

CITY OF NORTH MIAMI
PROFESSIONAL SERVICES AGREEMENT
(Climate Change Vulnerability Assessment and Adaptation Plan)

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered into on _____, between the **City of North Miami**, a Florida municipal corporation with a principal address of 776 NE 125th Street, North Miami, Florida 33161 (“City”), and **UNC ASHEVILLE**, a self-insured entity of the State of North Carolina, having its principal business office at One University Heights, Asheville, NC 28804 (“Contractor”). The City and Contractor shall collectively be referred to as the “Parties”, and each may individually be referred to as a “Party”.

RECITALS

WHEREAS, on September 14, 2020, the City of North Miami (“City”) was awarded a grant in the amount of Seventy-Five Thousand Dollars (\$75,000.00) from the Florida Resilient Coastlines Program (“FRCP”), the Department of Environmental Protection (“DEP”), and the Office of Resilience and Coastal Protection (“RCP”) to provide an in-depth analysis of climate changes that are possible for the City; and

WHEREAS, NEMAC+FernLeaf (“NF”) is composed of two entities—the University of North Carolina Asheville’s National Environmental Modeling and Analysis Center (“NEMAC”) and FernLeaf Interactive, together form a public-private partnership which provides resilience solutions; and

WHEREAS, the City desires to engage NF, by entering into an Agreement with the University of North Carolina Asheville (“Contractor”), to develop a Climate Change Vulnerability Assessment and Adaptation Plan (“Services”) in accordance with the terms of the City’s grant; and

WHEREAS, on January 12, 2021, the Mayor and City Council of North Miami adopted Resolution No. 2021-R-04 authoring the execution of a Professional Services Agreement with Contractor for the provision of Services.

NOW, THEREFORE, in consideration of the mutual terms and conditions set forth herein and other good and valuable consideration, the Parties hereto agree as follows:

ARTICLE 1 - RECITALS

1.1 The recitals are true and correct and are hereby incorporated into and made a part of this Agreement.

ARTICLE 2 - CONTRACT DOCUMENTS

2.1 The following documents are incorporated into and made a part of this Agreement (collectively referred to as the "Contract Documents"):

- 2.1.1 The City's Grant Agreement with the Florida Department of Environmental Protection, attached hereto by reference;
- 2.1.2 Consultant's Proposal ("Proposal"), attached hereto as "Exhibit A";
- 2.1.3 All additional documents which are required to be submitted by Contractor under this Agreement.

2.2 In the event of any conflict between the Contract Documents or any ambiguity or missing specification or instruction, the following priority is hereby established:

- 2.2.1 Specific written direction from the City Manager or City Manager's designee.
- 2.2.2 This Agreement.
- 2.2.3 The Agreement.

ARTICLE 3 - TIME FOR PERFORMANCE

3.1 Subject to authorized adjustments, the Contractor warrants to complete the Services within one hundred eighty (180) days from the date of the notice to proceed, unless terminated earlier by the City. Contractor agrees that the performance of Services shall be pursued on schedule, diligently and uninterrupted at a rate of progress which will ensure full completion within the agreed time for performance. Failure to achieve timely final completion shall be regarded as a material breach of this Agreement and shall be subject to the appropriate remedies available at law. This Agreement shall remain in full force and effect until the completion of Services by the Contractor and the acceptance of Services by the City.

3.2 Minor adjustments to the time for performance which are approved in writing by the City in advance, shall not constitute non-performance by Contractor. Any impact on the time for performance shall be determined and the time schedule for completion of Services will be modified accordingly.

3.3 When, in the opinion of the City, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform Services or any portion thereof, the City may request that the Contractor, within a reasonable time frame set forth in the City's request, provide adequate assurances to the City in writing, of Contractor's ability to perform in accordance with terms of this Agreement. In the event that the Contractor fails to provide the City the requested assurances within the prescribed time frame, the City may treat such failure as a repudiation or breach of this Agreement, and resort to any remedy for breach provided for in this Agreement or at law.

3.4 Notwithstanding the provisions of this Article 3, this Agreement may be terminated by the City at any time, with or without cause.

ARTICLE 4 - COMPENSATION

4.1 Contractor shall be paid an amount not to exceed Seventy-Five Thousand Dollars (\$75,000.00) as full compensation for Services, pursuant to Contract Documents. Funding for this Agreement is contingent on the availability of funds and the Agreement is subject to amendment or termination due to lack of funds or a reduction of funds, upon ten (10) days written notice to Contractor.

4.2 Consultant shall provide the City with detailed invoices including a description of the services rendered, breakdown of hours spent on tasks, and the number of employees assigned to a task.

4.3 The City shall pay Consultant within forty-five (45) days of receipt of payment from DEP.

4.4 All payments to Consultant are contingent on DEP approval and payment to the City.

4.5 Funding for this Agreement is contingent on the availability of funds and the Agreement is subject to amendment or termination due to lack of funds or a reduction of funds, upon ten (10) days written notice to Consultant.

ARTICLE 5 - SCOPE OF SERVICES

5.1 Contractor agrees to perform Services for the benefit of the City under the special terms, schedules, and conditions set forth in the Contract Documents. Contractor shall perform Services in accordance with that degree of care and skill ordinarily exercised by reputable members of its profession.

5.2 One or more changes to the Services within the general scope of this Agreement may be ordered by Change Order. A Change Order shall mean a written order to the Contractor executed by the Parties after execution of this Agreement. The Contractor shall proceed with any such changes, and they shall be accomplished in strict accordance with the Contract Documents and the terms and conditions described in this Agreement.

5.3 Consultant represents and warrants to the City that: (i) Consultant possesses all qualifications, licenses and expertise required in the provision of Services, with personnel fully licensed by the State of Florida; (ii) Consultant is not delinquent in the payment of any sums due the City, including payment of permit fees, local business taxes, or in the performance of any obligations to the City; (iii) all personnel assigned to perform work shall be, at all times during the term hereof, fully qualified and trained to perform the tasks assigned to each; (iv) the Services will be performed in the manner as described in the Contract Documents for the budgeted amounts, rates and schedules; and (v) the person executing this Agreement on behalf of Consultant is duly authorized to execute same and fully bind Consultant as a Party to this Agreement.

5.4 Consultant agrees and understands that: (i) any and all subconsultants used by Consultant shall be paid by Consultant and not paid directly by the City; and (ii) any and all liabilities

regarding payment to or use of subconsultants for any of the work related to this Agreement shall be borne solely by Consultant. Any work performed for Consultant by a subconsultant will be pursuant to an appropriate agreement between Consultant and subconsultant which specifically binds the subconsultant to all applicable terms and conditions of the Contract Documents.

5.5 Consultant warrants that any and all work, materials, services or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result, will be supplied by the Consultant at its own cost, whether or not specifically called for.

5.6 Consultant warrants and accepts that any and all work, materials, services or equipment necessitated by the inspections of City and/or Miami-Dade County agencies, or other regulatory agencies as are applicable, to bring the Services into conformity with the Contract Documents and all applicable laws, codes, regulations, procedures, or considered inside the contemplation of the Contract Documents, shall be deemed the responsibility of the Consultant at no additional cost to the City.

5.7 Consultant acknowledges that this Agreement is contingent on grant funds secured by DEP. As such, all task deliverables are subject to approval by DEP. Consultant is required to cure any and all deficiencies arising from DEP review of task deliverables.

ARTICLE 6 – LIQUIDATED DAMAGES

6.1 It is mutually agreed by and between the Parties hereto that time shall be an essential part of this Agreement, and that in case of the failure on the part of the Contractor to achieve contractually scheduled completion of the milestones established in the Project schedule within the time specified and agreed upon, the City will be damaged thereby.

ARTICLE 7 - INDEPENDENT CONTRACTOR

7.1 The Contractor, its employees and agents shall be deemed to be independent contractors and not agents or employees of the City and shall not attain any rights or benefits under the civil service or pension ordinances of the City, or any rights generally afforded to classified or unclassified employees. The Contractor shall not be deemed entitled to the Florida Workers' Compensation benefits as an employee of the City.

ARTICLE 8 - ERRORS AND OMISSIONS

8.1 Consultant shall be responsible for technically deficient designs, reports, or studies due to Consultant's errors and omissions, and shall promptly correct or replace all such deficient work without cost to City. The Consultant shall also be responsible for all damages resulting from such errors and omissions. Payment in full by the City for Services performed does not constitute a waiver of this representation.

ARTICLE 9 - CITY'S TERMINATION RIGHTS

9.1 The City shall have the right to terminate this Agreement, in its sole discretion at any time, with or without cause, upon ten (10) days written notice to Contractor. In such event, the City shall pay Contractor compensation for Services rendered prior to the effective date of termination. The City shall not be liable to Contractor for any additional compensation, or for any consequential or incidental damages.

ARTICLE 10 - DEFAULT

10.1 In the event the Contractor fails to comply with any provision of this Agreement, the City may declare the Contractor in default by written notification. The City shall have the right to terminate this Agreement if the Contractor fails to cure the default within ten (10) days after receiving notice of default from the City. If the Contractor fails to cure the default, the Contractor will only be compensated for completed Services. In the event partial payment has been made for such Services not completed, the Contractor shall return such sums due to the City within ten (10) days after notice that such sums are due. The Contractor understands and agrees that termination of this Agreement under this section shall not release Contractor from any obligations accruing prior to the effective date of termination.

ARTICLE 11 - INDEMNIFICATION

11.1 To the extent allowed by applicable law, including, but not limited to the North Carolina Tort Claims Act, and without waiving any statutory, constitutional and/or affirmative defenses, UNC Asheville shall indemnify the City of North Miami from and against all losses, liabilities, obligations, damages, penalties, claims, costs, charges and expenses, which may arise in any manner out of agreement.

11.2 The City shall indemnify, defend and hold UNC Asheville, its officers, directors, trustees, employees and agents harmless against any claim, including costs and reasonable attorney's fees, in which UNC Asheville is named as a result of the negligent or intentional acts or failure to act by CNM, its Program participants, its officers, directors, employees or agents (including subcontractors if applicable), while performing its obligations pursuant to this Agreement. Nothing herein is intended to alter or waive the City's entitlement to sovereign immunity, or to extend City's liability beyond the limits established in under state law.

11.2 Nothing contained in this Agreement is any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Chapter 768, Florida Statutes. Additionally, the City does not waive sovereign immunity, and no claim or award against the City shall include attorney's fees, investigative costs or pre-judgment interest.

ARTICLE 12 - INSURANCE

12.1 Contractor is an entity of the State of North Carolina and is self-insured. Contractor will provide documentation of its self-insured status.

ARTICLE 13 - NOTICES

13.1 All notices, demands, correspondence and other communications between the Parties shall be deemed sufficiently given under the terms of this Agreement when dispatched by registered or certified mail, postage prepaid, return receipt requested, addressed as follows or as the same may be changed from time to time:

For Contractor: Director of National Environmental Modeling & Analysis Center
NEMAC
246D Rhoades-Robinson Hall, CPO 2345
1 University Heights
Asheville, NC 28804

For the City: City of North Miami
Attn: City Manager
776 N.E.125th Street
North Miami, Florida 33161

With copy to: City of North Miami
Attn: City Attorney
776 N.E.125th Street
North Miami, Florida 33161

13.2 Either Party may at any time designate a different address and/or contact person by giving notice as provided above to the other Party. Such notices shall be deemed given upon receipt by the addressee.

13.3 In the event there is a change of address and the moving Party fails to provide notice to the other Party, then notice sent as provided in this Article shall constitute adequate notice

ARTICLE 14 - FORCE MAJEURE

14.1 A "Force Majeure Event" shall mean an act of God, act of governmental body or military authority, fire, explosion, power failure, flood, storm, hurricane, sink hole, other natural disasters, epidemic, riot or civil disturbance, war or terrorism, sabotage, insurrection, blockade, or embargo. In the event that either Party is delayed in the performance of any act or obligation pursuant to or required by the Agreement by reason of a Force Majeure Event, the time for required completion of such act or obligation shall be extended by the number of days equal to the total number of days, if any, that such Party is actually delayed by such Force Majeure Event. The Party seeking delay in performance shall give notice to the other Party specifying the anticipated duration of the delay, and if such delay shall extend beyond the duration specified in such notice, additional notice shall be repeated no less than monthly so long as such delay due to a Force Majeure Event continues. Any Party seeking delay in performance due to a Force

Majeure Event shall use its best efforts to rectify any condition causing such delay and shall cooperate with the other Party to overcome any delay that has resulted.

14.2 Contractor further agrees and stipulates that its right to excuse its failure to perform by reason of force majeure shall be conditioned upon giving written notice of its assertion that a Force Majeure delay has commenced within 96 hours after such an occurrence.

ARTICLE 15 - PUBLIC RECORDS

15.1 Contractor understands that the public shall have access, at all reasonable times, to all documents and information pertaining to City contracts, subject to the provisions of Chapter 119, Florida Statutes (2020), and agrees to allow access by the City and the public to all documents subject to disclosure under applicable law.

15.2 The Contractor shall additionally comply with Section 119.0701, Florida Statutes (2014), including without limitation, the following conditions: (1) keep and maintain public records that ordinarily and necessarily would be required by the City to perform this service; (2) provide the public with access to public records on the same terms and conditions as the City would at the cost provided by Chapter 119, Florida Statutes (2020), or as otherwise provided by law; (3) ensure that public records that are exempt or confidential and exempt from disclosure are not disclosed, except as authorized by law; (4) meet all requirements for retaining public records and transfer, at no cost to the City, all public records in its possession upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from disclosure requirements; and (5) all electronically stored public records must be provided to the City in a format compatible with the City's information technology systems.

15.3 It is further understood between the Parties that any information, writings, tapes, Contract Documents, reports or any other matter whatsoever which is given by the City to the Contractor pursuant to this Agreement shall at all times remain the property of the City and shall not be used by the Contractor for any other purposes whatsoever without the written consent of the City.

15.4 In the event the Agreement is terminated, Contractor agrees to provide the City all such documents within Ten (10) Days from the date the Agreement is terminated. All documents developed by Contractor under this Agreement shall be delivered to the City by the Contractor upon completion of the Services and shall become property of the City, without restriction or limitation of its use. The Contractor agrees that all documents generated hereto shall be subject to the applicable provisions of the Public Records Law, under Chapter 119, Florida Statutes (2020).

15.5 IF THE YOU HAVE QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO YOUR DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT FMEDRANDA@NORTHMIAMIFL.GOV , RECORDS CUSTODIAN, CITY OF NORTH MIAMI, 776 N.E. 125 STREET, NORTH MIAMI, FL 33161.

ARTICLE 16 - OWNERSHIP OF DOCUMENTS

16.1 All documents developed by Consultant under this Agreement shall be delivered to the City by the Consultant upon completion of the Services and shall become property of the City, without restriction or limitation of its use. The Consultant agrees that all documents generated hereto shall be subject to the applicable provisions of the Public Records Law, under Chapter 119, Florida Statutes.

16.2 It is further understood by and between the Parties that any information, writings, tapes, Contract Documents, reports or any other matter whatsoever which is given by the City to the Consultant pursuant to this Agreement shall at all times remain the property of the City and shall not be used by the Consultant for any other purposes whatsoever without the written consent of the City.

16.3 In the event the Agreement is terminated, Consultant agrees to provide the City all such documents within ten (10) days from the date the Agreement is terminated.

ARTICLE 17 - CONFLICT OF INTEREST

17.1 Consultant represents and warrants to the City that it has not employed or retained any person or company employed by the City to solicit or secure this Agreement and that it has not offered to pay, paid, or agreed to pay any person any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or in connection with, the award of this Agreement.

17.2 Consultant covenants that no person under its employ who presently exercises any functions or responsibilities on behalf of the City in connection with this Agreement has any personal financial interest, directly or indirectly, with contractors or vendors providing professional services on projects assigned to the Consultant, except as fully disclosed and approved by the City. Consultant further covenants that, in the performance of this Agreement, no person having such conflicting interest shall be employed.

ARTICLE 18 – RETAINAGE

18.1 To ensure Contractor's complete and satisfactory performance of its obligations hereunder, the City shall withhold an amount of up to ten percent (10%) of each payment request submitted by Contractor. Each Invoice submitted by Contractor shall specify the amount of Retainage attributable to, and to be withheld from, amounts due under such Invoice.

18.2 Notwithstanding the above, at such time as the Project is deemed by the City to be at least fifty percent (50%) complete, the City shall reduce to five percent (5%) the amount of retainage withheld from each subsequent progress payment made to the Contractor. For purposes of this Article, the term "50-percent completion" has the meaning set forth in the Contract Documents or, if not defined in the Contract Documents the point at which the City has expended at least fifty percent (50%) of the total cost of the construction services purchased under the Contract,

together with all costs associated with existing change orders and other additions or modifications to the Services provided for under the contract.

18.3 Release of any portion of retainage held by the City shall take place upon written request by the Contractor and in accordance with State of Florida statutory provisions. The final five percent (5%) of the total Project Budget shall only be released at the time of Final Payment following acceptance by the City of project completion, correction of all incomplete or defective work by the Contractor and satisfaction of any damages incurred by the City as a result of the Contractor's failure to satisfactorily complete the work.

ARTICLE 19 - MISCELLANEOUS PROVISIONS

19.1 No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

19.2 All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with this Agreement, as well as all continuing obligations indicated in the Contract Documents, shall survive final payment, completion and acceptance of the Services and termination or completion of the Agreement.

19.3 Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect or limitation of its use.

19.4 This Agreement constitutes the sole and entire agreement between the Parties. No modification or amendments to this Agreement shall be binding on either Party unless in writing and signed by both Parties.

19.5 This Agreement shall be construed and enforced according to the laws of the State of Florida.

19.6 The City reserves the right to audit the records of the Contractor covered by this Agreement at any time during the provision of Services and for a period of three years after final payment is made under this Agreement.

19.7 The Contractor agrees to comply with and observe all applicable federal, state, and local laws, rules, regulations, codes and ordinances, as they may be amended from time to time.

19.8 Services shall not be subcontracted, transferred, conveyed, or assigned under this Agreement in whole or in part to any other person, firm or corporation without the prior written consent of the City.

19.9 The City of North Miami is exempt from Federal Excise and State taxes. The applicable tax exemption number or certificate shall be made available upon request.

19.10 The professional Services to be provided by Contractor pursuant to this Agreement shall be non-exclusive, and nothing herein shall preclude the City from engaging other firms to perform Services.

19.11 This Agreement shall be biding upon the Parties herein, their heirs, executors, legal representatives, successors and assigns.

19.12 Contractor agrees that it shall not discriminate as to race, sex, color, creed, national origin, or disability, in connection with its performance under this Agreement.

19.13 All other terms, conditions and requirements contained in the Contract Documents, which have not been modified by this Agreement, shall remain in full force and effect.

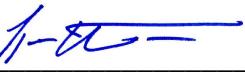
19.14 Contractor covenants that no person under its employ who presently exercises any functions or responsibilities on behalf of the City, in connection with this Agreement, has any personal financial interest, direct or indirect, with contractors or vendors providing professional services on projects assigned to the Contractor. Contractor further covenants that, in the performance of this Agreement, no person having such conflicting interest shall be employed.

19.15 In the event of any dispute arising under or related to this Agreement, the prevailing party shall be entitled to recover all actual attorney fees, costs and expenses incurred by it in connection with that dispute and/or the enforcement of this Agreement, including all such actual attorney fees, costs and expenses at all judicial levels, including appeal, until such dispute is resolved with finality.

19.16 This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their respective proper officers duly authorized the day and year first written above.

ATTEST:
Corporate Secretary or Witness:

By: 

Print Name: Louis V. Toms

Date: 3/17/2021

UNC Asheville
“Contractor”:

By: 

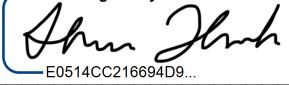
Print Name: Timothy Elgren, Ph.D.

Date: 3/17/21

ATTEST:

City of North Miami, a Florida municipal
Corporation: “City”

By: 
Vanessa Joseph, Esq.
City Clerk

By: 
Theresa Therilus, Esq.
City Manager

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

By: 
Jeff P. H. Cazeau
City Attorney