3 of each 9/14/12 L

# DOCUMENT ROUTING FORM

DOCUMENT: **FIRST AMENDMENTS TO AGREEMENTS FOR PROFESSIONAL TRAFFIC AND TRANSPORTATION ENGINEERING CONSULTANT SERVICES WITH:**

3 **1. Kimley-Horn and Associates, Inc.** 3 **2. Kittelson & Associates, Inc.**
3 **3. Miller Legg & Associates, Inc.** 3 **4. T.Y. Lin International**

PUR

Approved Comm. Mtg. on **AUGUST 21, 2012** **CAM# 12-1213** ITEM **#13**

Routing Origin: ☒ CAO ☐ ENG. ☐ COMM. DEV. ☐ OTHER _____

Also attached: ☒ copy of CAR ☒ copy of document ☐ ACM Form ☐ #_____ originals

By: Linda Blanco forwarded to: **BARBARA HOWELL, PUBLIC WORKS ENGINEERING**

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**1.)** Approved as to Content: Albert Cah
Department Director

Capital Improvements defined as having a life of at least 10 years and a cost of at least $50,000 and shall mean improvements to real property (land, buildings, fixtures) that add value and/or extend useful life, inc. major repairs such as roof replacement, etc. Term "Real Property" include: land, real estate, realty, real.

Please Check the proper box: CIP FUNDED ☐ YES ☒ NO
Capital Improvement Projects

**2.)** Approved as to Funds Available: by N/A Date:_____
Finance Director

Amount Required by Contract/Agreement $_____ Dept./Div. _____

FUNDING SOURCE: Index/Sub-object _____ Project # _____

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**3.)** City Attorney's Office: Approved as to Form 3 of each Originals to City Mgr. By: CAO

**CARRIE L. SARVER** CS

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**4.)** Approved as to content: Assistant City Manager:

By: _____ By: _____ '12 AUG 23 PM 4:39
Stanley Hawthorne, Assistant City Manager Susanne Torriente, Assistant City Manager

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**5.)** City Manager: Please sign as indicated and forward 3 of each originals to Mayor.

**6.)** Mayor: Please sign as indicated and forward 3 of each originals to Clerk.

**7.)** To City Clerk for attestation and City seal.

## INSTRUCTIONS TO CLERK'S OFFICE

**8.)** City Clerk: retains one original of document and forwards 2 of each originals to:

**RICK ANDREWS, PROCUREMENT**

☐ Copy of document to _____ ☒ **Original Route form to Linda Blanco, CAO**

☐ Attach ____ certified copies of Reso. #_____ ☐ Fill-in date

L:\A-LMB\Amendments to Agmts for Prof Traffic Consulting.doc

**FIRST AMENDMENT TO AGREEMENT**

THIS IS A FIRST AMENDMENT TO AGREEMENT, made and entered into this 21st day of August 2012 by and between:

CITY OF FORT LAUDERDALE, a municipal
Corporation of the State of Florida,
(hereinafter referred to as "CITY")

and

Kittelson & Associates, Inc., an Oregon Corporation
authorized to do business in the State of Florida
(hereinafter referred to as 'CONSULTANT")

WHEREAS, the City Commission of the City of Fort Lauderdale, Florida at its meeting of July 6, 2011, authorized the proper officials by motion to execute an Agreement between CONSULTANT and CITY authorizing the performance of services in connection with a continuing contract for Professional Traffic and Transportation Engineering Consultant Services (the "Agreement"); and

WHEREAS, at its meeting of August 21, 2012, the City Commission, by motion, authorized the proper City Officials to execute this Amendment to Agreement;

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants, agreements, terms, and conditions contained herein, do agree as to the following:

**Section 1.** The foregoing recitals are true and correct and are made a part of this Amendment to Agreement.

**Section 2.** That Article 1, titled "Definitions and Identifications," of the Agreement is hereby replaced and amended to read as follows:

ARTICLE 1
DEFINITIONS AND IDENTIFICATIONS

For the purposes of this Agreement and the various covenants, conditions, terms and provisions which follow, the DEFINITIONS and IDENTIFICATIONS set forth below are assumed to be true and correct and are therefore agreed upon by the parties.

1.1 AGREEMENT: Means this document between the CITY and CONSULTANT dated July 6, 2011 and any duly authorized and executed Amendments to Agreement.

1.2 CERTIFICATE FOR PAYMENT: A statement by CONSULTANT based on observations at the site and on review of documentation submitted by the Contractor that by its issuance recommends that CITY pay identified amounts to the Contractor for services performed by the Contractor at the Project.

1.3 CHANGE ORDER: A written order to the Contractor, addressing modifications to the Contract Documents, and establishing the basis of payment and contract time adjustment, if any, for the work affected by such modifications. The CONSULTANT may review and make recommendations to the CITY on any proposed Change Orders, for approval or other appropriate action by the CITY.

1.4 CITY: The City of Fort Lauderdale, a municipal corporation of the State of Florida.

1.5 CITY MANAGER: The City Manager of the City of Fort Lauderdale, Florida.

1.6 COMMISSION: The City Commission of the City of Fort Lauderdale, Florida, which is the governing body of the CITY government.

1.7 CONSTRUCTION COST: The total construction cost to CITY of all elements of the Project designed or specified by the CONSULTANT.

1.8 CONSTRUCTION COST LIMIT: A maximum construction cost limit established by the CITY defining the maximum budget amount to which the final construction documents should be designed so as not to exceed.

1.9 CONSTRUCTION DOCUMENTS: Those working drawings and specifications and other writings setting forth in detail and prescribing the work to be done, the materials, workmanship and other requirements for construction of the entire Project, including any bidding information.

1.10 CONSULTANT: Kittelson & Associates Inc., the CONSULTANT selected to perform professional services pursuant to this Agreement.

1.11 CONTRACT ADMINISTRATOR: The Public Works Director of the City of Fort Lauderdale, or his designee. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the Contract Administrator.

1.12 CONTRACTOR: One or more individuals, firms, corporations or other entities identified as such by a written agreement with CITY ("Contract for Construction") to perform the construction services required to complete the Project.

1.13 ERROR: A mistake in design, plans and/or specifications that incorporates into those documents an element that is incorrect and is deficient from the standard of

care that a professional engineer in similar circumstances, working on a similar project and location would have exercised. Also includes mistakes in design, plans, specifications and/or shop drawings review that lead to materials and/or equipment being ordered and/or delivered where additional costs are incurred.

1.14 FINAL STATEMENT OF PROBABLE CONSTRUCTION COSTS: A final cost estimate prepared by CONSULTANT during the Final Design Phase of the Project, based upon the final detailed Construction Documents of the Project.

1.15 NOTICE TO PROCEED: A written Notice to Proceed with the Project issued by the Contract Administrator.

1.16 OMISSION: A scope of work missed by the CONSULTANT that is necessary for the Project, including a quantity miscalculation, which was later discovered and added by Change Order and which is deficient from the standard of care that a professional engineer in similar circumstances, working on a similar project and location would have exercised. Also includes design that was wrong, but was corrected after award to the Contractor, but before the construction process was materially affected.

1.17 ORIGINAL CONTRACT PRICE: The original bid and/or contract price as awarded to a Contractor based upon the CONSULTANT'S final detailed Construction Documents of the Project.

1.18 PLANS AND SPECIFICATIONS: The documents setting forth the final design plans and specifications of the Project, including architectural, civil, structural, mechanical, electrical, communications and security systems, materials, lighting equipment, site and landscape design, and other essentials as may be appropriate, all as approved by CITY as provided in this Agreement.

1.19 PRELIMINARY PLANS: The documents prepared by the CONSULTANT consisting of preliminary design drawings, renderings and other documents to fix and describe the size and character of the entire Project, and the relationship of Project components to one another and existing features.

1.20 PROJECT: An agreed scope of work for accomplishing a specific plan or development. This may include, but is not limited to, planning, architectural, engineering, and construction support services. The services to be provided by the CONSULTANT shall be as defined in this Agreement and further detailed in Task Orders for individual projects or combinations of projects. The Project planning, design and construction may occur in separate phases and Task Orders at the CITY's discretion.

1.21 RESIDENT PROJECT REPRESENTATIVE: Individuals or entities selected, employed, compensated by and directed to perform services on behalf of CITY, in monitoring the Construction Phase of the Project to completion.

1.22 TASK ORDER: A document setting forth a detailed scope of services to be performed by CONSULTANT upon authorization of the CITY.

1.23 TIME OF COMPLETION: Time in which the entire work shall be completed for each Task Order.

**Section 3.** That Article 5, titled "TASK ORDERS," of the Agreement is hereby replaced and amended to read as follows:

ARTICLE 5
TASK ORDERS

5.1 The Project will be divided into "Tasks."

5.2 Task Orders shall be jointly prepared by the CITY and CONSULTANT defining the detailed scope of services to be provided for the particular Project. Each Task Order shall be separately numbered and approved in accordance with this Agreement and all applicable CITY code requirements.

5.3 Under all Task Orders and Projects, CITY may require the CONSULTANT, by specific written authorization, and for mutually agreed upon additional compensation, to provide or assist in obtaining one or more of the following special services. These services may include, at the discretion of the CITY, the following items:

5.3.1 Providing additional copies of reports, contract drawings and documents; and

5.3.2 Assisting CITY with litigation support services arising from the planning, development, or construction.

5.4 Prior to initiating the performance of any services under this Agreement, CONSULTANT must receive a written Notice to Proceed and Purchase Order from the CITY. The CONSULTANT must receive the approval of the Contract Administrator or his designee in writing prior to beginning the performance of services in any subsequent Task Order under this Agreement.

5.5 If, in the opinion of the CITY, the CONSULTANT is improperly performing the services under a specific Task Order, or if at any time the CITY shall be of the opinion that said Task Order is being unnecessarily delayed and will not be completed within the agreed upon time, the CITY shall notify the CONSULTANT in writing. The CONSULTANT has within ten (10) working days thereafter to take such measures as will, in the judgment of the CITY, ensure satisfactory performance and completion of the work. If the CONSULTANT fails to cure within the ten (10) working days, the CITY may notify the CONSULTANT to discontinue all

work under the specified Task Order. The CONSULTANT shall immediately respect said notice and stop said work and cease to have any rights in the possession of the work and shall forfeit the Task Order and any remaining monies. The CITY may then decide, after City Commission approval, to issue a new Task Order for the uncompleted work to another consultant using the remaining funds. Any excess costs arising therefrom over and above the original Task Order price shall be charged against CONSULTANT, as the original CONSULTANT.

**Section 4.** That Article 7, titled "Compensation and Method of Payment," of the Agreement is hereby replaced and amended to read as follows:

ARTICLE 7
COMPENSATION AND METHOD OF PAYMENT

7.1 AMOUNT AND METHOD OF COMPENSATION

The method of compensation for each Task Order shall be not to exceed as agreed upon per Task Order and described in Section 7.1.1 below.

7.1.1 Not To Exceed Amount Compensation

CITY agrees to pay CONSULTANT as compensation for performance of all services as related to each Task Order under the terms of this Agreement a Not to Exceed Amount as agreed upon per Task Order. This compensation does not include Reimbursables as described in Section 7.2. It is agreed that the method of compensation is that of "Not to Exceed Amount" which means that CONSULTANT shall perform all services set forth in each Task Order for total compensation in the amount of or less than that stated total. The hourly rate-billing schedule to be used in negotiating each Task Order is attached as Exhibit "B-1" to this Agreement. As described in Section 8.1, no modification, amendment, or alteration to Exhibit "B" shall be effective unless contained in a written document prepared with the same formality as this Agreement and executed by the CITY and CONSULTANT.

A not to exceed proposal shall be accompanied by the CONSULTANT's estimate. The estimate shall detail the direct labor costs by categories of employees, work hours, and hourly rate; overhead; direct non-salary expenses including reimbursables; and profit, or as required by individual Task Order.

7.2 REIMBURSABLES

7.2.1 Direct non-salary expenses, entitled Reimbursables, directly attributable to the Project will be charged at actual cost. Reimbursable expenses are in addition to the compensation for basic services and include actual expenditures made by the CONSULTANT and the CONSULTANT'S

employees directly attributable to the Project and will be charged at actual cost, without reference to the professional service fees above. CITY shall not withhold retainage from payments for Reimbursable Expenses. CONSULTANT shall be compensated for Reimbursables associated with a particular Task Order only up to the amount allocated for such Task Order. Any reimbursable or portion thereof which, when added to the Reimbursables related to a particular Task Order previously billed, exceeds the amount allocated for such Task Order shall be the responsibility of the CONSULTANT unless otherwise agreed to in writing by the Contract Administrator. Travel and subsistence expenses for the CONSULTANT, his staff and subconsultants and communication expenses, long distance telephone, courier and express mail between CONSULTANT's and subconsultants' various offices are not reimbursable under this Agreement. Reimbursables shall include only the following listed expenses unless authorized in writing by the Contract Administrator:

A. Cost of reproduction, postage and handling of drawings and specifications which are required to deliver services set forth in this Agreement, excluding reproductions for the office use of the CONSULTANT. Reimbursable printing and photocopying expenses shall include only those prints or photocopies of original documents which are (i) exchanged among CONSULTANT, CITY and other third parties retained or employed by any of them or (ii) submitted to CITY for review, approval or further distribution. Documents, which are reproduced for CONSULTANT's internal drafts, reviews, or other purposes, are not eligible for reimbursement.

B. Identifiable testing costs approved by Contract Administrator.

C. All permit fees paid to regulatory agencies for approvals directly attributable to the Project. These permit fees do not include those permits required for the construction Contractor.

D. Overnight Delivery/Courier Charges (when CITY requires/requests this service).

7.2.2 Reimbursable subconsultant expenses are limited to the items described above when the subconsultant agreement provides for reimbursable expenses. A detailed statement of expenses must accompany any request for reimbursement. Local travel to and from the Project site or within the Tri-County Area will not be reimbursed.

7.2.3 It is acknowledged and agreed to by CONSULTANT that the dollar limitation set forth in each Task Order is a limitation upon, and describes the maximum extent of CITY's obligation to reimburse CONSULTANT for direct, nonsalary expenses, but does not constitute a limitation, of any sort, upon CONSULTANT's obligation to incur such expenses in the performance of

services hereunder. If CITY or Contract Administrator requests CONSULTANT to incur expenses not contemplated in the amount for Reimbursables, CONSULTANT shall notify Contract Administrator in writing before incurring such expenses. Any such expenses shall be reviewed and approved by CITY prior to incurring such expenses.

7.3 METHOD OF BILLING

7.3.1 Not To Exceed Amount Compensation

CONSULTANT shall submit billings, which are identified by the specific project number on a monthly basis in a timely manner for all salary costs and Reimbursables attributable to the Project. These billings shall identify the nature of the work performed, the total hours of work performed and the employee category of the individuals performing same. Billings shall itemize and summarize Reimbursables by category and identify same as to the personnel incurring the expense and the nature of the work with which such expense was associated. Where prior written approval by Contract Administrator is required for Reimbursables, a copy of said approval shall accompany the billing for such Reimbursables. The statement shall show a summary of salary costs and Reimbursables with accrual of the total and credits for portions paid previously. External Reimbursables and subconsultant fees must be documented by copies of invoices or receipts, which describe the nature of the expenses and contain a project number or other identifier, which clearly indicates the expense, as identifiable to the Project. Except for meals and travel expenses, it shall be deemed unacceptable for the CONSULTANT to modify the invoice or receipt by adding a project number or other identifier. Internal expenses must be documented by appropriate CONSULTANT's cost accounting forms with a summary of charges by category. When requested, CONSULTANT shall provide backup for past and current invoices that records hours and salary costs by employee category, Reimbursables by category, and subconsultant fees on a task basis, so that total hours and costs by task may be determined.

7.4 METHOD OF PAYMENT

7.4.1 CITY shall pay CONSULTANT in accordance with the Florida Prompt Payment Act. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by Contract Administrator.

7.4.2 CITY will review CONSULTANT's invoices and, if inaccuracies or errors are discovered in said invoice, CITY will inform CONSULTANT within ten (10) working days by fax and/or by email of such inaccuracies or errors and

request that revised copies of all such documents be re-submitted by CONSULTANT to CITY.

7.4.3 Upon mutual agreement by both CITY and CONSULTANT, payment shall be made by CITY to CONSULTANT using a CITY P-Card. If payment is not made using a CITY P-Card, payment will be made to CONSULTANT at the following address:

Kittelson & Associates, Inc.
P.O. Box 40847
Portland, OR 97240

**Section 5.** That Article 8, titled "Additional Services and Changes in Scope of Services," of the Agreement is hereby replaced and amended to read as follows:

ARTICLE 8
AMENDMENTS AND CHANGES IN SCOPE OF SERVICES

8.1 No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written Amendment prepared with the same formality as this Agreement and executed by the CITY and CONSULTANT.

8.2 CITY or CONSULTANT may request changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under a Task Order. Such changes must be contained in a written amendment, executed by the parties hereto, with the same formality and of equal dignity herewith, prior to any deviation from the terms of the Task Order including the initiation of any additional services. CITY shall compensate CONSULTANT for such additional services as provided in Article 7.

8.3 In the event a dispute between the Contract Administrator and CONSULTANT arises over whether requested services constitute additional services and such dispute cannot be resolved by the Contract Administrator and CONSULTANT, such dispute shall be promptly presented to the City Manager for resolution. The City Manager's decision shall be final and binding on the parties for amounts in the aggregate under $100,000 per project. In the event of a dispute in an amount over $100,000, the parties agree to use their best efforts to settle such dispute. To this effect, they shall consult and negotiate with each other, in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If they do not reach such solution within a period of sixty (60) days, then upon notice to the other, either party may commence litigation to resolve the dispute in Broward County, Florida. Any resolution in favor of CONSULTANT shall be set forth in a written document in accordance with Section 8.2 above. During the pendency of any dispute, CONSULTANT shall promptly perform the disputed services.

**Section 6.** That Article 9, titled "Amendments," of the Agreement is hereby replaced and amended to read as follows:

ARTICLE 9
CONSULTANT'S RESPONSIBILITIES

9.1 The CONSULTANT, following the CITY's approval of the Construction Documents and of the Final Statement of Construction Cost, shall, when so directed and authorized by the CITY, assist the CITY in obtaining bids or negotiated proposals and assist in awarding and preparing contracts for construction. If requested, the CONSULTANT shall review and analyze the proposals received by the CITY, and shall make a recommendation for any award based on CITY's Purchasing Ordinance.

9.2 Should the lowest responsible, responsive proposal exceed the Final Statement of Probable Construction Costs by less than 10%, CONSULTANT, at no additional cost to the CITY, shall meet with the CITY's representatives and work to reduce costs to bring the Original Contract Price within the Final Statement of Probable Construction Costs. Should the lowest responsible, responsive proposal exceed the Final Statement of Probable Construction Costs by 10% or more, CONSULTANT shall, at the CITY's direction, redesign each Project and/or work with the CITY to reduce the costs to within the Final Statement of Probable Construction Costs at no additional expense to the CITY. If negotiations between the CITY and the CONSULTANT have not commenced within three months after completion of the final design phase, or if industry-wide prices are changed because of unusual or unanticipated events affecting the general level of prices or times of delivery in the construction industry, the established Construction Cost Limit may be adjusted in accordance with the applicable change in the Construction Cost Index for Twenty Cities from the date of completion of the final design phase and the date on which proposals are sought, as published monthly in "Engineering News Record". If each Project scope and design is expanded by the CITY after the CONSULTANT renders the estimated Construction Cost of the Plans and Specifications, the CONSULTANT shall not be responsible for any redesign without compensation.

9.3 The CONSULTANT shall provide the CITY with a list of recommended, prospective proposers.

9.4 The CONSULTANT shall attend all pre-proposal conferences.

9.5 The CONSULTANT shall recommend any addenda, through the Contract Administrator, as appropriate to clarify, correct, or change proposal documents.

9.6 If pre-qualification of proposers is required as set forth in the request for proposal, CONSULTANT shall assist the CITY, if requested, in developing qualification

criteria, review qualifications and recommend acceptance or rejection of the proposers. If requested, CONSULTANT shall evaluate proposals and proposers, and make recommendations regarding any award by the CITY.

9.7 The CITY shall make decisions on all claims regarding interpretation of the Construction Documents, and on all other matters relating to the execution and progress of the work after receiving a recommendation from the CONSULTANT. The CONSULTANT shall check and approve samples, schedules, shop drawings and other submissions for conformance with the concept of each Project, and for compliance with the information given by the Construction Documents. The CONSULTANT may also prepare Change Orders, assemble written guarantees required of the Contractor, and approve progress payments to the Contractor based on each Project Schedule of Values and the percentage of work completed.

9.8 The CITY shall maintain a record of all Change Orders which shall be categorized according to the various types, causes, etc. that it may be determined are useful or necessary for its purpose. Among those shall be Change Orders identified as architectural/engineering errors or omissions.

9.8.1 Unless otherwise agreed by both parties in writing, it is specifically agreed that any change to the work identified as an Error on the part of the CONSULTANT shall be considered for purposes of this Agreement to be an additional cost to the CITY which would not be incurred without the Error.

9.8.2 Unless otherwise agreed by both parties in writing, it is further specifically agreed for purposes of this Agreement that fifteen percent (15%) of the cost of Change Orders for any item categorized as an Omission shall be considered an additional cost to the CITY which would not be incurred without the Omission. So long as the total of those two numbers (Change Order costs of Errors plus fifteen percent (15%) of Omissions) remains less than two percent (2%) of the total Construction Cost of the Project, the CITY shall not look to the CONSULTANT for reimbursement for Errors and Omissions.

9.8.3 Should the sum of the two as defined above (cost of Errors plus fifteen percent (15%) of the cost of Omissions) exceed two percent (2%) of the Construction Cost, the CITY shall recover the full and total additional cost to the CITY as a result of CONSULTANT's Errors and Omissions from the CONSULTANT, that being defined as the cost of Errors plus fifteen percent (15%) of the cost of Omissions above two percent (2%) of the Construction Cost.

9.8.4 To obtain such recovery, the CITY shall deduct from the CONSULTANT's fee a sufficient amount to recover all such additional cost to the CITY.

9.8.5 In executing this Agreement, the CONSULTANT acknowledges acceptance of these calculations and to the CITY's right to recover same as stated above. The recovery of additional costs to the CITY under this paragraph shall not limit or preclude recovery for other separate and/or additional damages which the CITY may otherwise incur.

9.8.6 The Contract Administrator's decision as to whether a Change Order is caused by an Error or caused by an Omission, taking into consideration industry standards, shall be final and binding on both parties for amounts in the aggregate under $100,000 per project. In the event of a dispute in an amount over $100,000, the parties agree to use their best efforts to settle such dispute. To this effect, they shall consult and negotiate with each other, in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If they do not reach such solution within a period of sixty (60) days, then upon notice to the other, either party may commence litigation to resolve the dispute in Broward County, Florida.

**Section 7.** That Article 11.2, titled "TERMINATION," of the Agreement is hereby replaced and amended to read as follows:

11.2 TERMINATION

11.2.1 It is expressly understood and agreed that the CITY may terminate this Agreement at any time by giving the CONSULTANT notice by telephone, or personally to one of the officers of the CONSULTANT, confirmed by certified mail, return receipt requested, to the principal office of the CONSULTANT. In the event that the Agreement is terminated, the CONSULTANT shall be entitled to be compensated for the services rendered from the date of execution of the Agreement up to the time of termination. Such compensation shall be based on the fee as set forth above, wherever possible. For those portions of services rendered to which the applicable fee cannot be applied, payment shall be based upon the appropriate rates for the actual time spent on the project. In the event that the CONSULTANT abandons this Agreement or through violation of any of the terms and conditions of this Agreement, causes it to be terminated, CONSULTANT shall indemnify the CITY against any loss pertaining to this termination. All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by CONSULTANT shall become the property of CITY and shall be delivered by CONSULTANT to the CITY within five (5) days of CITY's request. Upon payment of such sum by CITY to CONSULTANT, CITY shall have no further duties or obligations pursuant to or arising from this Agreement. CONSULTANT shall have the right to terminate this Agreement upon the substantial breach by the CITY of its obligations under this Agreement such as unreasonable delay in payment or non-payment of undisputed amounts.

11.2.2 This Agreement may also be terminated by CITY upon such notice as CITY deems appropriate in the event CITY or Contract Administrator determines that termination is necessary to protect the public health, safety, or welfare.

11.2.3 Notice of termination shall be provided in accordance with Section 11.26, NOTICES, except that Contract Administrator may provide a prior verbal stop work order if the Contract Administrator deems a stop work order of this Agreement in whole or in part is necessary to protect the public's health, safety, or welfare. A verbal stop work order shall be promptly confirmed in writing as set forth in Section 11.26, NOTICES.

11.2.4 In the event this Agreement is terminated for convenience, CONSULTANT shall be paid for any services performed to the date the Agreement is terminated. Compensation shall be withheld until all documents specified in Section 11.3 of this Agreement are provided to the CITY. Upon being notified of CITY's election to terminate, CONSULTANT shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. Under no circumstances shall CITY make payment for services which have not been performed.

**Section 8.** That Article 11.10, titled "INSURANCE," of the Agreement is hereby replaced and amended to read as follows:

11.10 INSURANCE

11.10.1 CONSULTANT shall provide and shall require all of its sub-consultants and sub-contractors to provide, pay for, and maintain in force at all times during the term of the Agreement, such insurance, including Commercial General Liability Insurance, Business Automobile Liability Insurance, Workers' Compensation Insurance, Employer's Liability Insurance, and Professional Liability Insurance, as stated below. Such policy or policies shall be issued by companies authorized to do business in the State of Florida and having agents upon whom service of process may be made in the State of Florida.

A. The City is required to be named as additional insured on the Commercial General Liability insurance policy. BINDERS ARE UNACCEPTABLE. The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of the CONSULTANT. Any exclusions or provisions in the insurance maintained by the CONSULTANT that precludes coverage for the work contemplated in this Agreement shall be deemed unacceptable, and shall be considered a breach of contract.

B. The CONSULTANT shall provide the CITY an original Certificate of Insurance for policies required by Article 11. All certificates shall state that the CITY shall be given ten (10) days notice prior to expiration or cancellation of the policy. The insurance provided shall be endorsed or amended to comply with this notice requirement. In the event that the insurer is unable to accommodate, it shall be the responsibility of the CONSULTANT to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested and addressed to the Finance Department. Such policies shall: (1) name the insurance company or companies affording coverage acceptable to the CITY, (2) state the effective and expiration dates of the policies, (3) include special endorsements where necessary. Such policies provided under Article 11 shall not be affected by any other policy of insurance, which the CITY may carry in its own name.

C. CONSULTANT shall as a condition precedent of this Agreement, furnish to the City of Fort Lauderdale, c/o Project Manager, 100 N. Andrews Avenue, Fort Lauderdale, FL 33301, Certificate(s) of Insurance upon execution of this Agreement, which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

11.10.2 COMMERCIAL GENERAL LIABILITY

A. Limits of Liability:

| | |
|---|---|
| Bodily Injury and Property Damage - Combined Single Limit | |
| Each Occurrence | $1,000,000 |
| Project Aggregate | $1,000,000 |
| [Limits to be reviewed by City for projects over $1M] | |
| General Aggregate | $2,000,000 |
| Personal Injury | $1,000,000 |
| Products/Completed Operations | $1,000,000 |

B. Endorsements Required:
City of Fort Lauderdale included as an Additional Insured
Broad Form Contractual Liability
Waiver of Subrogation
Premises/Operations
Products/Completed Operations
Independent Contractors
Owners and Contractors Protective Liability

11.10.3 BUSINESS AUTOMOBILE LIABILITY

A. Limits of Liability:
Bodily Injury and Property Damage - Combined Single Limit

All Autos used in completing the contract
Including Hired, Borrowed or Non-Owned Autos
Any One Accident $1,000,000

B. Endorsements Required:
Waiver of Subrogation

11.10.4 WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY

Limits: Workers' Compensation – Per Florida Statute 440
Employers' Liability - $500,000

Any firm performing work on behalf of the City of Fort Lauderdale must provide Workers' Compensation insurance. Exceptions and exemptions can only be made if they are in accordance with Florida Statute. For additional information contact the Department of Financial Services, Workers' Compensation Division at (850) 413-1601 or on the web at www.fldfs.com.

Consultant must be in compliance with all applicable State and Federal workers' compensation laws, including the U.S. Long Shore Harbor Workers' Act or Jones Act.

11.10.5 PROFESSIONAL LIABILITY/ERRORS AND OMISSIONS COVERAGE

| | |
|---|---|
| Each Claim | $1,000,000 |
| General Aggregate Limit | $2,000,000 |
| Deductible- not to exceed $100,000 | |

11.10.6 All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The Consultant's insurance must be provided by an A.M. Best's "A-" rated or better insurance company authorized to issue insurance policies in the State of Florida, subject to approval by the City's Risk Manager. Any exclusions or provisions in the insurance maintained by the Consultant that precludes coverage for work contemplated in this project shall be deemed unacceptable, and shall be considered breach of contract.
Compliance with the foregoing requirements shall not relieve the CONSULTANT of their liability and obligation under this section or under any other section of this Agreement.

The CONSULTANT shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the Project. If insurance certificates are scheduled to expire during the contractual period, the CONSULTANT shall be responsible for submitting new or renewed insurance certificates to the CITY at a

minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates that cover the contractual period, the CITY shall:

A. Suspend the Agreement until such time as the new or renewed certificates are received by the CITY.

B. The CITY may, at its sole discretion, terminate the Agreement for cause and seek damages from the CONSULTANT in conjunction with the violation of the terms and conditions of the Agreement

**Section 9.** That Article 11.26, titled "NOTICES," of the Agreement is hereby replaced and amended to read as follows:

11.26 NOTICES

Whenever either party desires to give notice unto the other, 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, at the place last specified, and the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice, to-wit:

CITY:
City Engineer
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, FL 33301
Telephone: (954) 828-5772

With a copy to:
City Manager
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, FL 33301
Telephone: (954) 828-5364

With a copy to:
City Attorney
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, FL 33301
Telephone: (954) 828-5038

CONSULTANT:
John Zegeer, P.E. PTOE
Senior Principal
110 East Broward Boulevard, Suite 2410
Fort Lauderdale, FL 33301
Office: (954) 828-1730

Fax: (954) 828-1787
Email: jzegeer@kittelson.com

**Section 12.** In all other respects, the original Agreement between the parties dated July 6, 2011 and any preceding amendments not in conflict herewith are hereby ratified, reaffirmed and shall remain in full force and effect as provided by their terms.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**
**[SIGNATURE PAGES FOLLOW]**

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals for this First Amendment to Agreement the day and year first written above.

**CITY:**

WITNESSES:

CITY OF FORT LAUDERDALE, a municipal corporation of the State of Florida

Jeannette A. Johnson
[Witness signature]

Jeannette A. Johnson
[Print Name]

[Witness signature]

[Print Name]

By _____
JOHN P. "JACK" SEILER, Mayor

By _____
LEE R. FELDMAN, City Manager

ATTEST:

_____
JONDA K. JOSEPH, City Clerk

Approved as to form:

_____
CARRIE L. SARVER
Assistant City Attorney

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**CONSULTANT:**

WITNESSES:

Kittelson & Associates, Inc., an Oregon Corporation authorized to do business in the State of Florida

Rohit Rai
ROHIT RAI
Print Name

By John D Zegeer
John D Zegeer
Print Name and Title Senior Principal

Mario Candia Martinez
Print Name

(CORPORATE SEAL)

ATTEST:

BY: _____

_____
Print Name of Corporate Secretary

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this 30 day of MAY, 2012 by JOHN ZEGEER and _____ as SENIOR PRINCIPAL and _____ respectively, _____ on behalf of the corporation.
Who is: ☑ Personally Known or ☐ Produced Identification:
Type of ID Produced _____

(NOTARY SEAL)

Beverley King
Notary Public, State of Florida
BEVERLEY KING
Name of Notary Typed, Printed or Stamped

Notary Public State of Florida
Beverley King
My Commission EE 182477
Expires 06/13/2016