. The CITY retains the right to delay or withhold payment for services which have not been accepted by the CITY.

9.2.1 Notwithstanding any provision of this Agreement to the contrary, CITY may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work which has not been remedied or resolved in a manner satisfactory to the City's Contract Administrator or failure to comply with this Agreement. The amount withheld shall not be subject to payment of interest by CITY.

9.3.1 Payment shall be made to CONSULTANT at:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**REIMBURSABLES**

9.2 For reimbursement of any travel costs, travel-related expenses, or other direct non-salary expenses directly attributable to the Project through a Work Authorization, CONSULTANT agrees to adhere to Section 112.061, Florida Statutes, except to the extent, if any that Exhibit C Cost Proposal provides to the contrary. City shall not be liable for any such expenses that have not been approved in advance, in writing, by the City's Project Manager. Reimbursables apply the same to any subconsultant expenses.

**ARTICLE 10**  
**TERMINATION**

10.1 This Agreement may be terminated for cause by the aggrieved party if the party in breach has not corrected the breach within ten (10) days after written notice from the aggrieved party identifying the breach. All Articles in this contract are material and a breach of any Article shall be grounds for termination for cause. This Agreement may also be terminated for convenience by the CITY. Termination for convenience by the CITY shall be effective on the termination date stated in written notice provided by the CITY, which termination date shall be not less than thirty (30) days after the date of such written notice. This Agreement may also be terminated by the CITY Manager upon such notice as the CITY Manager deems appropriate under the circumstances in the event the CITY Manager determines that termination is necessary to protect the public health or safety. The parties agree that if the CITY erroneously, improperly or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.

10.2 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement except that notice of termination by the CITY Manager, which the CITY Manager deems necessary to protect the public health, safety, or welfare may be verbal notice that shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.

10.3 In the event this Agreement is terminated for convenience, CONSULTANT shall be paid for any services properly performed under the Agreement through the termination date specified in the written notice of termination. CONSULTANT acknowledges and agrees that it has received good, valuable and sufficient consideration from CITY, the receipt and adequacy of which are, hereby acknowledged by CONSULTANT, for CITY's right to terminate this Agreement for convenience, and that CONSULTANT shall not be entitled to any consequential damages or loss of profits.

10.4 This Agreement or any Work Authorization issued under this Agreement may be terminated for cause by the aggrieved party if the party in breach has not corrected the breach within ten (10) days after written notice from the aggrieved party identifying the breach. This Agreement may also be terminated for convenience by the Board. Termination for convenience by the Board shall be effective on the termination date stated in written notice provided by the County, which termination date shall be not less than thirty (30) days after the date of such written notice. If this Agreement or Work Authorization was entered into on behalf of County by someone other than the Board, termination by County may be by action of the County Administrator or the County representative (including his or her successor) who entered in this Agreement on behalf of County. This Agreement may also be terminated by the County Administrator upon such notice as the County Administrator deems appropriate under the circumstances in the event the County Administrator determines that termination is necessary to protect the public health or safety. If the County erroneously, improperly or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.

10.5 This Agreement may be terminated for cause for reasons including, but not limited to, Consultant's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to suitably perform the work; or failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement or Work Authorization. The Agreement may also be terminated for cause if the Consultant is placed 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, as amended or if the Consultant provides a false certification submitted pursuant to Section 287.135, Florida Statutes, as amended.

10.6 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement except that notice of termination by the County Administrator which the County Administrator deems necessary to protect the public health or safety may be verbal notice that shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.

## **ARTICLE 11**

### **MISCELLANEOUS**

#### **11.1 RIGHTS IN DOCUMENTS AND WORK**

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of CITY; and, if a copyright is claimed, CONSULTANT grants to CITY a non-exclusive license to use the copyrighted item(s) indefinitely, to prepare derivative works, and to make and distribute copies to the public. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by CONSULTANT, whether finished or unfinished, shall become the property of CITY and shall be delivered by CONSULTANT to the City's Contract Administrator within seven (7) days of termination of this Agreement by either party. Any compensation due to CONSULTANT shall be withheld until all documents are received as provided herein.

#### **11.2 AUDIT RIGHT AND RETENTION OF RECORDS**

CITY shall have the right to audit the books, records, and accounts of CONSULTANT and its subcontractors that are related to this Project. CONSULTANT and its subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project. All books, records, and accounts of CONSULTANT and its subcontractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, CONSULTANT or its subcontractor, as applicable, shall make same available at no cost to CITY in written form.

CONSULTANT and its subcontractors shall preserve and make available, at reasonable times for examination and audit by CITY, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the

Florida Public Records Act, Chapter 119, Florida Statutes, as may be amended from time to time, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by CITY to be applicable to CONSULTANT's and its subcontractors' records, CONSULTANT and its subcontractors shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by CONSULTANT or its subcontractors. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for CITY's disallowance and recovery of any payment upon such entry.

CONSULTANT shall, by written contract, require its subcontractors to agree to the requirements and obligations of this Section.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CITY CLERK AT (954) 457-1340, BY EMAIL AT CITYCLERKOFFICE@COHB.ORG, OR AT 400 S. FEDERAL HWY, ATTN: CITY CLERK, HALLANDALE BEACH, FL 33009**

#### **11.3 PUBLIC ENTITY CRIME ACT**

CONSULTANT represents that the execution of this Agreement will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes, as may be amended from time to time, which essentially provides that a person or affiliate who is a consultant, or other provider and who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to CITY, may not submit a bid on a contract with CITY for the construction or repair of a public building or public work, may not submit bids on leases of real property to CITY, may not be awarded or perform work as a CONSULTANT, supplier, subcontractor, or consultant under a contract with CITY, and may not transact any business with CITY in excess of the threshold amount provided in Section 287.017, Florida Statutes, as may be amended from time to time, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid by CITY pursuant to this Agreement, and may result in debarment from CITY's competitive procurement activities.

In addition to the foregoing, CONSULTANT further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether CONSULTANT has been placed on the convicted vendor list.

11.4 **INDEPENDENT CONSULTANT**

CONSULTANT is an independent CONSULTANT under this Agreement. In providing the services, neither CONSULTANT nor its agents shall act as officers, employees, or agents of CITY. No partnership, joint venture, or other joint relationship is created hereby. CITY does not extend to CONSULTANT or CONSULTANT's agents any authority of any kind to bind CITY in any respect whatsoever.

11.5 **THIRD PARTY BENEFICIARIES**

Neither CONSULTANT nor CITY intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

11.6 **NOTICES**

Whenever either party desires or is required to provide notice to the other as addressed in this contract, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a written receipt of acknowledgment of delivery, or by email provided that the notice is also sent by one of the foregoing methods, and addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

**City of Hallandale Beach**

Jeremy Earle, Interim City Manager  
400 South Federal Highway  
Hallandale Beach, FL 33009

**With Copy to:**

James F. Sylvain, P.E., Director of Public Works  
Attn: Department of Public Works  
630 N.W. 2<sup>nd</sup> Street  
Hallandale Beach, FL 33009

**And:**

Jennifer Merino, City Attorney  
400 South Federal Highway  
Hallandale Beach, FL 33009

**And:**

Procurement Department  
400 South Federal Highway  
Hallandale Beach, FL 33009

**Consultant:**

---

Juan H. Vazquez, P.E., Vice President

---

6861 SW 196th Avenue, Suite 302

---

Pembroke Pines, FL 33332

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**11.7 ASSIGNMENT AND PERFORMANCE**

Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other party. CITY may terminate this Agreement, effective immediately, if there is any assignment, or attempted assignment, transfer, or encumbrance, by CONSULTANT of this Agreement or any right or interest herein without CITY's written consent.

CONSULTANT represents that each person who will render services pursuant to this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and that each such person is reasonably experienced and skilled in the area(s) for which he or she will render his or her services.

CONSULTANT shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of CONSULTANT's performance and all interim and final product(s) provided to or on behalf of CITY shall be comparable to the best local and national standards.

**11.8 CONFLICTS**

Neither CONSULTANT nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with CONSULTANT's loyal and conscientious exercise of judgment and care related to its performance under this Agreement.

In the event CONSULTANT is permitted pursuant to this Agreement to utilize subcontractors to perform any services required by this Agreement, CONSULTANT agrees to require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as CONSULTANT.

#### **11.9 MATERIALITY AND WAIVER OF BREACH**

CITY and CONSULTANT agree that each requirement, duty, and obligation set forth herein was bargained for at arms-length and is agreed to by the parties in exchange for quid pro quo, that each is substantial and important to the formation of this Agreement and that each is, therefore, a material term hereof.

CITY's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

#### **11.10 COMPLIANCE WITH LAWS**

CONSULTANT shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

#### **11.11 SEVERANCE**

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless CITY or CONSULTANT elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

#### **11.12 JOINT PREPARATION**

Each party and its counsel have participated fully in the review and revision of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

#### **11.13 PRIORITY OF PROVISIONS**

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of Articles 1 through 8 of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 8 shall prevail and be given effect.

**11.14 JURISDICTION, VENUE, WAIVER OF JURY TRIAL**

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. All parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Seventeenth Judicial Circuit in Broward CITY, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. BY ENTERING INTO THIS AGREEMENT, CONSULTANT AND CITY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.

Nothing in this Agreement is intended to serve as a waiver of sovereign immunity, or of any other immunity, defense, or privilege enjoyed by the City pursuant to Section 768.28 Florida Statutes.

**11.15 AMENDMENTS**

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the CITY and CONSULTANT or others delegated authority to or otherwise authorized to execute same on their behalf.

**11.16 PRIOR AGREEMENTS**

This document represents the final and complete understanding of the parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

**11.17 PAYABLE INTEREST**

11.17.1. Payment of Interest. CITY shall not be liable for interest for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof CONSULTANT waives, rejects, disclaims and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim based on or related to this Agreement.

11.17.2. Rate of Interest. In any instance where the prohibition or limitations of Section 11.17.1 are determined to be invalid or unenforceable, the annual rate of interest

payable by CITY under this Agreement, whether as prejudgment interest or for any other purpose, shall be .025 percent simple interest (uncompounded).

**11.18 INCORPORATION BY REFERENCE**

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties. The attached Exhibits are incorporated into and made a part of this Agreement:

RFP # FY 2018-2019-000 CCNA Continuing Professional Architectural and Engineering Services and Other Services

Firm's Proposal

Exhibit A - Discipline Form

Exhibit B - Hourly Billing Rates for Task Orders

Exhibit C – Work Authorization

**11.19 REPRESENTATION OF AUTHORITY**

Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

**11.20 MULTIPLE ORIGINALS**

Multiple copies of this Agreement may be executed by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

**ARTICLE 12**

**NONDISCRIMINATION, EQUAL OPPORTUNITY  
AND AMERICANS WITH DISABILITIES ACT**

12.1 CONSULTANT shall not unlawfully discriminate against any person in its operations and activities in its use or expenditure of funds or any portion of the funds provided by this Agreement and shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded in whole or in part by CITY, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines and standards.

CONSULTANT's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation (Broward County Code, Chapter 16 ½), gender identity, gender expression, national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully

or appropriately used as a basis for service delivery.

CONSULTANT shall comply with Title I of the Americans with Disabilities Act regarding nondiscrimination on the basis of disability in employment and further shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender, sexual orientation, gender identity, gender expression, national origin, marital status, political affiliation, or physical or mental disability. In addition, CONSULTANT shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship, and accessibility).

CONSULTANT shall take affirmative action to ensure that applicants are employed and employees are treated without regard to race, age, religion, color, gender, sexual orientation (Broward County Code, Chapter 16 ½), gender identity, gender expression, national origin, marital status, political affiliation, or physical or mental disability during employment. Such actions shall include, but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff; termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

CONSULTANT shall not engage in or commit any discriminatory practice in violation of the Broward County Human Rights Act (Broward County Code, Chapter 16 ½) in performing any services pursuant to this Agreement.

#### 12.2 Domestic Partner Benefits Requirement

CONTRACTOR certifies, and has provided the Domestic Partnership Certification Form, that it would provide benefits to Domestic Partners of its employees on the same basis as it provides benefits to employees' spouses.

CONTRACTOR shall comply with the applicable provisions of this section.

- (i) The Contractor certifies and represents that it will comply with this section during the entire term of the Contract.
- (ii) The failure of the Contractor to comply with this section shall be deemed to be a material breach of the contract, entitling the City to pursue any remedy stated below or any remedy provided under applicable law.
- (iii) The City may terminate the Contract if the Contractor fails to comply with this section.
- (iv) The City may retain all monies due or to become due until the Contractor complies with this section.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: CITY OF HALLANDALE BEACH through its authorization to execute same by Commission action on 5, day of August, 2020, and RJ Behar, signing by and through its Vice President duly authorized to execute same.

ATTEST:

CITY CLERK

CITY

CITY OF HALLANDALE BEACH

By: Jeremy Earle (Apr 26, 2021 14:02 EDT)

Jeremy Earle, Interim City Manager

26 Day of April, 2021.

Approved as to legal sufficiency and form by  
CITY ATTORNEY

Jennifer Merino

Jennifer Merino, City Attorney

24 Day of April, 2021.

CONSULTANT MUST EXECUTE THIS AGREEMENT AS INDICATED BELOW. USE CORPORATION OR NONCORPORATION FORMAT, AS APPLICABLE.

If the company President does not sign the Agreement, there must be a Secretary's Certificate Form provided to the CITY of Hallandale Beach, Florida indicating designee signing, has the authority to sign.

(If incorporated sign below).

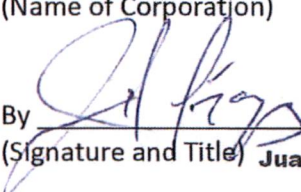
ATTEST:

  
**Dereth Behar**  
(Secretary)

**CONSULTANT**

**R.J. Behar & Company, Inc.**

(Name of Corporation)

By   
(Signature and Title) **Juan Vazquez, PE / Vice President**

**30** Day of **December**, 20**20**.

(Corporate Seal)

(Type Name and Title Signed Above)

**30** Day of **December** 20**20**.

(If not incorporated sign below).

**CONSULTANT**

WITNESSES:

\_\_\_\_\_  
(PRINT NAME)

\_\_\_\_\_  
(PRESIDENT OR VICE-PRESIDENT)

\_\_\_\_\_  
(PRINT NAME)

\_\_\_\_\_  
(TYPE NAME & SIGNED ABOVE)

**NOTARY SEAL**