

**RESOLUTION NO. 2022-042**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF COCONUT CREEK, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE THE INTERLOCAL AGREEMENT BETWEEN BROWARD COUNTY AND THE CITY OF COCONUT CREEK FOR THE SURTAX-FUNDED MUNICIPAL TRANSPORTATION PROJECT: ADA ACCESSIBLE BUS PADS, SURTAX PROJECT NUMBER COCO-024; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, there are one hundred sixty-four (164) designated bus stops within the City of Coconut Creek; and

**WHEREAS**, Broward County and the State of Florida are responsible for seventy-nine (79) of these stops, and the City is responsible for the remaining eighty-five (85) stops; and

**WHEREAS**, the City-maintained bus stops are located on City roads and are utilized by the City's community buses; and

**WHEREAS**, approximately sixty-five (65) of these City-maintained bus stops have been determined to be out of compliance with current Americans with Disabilities Act (ADA) standards; and

**WHEREAS**, engineer design services are necessary to create construction ready plans for these proposed ADA improvements; and

**WHEREAS**, on September 27, 2018, the City Commission adopted Resolution No. 2018-217, approving the Transportation System Surtax Interlocal Agreement (ILA) with Broward County (County), the Broward Metropolitan Planning Organization (MPO), and other Broward County municipalities (Municipalities), for purposes of implementing the transportation surtax; and

**WHEREAS**, on November 6, 2018, Broward County voters approved the

Transportation Surtax Ballot measure to fund transportation projects throughout Broward County such as the City's ADA Accessible Bus Pads project; and

**WHEREAS**, on July 11, 2019, the City Commission adopted Resolution No. 2019-169, approving the First Amendment to the ILA with the County, the MPO, and the Municipalities for purposes of implementing the transportation surtax; and

**WHEREAS**, on January 28, 2021, the City Commission adopted Resolution No. 2021-007, approving the Second Amendment to the ILA with the County, the MPO, and the Municipalities to fully restate the Interlocal Agreement, as amended, including to (i) document the completion of the MPO's first cycle (Cycle 1) of evaluating and ranking municipal capital projects to be funded with Transportation Surtax proceeds, (ii) document the allocation of FY2019, FY2020, and FY2021 Transportation Surtax proceeds for approved Municipal Capital Projects (MCP), (iii) set forth the MPO's criteria going forward for evaluating, ranking, and recommending funding for municipal capital projects in future County annual five-year capital improvement plans, (iv) outline the County's general process for evaluation and ranking of municipal rehabilitation and maintenance projects and document completion of that process for FY2020, (v) document the allocation of FY2019 and FY2020 Transportation Surtax proceeds for approved municipal rehabilitation and maintenance projects, and (vi) document an agreed upon process for funding municipal capital projects, including the timing of funding and the process for adjusting the County's annual five-year capital improvement plans; and for the purpose of documenting the completion of the MPO's Cycle 1 of evaluating and ranking municipal capital projects to be funded with Transportation Surtax proceeds; and

**WHEREAS**, the ADA Accessible Bus Pads, Surtax Project Number COCO-024, is an approved Cycle 1 MCP eligible for funding with surtax proceeds in the amount of \$432,000; and

**WHEREAS**, the City Commission finds it in the best interest of the City to approve the Interlocal Agreement ("Funding Agreement") between Broward County and the City for the surtax-funded municipal transportation project, ADA Accessible Bus Pads, Surtax

Project Number COCO-024 (Exhibit “A,” attached hereto and made a part hereof) (Exhibit “B” consists of the relevant RFQ Specifications and Exhibit “C” consists of the Draft Design Services Contract); and

**WHEREAS**, the City Commission finds it in the best interest of the City to approve the Funding Agreement (Exhibit “A”) and the Bid Specifications and Draft Design Services Contract (Exhibits “B” and “C”) even if there are some additional changes to the language in Exhibits “B” and “C” without these items having to come back before the City Commission so long as there are no substantive changes or changes to the approved amounts in the interest of time based on the fast approaching deadlines provided in the Funding Agreement and the fact that the County requires the City to approve the RFQ Specifications and Draft Design Services Contract as part of the Funding Agreement.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF COCONUT CREEK, FLORIDA:**

**Section 1:** That the foregoing “WHEREAS” clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this resolution. All exhibits attached hereto are incorporated herein and made a specific part of this resolution.

**Section 2:** That the City Commission has reviewed and hereby approves the attached Interlocal Agreement between Broward County and the City of Coconut Creek for the surtax-funded municipal transportation project, ADA Accessible Bus Pads, Surtax Project Number COCO-024 (Exhibit “A”) and the RFQ Specifications (Exhibit “B”) and Draft Design Services Contract (Exhibit “C”).

**Section 3:** That the Mayor is hereby authorized to execute said agreement.

**Section 4:** That if any clause, section, other part or application of this resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or in application, it shall not affect the validity of the remaining portion or applications of this resolution.

**Section 5:** That this resolution shall be in full force and effect immediately upon its adoption.

**Adopted this 10<sup>th</sup> day of March, 2022.**

Rebecca A. Tooley  
Rebecca A. Tooley, Mayor

Attest:



Marianne Bowers

Marianne Bowers, Interim City Clerk

Tooley      Aye  
Rydell      Aye  
Sarbone    Aye  
Welch      Aye  
Railey      Aye

EXHIBIT "A"



**INTERLOCAL AGREEMENT BETWEEN BROWARD COUNTY AND THE CITY OF COCONUT CREEK  
FOR SURTAX-FUNDED MUNICIPAL TRANSPORTATION PROJECT:**

**COCO-024/DESIGN SERVICES FOR ADA ACCESSIBLE BUS PADS**

This Interlocal Agreement (“Agreement”) is made and entered by and between Broward County, a political subdivision of the State of Florida (“County”), and the City of Coconut Creek, a municipality of the State of Florida (“Municipality”) (each a “Party” and collectively referred to as the “Parties”).

**RECITALS**

A. In November 2018, Broward County voters approved a 30-year sales surtax (also known as “Penny for Transportation”) to fund statutorily-permissible transportation expenditures.

B. All projects, County, State, and municipal, funded by the transportation surtax are evaluated for eligibility under Section 212.055(1), Florida Statutes, by the independent Transportation Surtax Oversight Board before the Broward County Board of County Commissioners makes the final decisions regarding project funding.

C. A process has been established pursuant to which surtax-funded staff at the Broward Metropolitan Planning Organization (“MPO”) prioritize municipal projects, with the exception of municipal rehabilitation and maintenance projects, and make recommendations for funding. The first round of ranking of municipal capital projects was recently completed by the MPO following extensive and detailed discussions with the submitting municipalities, and the Project contemplated in this Agreement was included in that review and ranking.

D. The municipal Project defined herein has been determined statutorily eligible for funding and subsequently approved for funding by the Broward County Board of County Commissioners.

E. The purpose of this Agreement is to set forth the terms and conditions for County to provide transportation surtax funding for the Project and the terms and conditions for Municipality to complete the Project. Municipality will implement the Project, as funded by County with surtax funding, in accordance with the terms of this Agreement.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**ARTICLE 1. DEFINITIONS**

1.1. **Board** means the Board of County Commissioners of Broward County, Florida.

1.2. **Contract Administrator** means the County Administrator or such other person designated by the County Administrator in writing.

- 1.3. **Contractor** means the persons, firms, or corporations with whom Municipality has or will contract for the performance of the Project.
- 1.4. **Consultant** means the architect or engineer with whom Municipality has or will contract to provide programming, design, construction management, engineering, and inspection, or other professional services for the Project.
- 1.5. **County Business Enterprise** or **CBE** means an entity certified as meeting the applicable requirements of Section 1-81, Broward County Code of Ordinances.
- 1.6. **Maximum Funding Amount** means the maximum funding amount stated in Section 5.4.
- 1.7. **Oversight Board** means the independent Transportation Surtax Oversight Board created pursuant to Section 31½-75 of the Broward County Code of Ordinances.
- 1.8. **Project** means the project described in Exhibit A.
- 1.9. **Project Manager** means Brian Rosen, Project Manager for Municipality.
- 1.10. **Subcontractor** means an entity or individual providing services to Municipality through Contractor or Consultant for all or any portion of the Project. The term “Subcontractor” includes subconsultants.
- 1.11. **Surety** means the surety company or individual that is bound by the performance bond and payment bond and that is responsible for Contractor’s or Consultant’s acceptable and timely performance and completion of the Project under this Agreement and for the payment of all debts pertaining thereto in accordance with Section 255.05, Florida Statutes.
- 1.12. **Surtax-Funded Projects** means any project, including without limitation the Project described in Exhibit A, that is funded in whole or in part by the transportation surtax collected pursuant to Section 212.055(1), Florida Statutes.

## ARTICLE 2. EXHIBITS

<b>Exhibit A</b>	<b>Project Description and Project Schedule</b>
<b>Exhibit B</b>	<b>Funding Schedule</b>
<b>Exhibit C</b>	<b>Reporting Requirements</b>
<b>Exhibit D</b>	<b>Form Contracts</b>
<b>Exhibit E</b>	<b>Municipal Resolution Authorizing Execution of Agreement</b>

## ARTICLE 3. PROJECT DESCRIPTION; COMPETITIVE PROCUREMENT; PERMITTING

3.1. Project Description and Project Schedule. Municipality shall perform, or cause to be performed, the Project in accordance with the Project Description and the Project Schedule set forth in **Exhibit A**. The Project Description is a general description of the Project and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, and

tasks that are such an inseparable part of the Project described that exclusion of any of them would be impractical, illogical, or unconscionable.

3.2. Municipal Responsibility for the Project. Municipality is solely responsible for the Project, subject to the terms of this Agreement. County has no responsibility for the construction means, methods, techniques, sequences, or procedures employed in the performance of the Project. Municipality shall be solely responsible for retention, supervision, and payment of Contractor, Consultant, and all Subcontractors. Municipality shall be solely responsible for securing any and all property rights or permits required by the Project. Nothing in this Agreement shall impose on County an obligation to assume any contract or subcontract, or to make payment to Contractor, Consultant, or any Subcontractor, vendor, or supplier, or to perform the Project or any portion thereof, or to supply any goods or services for the Project. Further, nothing contained herein shall create any contractual relationship between County and Contractor, Consultant, or any Subcontractor, vendor, or supplier.

3.3. Competitive Procurement; Consultants' Competitive Negotiation Act. Except to the extent the Contract Administrator has approved utilization of an existing contract by Municipality for the services to be performed by Contractor or Consultant, Municipality must provide the proposed solicitation(s) for the Project to the Contract Administrator for review at least twenty (20) days prior to publication of the solicitation by Municipality. County's review shall include, without limitation, determination of the applicable CBE Goal (as defined in Article 10), which must be included by Municipality in the solicitation(s). If Municipality seeks to utilize an existing contract for the services to be performed by the Contractor or Consultant, Municipality must obtain prior approval by County and must provide the Contract Administrator with the proposed contract and supporting documentation for consideration pursuant to the procedures stated in Section 3.5.2; County may require, as a condition for its approval, that the engagement of Contractor or Consultant for this Project utilizing an existing municipal contract include modifications or additions to the existing contract terms and conditions, including without limitation any provision identified in Section 3.5.3. Municipality must comply with all applicable provisions of state law including, as applicable, Section 255.20 and Section 287.055, Florida Statutes, in the procurement of any services or materials relating to the Project. If any applicable state or federal procurement requirement is stricter than any other applicable requirement, Municipality shall be obligated to meet the stricter requirement. Prior to the execution of any contract with Contractor or Consultant relating to the Project, Project Manager shall certify in writing to the Contract Administrator that the procurement and the proposed contract comply with the requirements of this Section 3.3.

3.4. Modifications to Project or Phases.

3.4.1. Material Changes to the Project. Material changes are changes that increase the Maximum Funding Amount or materially modify the Project Description. Any proposed material change to the Project Description that does not increase the Maximum Funding Amount requires the prior written approval of the Contract Administrator. Any proposed material change that would increase the Maximum Funding Amount requires an



amendment of this Agreement. Any proposed material change may also, if determined necessary by Contract Administrator pursuant to the applicable contractual, statutory, or other surtax-related requirements, require review by the Oversight Board for statutory eligibility. Municipality shall submit to the Contract Administrator written notice of the proposed material change and appropriate backup documentation; if requested by the Contract Administrator, Municipality shall provide any additional requested backup documentation. The Contract Administrator will either approve or disapprove in writing the proposed material change to the Project Description that does not increase the Maximum Funding Amount within fifteen (15) calendar days after receipt of the written notice and all requested backup documentation; if not timely approved, the request shall be deemed disapproved. Any material change that increases the Maximum Funding Amount must be approved by the Board.

3.4.2. Modifications to Construction Phase. Requests for additional funding as a result of modifications to the construction phase of a Project that exceed the amount provided in the then-current Funding Schedule, including without limitation change orders or other scope changes, are subject to (i) approval by the Contract Administrator, and (ii) the Board's allocation of additional funding; such requests may also, if determined necessary by Contract Administrator pursuant to the applicable contractual, statutory, or other surtax-related requirements, require additional review by the Oversight Board for statutory eligibility. Municipality shall submit to the Contract Administrator written notice of its request for additional funding and appropriate backup documentation; if requested by the Contract Administrator, Municipality shall provide any additional requested backup documentation. The Contract Administrator will either approve or disapprove the request in writing within fifteen (15) calendar days after receipt of the written notice and all requested backup documentation; if not timely approved, the request shall be deemed disapproved.

3.4.3. Owner Enhancements. In addition to any approvals that may be required pursuant to this Agreement, any increased or additional costs due to changes in the quality of materials, furnishings, finishes, aesthetics, or any other cost reasonably determined by the Contract Administrator to be an "owner enhancement" (including, without limitation, decorative lighting, decorative paving, and improvements that are not within the public right of way) must be funded solely by Municipality with non-surtax funding, and County shall have no funding responsibility for any such increased costs. Upon the Contract Administrator's request, the Project Manager shall provide sufficient detail for the Contract Administrator's determination of whether any increased or additional costs include owner enhancements. The Contract Administrator shall determine, after consultation with the Project Manager, whether the increased or additional costs constitute owner enhancements.

3.4.4. Project Schedule. Any proposed change in the Project Schedule that modifies the commencement or completion date for any phase or for the Project by more than sixty

(60) days requires the prior written approval of the Contract Administrator. Municipality shall submit to the Contract Administrator written notice of the proposed change and appropriate backup documentation; if requested by the Contract Administrator, Municipality shall provide any additional requested backup documentation. The Contract Administrator will either approve or disapprove in writing the proposed change within fifteen (15) calendar days after receipt of the written notice and all requested backup documentation; if not timely disapproved, the request shall be deemed approved.

3.4.5. Nonmaterial Changes. Nonmaterial changes to the Project (namely, changes that do not require approvals under Sections 3.4.1, 3.4.2, 3.4.3, or 3.4.4) do not require County approval and may be approved by the Project Manager.

### 3.5. Contractor and Consultant Contracts.

3.5.1. Form Contracts. County has preapproved the Surtax-Funded Projects Form Construction Contract and the Surtax-Funded Projects Form Consultant Contract (collectively, the “**Form Contracts**”) attached as **Exhibit D**, which Municipality may utilize for its contracts with Contractor and Consultant, respectively. County may update the Form Contracts from time to time upon written notice to Municipality, and such updated Form Contracts shall be the applicable forms for solicitations advertised after the date of such written notice by County.

3.5.2. County Approval. Unless the Form Contracts are utilized for the Project with no material modification or an existing municipal contract is approved by County for use pursuant to Section 3.3, Municipality must obtain written approval from the County Attorney’s Office for Municipality’s contract(s) with Contractor and with Consultant prior to utilization of the contracts for the Project (and prior to publication of the solicitation, if the contract is included in the solicitation). In addition to the provisions required to be included in Municipality’s contracts with Contractor and with Consultant pursuant to Section 8.1 or Section 10.5, Municipality’s contracts must also include the provisions listed in Section 3.5.3 and Section 3.5.4, as applicable, in the form stated in the Form Contracts. Any material modification to any required contractual provision must be approved in advance by the County Attorney’s Office; no subsequent material change to the contract(s) for the Project may be made without written approval from the County Attorney’s Office. Municipality agrees and acknowledges that County’s approval of any contracts with Contractor or Consultant, including without limitation the Form Contracts, is solely for purposes of protecting County’s interests; County approval of any such contract does not constitute a legal opinion, including without limitation as to the legal sufficiency of the contract, for use or reliance by Municipality or any third party and shall not be the basis for any claim or liability against County or asserted to avoid any reimbursement or other obligation of Municipality under this Agreement. Municipality shall provide at least twenty (20) days’ written notification to the Contract Administrator and the County Attorney’s Office prior to award of the contract to Contractor or Consultant, as applicable, which notice must include a copy of the competitive solicitation

(or other applicable procurement document) for the Project, the responsive submission by the proposed Contractor or Consultant, the proposed contract amount for the Project, the proposed contract, and the date on which Municipality intends to award the contract. County may disapprove the proposed contract: (a) for failure to comply with any requirement of this Agreement; (b) if the contract price exceeds or is materially inconsistent with the Funding Schedule (absent good cause, as determined by Contract Administrator); or (c) after consultation with Project Manager, for any other good cause as determined in the sole discretion of the Contract Administrator. If County disapproves any proposed contract, County must provide notice of such disapproval within twenty (20) days after receipt of the notice and the documents required pursuant to this section; if not timely disapproved, the proposed contracts shall be deemed approved.

3.5.3. For the contract with Contractor, the following provisions from the Surtax-Funded Projects Form Construction Contract must be included:

- 3.5.3.1. Contract, Article 3 (Contract Time)
- 3.5.3.2. Contract, Article 5 (Progress Payments; Retainage)
- 3.5.3.3. Contract, Article 6 (Acceptance and Final Payment)
- 3.5.3.4. General Conditions, Article 4 (Performance Bond and Payment Bond) and Article 5 (Qualification of Surety)
- 3.5.3.5. General Conditions, Article 17 (Project Records and Right to Audit) (*see also* Section 8.1 herein)
- 3.5.3.6. General Conditions, Article 33 (Location and Damage to Existing Facilities, Equipment, or Utilities)
- 3.5.3.7. General Conditions, Article 38 (Change Orders) and Article 39 (Value of Change Order Work)
- 3.5.3.8. General Conditions, Article 14 (Superintendence and Supervision)
- 3.5.3.9. General Conditions, Article 20 (Differing Site Conditions)
- 3.5.3.10. General Conditions, Article 40 (Notification and Claim for Change of Contract Time or Contract Price)
- 3.5.3.11. General Conditions, Article 41 (No Damages for Delay)
- 3.5.3.12. General Conditions, Article 42 (Excusable Delay; Compensable; Non-Compensable)
- 3.5.3.13. General Conditions, Article 53 (Domestic Partnership)
- 3.5.3.14. General Conditions, Article 54 (Equal Employment Opportunity and CBE/SBE Compliance)
- 3.5.3.15. Supplemental Wage Requirements (Prevailing Wage Rate Ordinance)

3.5.4. For the contract with Consultant, the following provisions from the Surtax-Funded Projects Form Consultant Contract must be included:

- 3.5.4.1. Article 4 (Time for Performance; Contractor Damages)
- 3.5.4.2. Sections 5.3 and 5.4 (Reimbursable Expenses; Method of Billing)
- 3.5.4.3. Section 7.5 (Truth in Negotiation)

- 3.5.4.4. Section 7.9 (Domestic Partnership Requirement)
- 3.5.4.5. Article 10 (Equal Employment Opportunity and CBE Compliance)
- 3.5.4.6. Section 11.4 (Public Records and Trade Secrets)
- 3.5.4.7. Section 11.5 (Audit Rights)
- 3.5.4.8. Section 11.8 (Indemnification)
- 3.5.4.9. Section 11.14 (Drug-Free Workplace)

#### **ARTICLE 4. TERM AND TIME OF PERFORMANCE**

4.1. Term. The term of this Agreement shall begin on the date it is fully executed by the Parties (“Effective Date”) and shall end on September 30, 2024 (“Initial Term”), unless extended pursuant to Section 4.2.

4.2. Extensions. The Parties may renew this Agreement for up to two (2) additional one (1) year terms (each an “Extension Term”) by written approval of the Project Manager and the County Administrator at least thirty (30) days prior to the expiration of the then-current term. Any further extension shall require approval by the Board and the governing body of Municipality.

4.3. Fiscal Year. The continuation of this Agreement beyond the end of any County fiscal year (October 1 through September 30) is subject to both the appropriation and the availability of transportation surtax funds in accordance with Chapter 129, Florida Statutes.

4.4. Time of the Essence. Unless expressly waived by the Contract Administrator in writing, time is of the essence in Municipality’s performance of its duties, obligations, and responsibilities under this Agreement.

#### **ARTICLE 5. FUNDING AND SURETY**

5.1. Surtax Funding. County shall provide funding to Municipality for the Project in accordance with the Funding Schedule (**Exhibit B**). Any amounts, costs, or expenses indicated as ineligible for funding in Exhibit B shall not be funded by County but must instead be funded by Municipality from non-surtax funds. The Parties agree and acknowledge that all funding provided by County to Municipality under this Agreement shall be paid exclusively from and subject to the availability of proceeds from the transportation surtax levied pursuant to Section 212.055(1), Florida Statutes, and County shall not have any obligation to provide, nor shall County provide, any funding from County’s general revenue or any other County source. Municipality agrees and stipulates that the funding provided by County to Municipality under this Agreement will be utilized by Municipality only for the purposes permitted under Section 212.055(1), Florida Statutes.

5.2. Method of Billing and Payment. Municipality shall invoice County only in accordance with the Funding Schedule. Any credit due to County under Section 5.6 must be reflected on the next applicable invoice. To be proper, each invoice must comply with the requirements of Exhibit B and be accompanied by a certification by the chief administrative officer and the chief financial

officer of Municipality, or such other persons designated by Municipality with authority to act in similar capacities, that all funds received and utilized to date by Municipality under this Agreement were utilized only for the Project, only for the portion(s) of the Project that the Oversight Board and County determined were eligible for surtax funding, and only for purposes that Municipality independently determined were eligible for surtax funding. County shall pay Municipality in accordance with the Funding Schedule within thirty (30) days of receipt of Municipality's proper invoice. Payment shall be made to Municipality at the address designated by Municipality for notices pursuant to Section 11.6.

5.3. Phases; Funding Schedule. The Funding Schedule may provide for funding the Project in phases or by deliverable, with the funding for subsequent phases or deliverables to be determined after completion of prior phases or particular deliverables. Any such later-determined funding for the Project, including any modification to the funding amount(s), phase(s), or deliverable(s) stated in the Funding Schedule, shall require a written amendment to this Agreement with an amended Funding Schedule attached thereto setting forth the next phase(s) or deliverable(s) and applicable funding for same. All terms and conditions of this Agreement shall apply to any such amended Funding Schedule. The County Administrator, on behalf of County, and the Municipality's City Manager, on behalf of Municipality, are authorized to execute amendments to this Agreement to incorporate an amended Funding Schedule, provided the total of all funding obligations of County under this Agreement does not exceed the total Maximum Funding Amount. Any amended Funding Schedule or other amendment that would cause County's total funding obligations under this Agreement to exceed the Maximum Funding Amount shall not be effective unless approved by the Board.

5.4. Maximum Funding. Municipality acknowledges that the Maximum Funding Amount set forth below is the maximum amount payable by County and constitutes a limitation upon County's obligation to provide funding to Municipality for the Project. Municipality further acknowledges that subtotal amounts set forth below for the applicable phases and in the Funding Schedule (including as amended) are the maximum amounts payable for the applicable portions of the Project, and constitute limitations on County's obligation to provide funding to Municipality for the Project.

Description	Not-To-Exceed Amounts
Phase 1: Design	\$432,000
<b>MAXIMUM FUNDING AMOUNT:</b>	\$432,000

In no event shall County be liable to provide funding to Municipality in excess of the applicable amounts stated in the Funding Schedule or the Maximum Funding Amount, regardless of the basis for any claim or the basis for increased cost, including, without limitation, differing site conditions, delays, weather, or any other reason. If the actual costs of the Project exceed the amount County is obligated to fund per the Funding Schedule, as same may be amended pursuant to this Agreement, Municipality shall be solely responsible for funding any and all such additional amounts. Municipality is solely responsible for any and all costs to operate, support,

and maintain the Project unless otherwise agreed in writing by the Parties; County has no obligation to fund any costs related to the Project except as expressly stated in this Agreement.

5.5. Adjustments for Corridor Projects; Funding Withholding; Other Delayed Funding.

5.5.1. In order to avoid duplicative construction and unnecessary disruption of the local transportation network and community, the Parties shall cooperate in good faith to coordinate the timing of the Project with other projects that affect the same or nearby transportation elements, including, without limitation, other Surtax-Funded Projects and other County or State roadway projects (collectively, "Corridor Projects"). The Contract Administrator shall provide prompt notice to Municipality if County determines that the timing of the Project requires adjustment due to a Corridor Project. Upon receipt of such a notice, Municipality shall use best efforts to suspend any additional work on the Project pending an agreed adjustment to the Project Schedule, and the Parties shall cooperate to mutually approve an adjusted Funding Schedule (adjusted only as to timing, absent good cause as determined by Contract Administrator) and Project Schedule. County may withhold any otherwise scheduled funding until such adjustments are mutually approved by the Parties. To the extent some or all of the Project costs are modified as a direct result of a timing adjustment to accommodate a Corridor Project, such modified costs shall be addressed in an amendment to the Funding Schedule and, if necessary, an amendment to this Agreement.

5.5.2. If commencement or completion of a phase of the Project is delayed beyond its scheduled date by more than one (1) year, or work suspended for more than one (1) year, the Funding Schedule may be unilaterally adjusted as to timing (but not amount) by written notice issued by the Contract Administrator, after consultation with Municipality, to reflect the delay; any adjustment to the amount of funding for any phase in connection with the delay shall require an amended Funding Schedule in accordance with Section 5.3.

5.6. Overpayments; Refunds. Any funding provided by County under this Agreement for a Phase that exceeds the actual amounts expended by Municipality in accordance with this Agreement for that Phase shall be credited against the next invoice to County or refunded to County, as elected by County. Any funding provided by County under this Agreement that exceeds actual amounts paid by Municipality for the Project shall be promptly refunded to County upon Municipality's discovery of an overpayment, County's request for refund, or sixty (60) days after completion of the Project, whichever occurs first. For purposes of this calculation, any interest expense(s) incurred by Municipality are not an allowable cost. Any refunds, credits, liquidated damages, insurance proceeds (after payment of any applicable deductible), claim or litigation proceeds (after payment of attorneys' fees and costs), or other amounts received by or credited to Municipality by or on behalf of Contractor, Consultant, or any Subcontractor (collectively, "Proceeds") shall be either credited against future funding due from County under this Agreement or paid by Municipality to County within thirty (30) days after its receipt of the Proceeds, as elected by County. The total Proceeds amount credited or refunded

to County shall not exceed the total funding provided by County under this Agreement. Municipality shall promptly notify County of any amount of Proceeds received by or credited to Municipality, and of any claims filed or asserted relating to the Project. For unresolved claims or litigation, the Parties shall cooperate to ensure any Proceeds are first credited or repaid to the benefit of County before any other allocation.

5.7. Separate Accounting. Municipality shall deposit and maintain all funding received from any source for the Project in a segregated fund or account, which shall be subject to audit pursuant to Article 8. Any interest earned by Municipality on any funds provided under this Agreement shall be credited against the funding otherwise due from County under this Agreement and must be utilized by Municipality solely in accordance with the terms of this Agreement. Upon prior written approval by the Contract Administrator, Municipality may utilize other methods of separate accounting for the Project funds provided the accounting method permits a full and complete audit of the funds as required by Article 8.

5.8. Withholding by County. Notwithstanding any provision of this Agreement to the contrary, County may withhold, in whole or in part, payment to the extent necessary to ensure utilization of the funds in accordance with this Agreement, applicable law, and the Board-approved transportation surtax program. Failure of Municipality or the Project to comply with the Reporting Requirements or the Performance Metrics may also be a basis to withhold or limit future funding for the Project, as determined in the reasonable discretion of the Contract Administrator. The amount withheld shall not be subject to payment of interest by County. Upon written notice by County and except as expressly stated otherwise herein, payment may be withheld by County for the duration of any failure of Municipality to comply with a term, condition, or requirement of this Agreement; County shall promptly pay the amount withheld to Municipality when Municipality's noncompliance with the applicable terms and conditions of this Agreement is cured to the reasonable satisfaction of Contract Administrator.

5.9. Final Invoice and Reconciliation. Unless otherwise stated in the Funding Schedule or approved by the Contract Administrator, Municipality must submit the final invoice to County no later than one hundred twenty (120) days after the completion of the Project. The final invoice must be accompanied by a complete summary of all expenses incurred and all amounts paid for the Project, all funding, Proceeds, interest, or other amounts received relating to the Project, and any unpaid invoices, amounts still owing, disputed charges, or other unresolved issues relating to the Project that may impact the financial accounting of the Project (collectively, the "Final Reconciliation"). Upon request by the Contract Administrator, Municipality shall provide any backup or additional documentation requested relating to the Final Reconciliation; if County or Municipality identifies any error or omission in the Final Reconciliation, Municipality shall resubmit a corrected final invoice and corrected Final Reconciliation. County shall pay the correct final invoice after review and approval of the Final Reconciliation.

## **ARTICLE 6. TRANSPORTATION SURTAX PROJECT COORDINATION AND PARTICIPATION**

6.1. Reporting Requirements. Unless waived in writing by the Contract Administrator, Municipality shall comply with the Reporting Requirements set forth in **Exhibit C**. In addition,

Municipality shall provide written reports to the Contract Administrator consisting of the following information as of the date of the report, with monthly information provided within thirty (30) days after the end of the applicable month, quarterly information provided within forty-five (45) days after the end of the applicable quarter, and annual information provided within one hundred eighty (180) days after the end of the fiscal year:

6.1.1. Quarterly Report on Expenditures: For both total to date and total for the applicable quarter, the total funds received from any funding source for the Project (itemized by funding source) and total funds (by funding source) expended to date for the Project;

6.1.2. Monthly Report on Project Schedule: The updated Project Schedule, summary of progress during the applicable quarter, and any adjustments to the Project Schedule (including all approved adjustments and pending requests for adjustments);

6.1.3. Monthly report on Material Changes or Impacts: All material changes to the Project, the Project Schedule, or any other aspect of the Project that may impact the cost of the Project or the ability of the Project to achieve the intended goals or purposes; and

6.1.4. Annual Audit Reports: On an annual basis, copies of Municipality's most recent annual financial reporting packages, reports, or other information required to be submitted in accordance with Section 215.97, Florida Statutes. A copy of Municipality's most recent single audit complies with this requirement.

6.2. Performance Metrics. Municipality must ensure that the quality, progress, and nature of the Project strictly comply with the Performance Metrics stated in Exhibit C. The Contract Administrator may modify the Performance Metrics for the Project at any time with the written approval of the Project Manager. In addition to the reporting required pursuant to Section 6.1 above, Municipality shall provide written reports to the Contract Administrator on at least an annual basis, no later than ninety (90) days after the end of the fiscal year, documenting the Project's compliance with the applicable Performance Metrics. The Contract Administrator or designee will provide technical assistance and support, as may be reasonably requested by Municipality, and shall make available to Municipality a centralized repository of relevant, available metrics and data.

6.3. Permitting for Surtax-Funded Projects. To decrease public inconvenience and to facilitate the expeditious and efficient completion of Surtax-Funded Projects, for any Surtax-Funded Project that is performed by County and is in whole or in part within the geographical boundaries of Municipality, Municipality shall waive, to the full extent permissible under applicable law, all municipal permitting requirements, except to the extent of any portion of the work performed by County that will be owned, operated, and maintained by Municipality. The waiver shall include, but not be limited to, the requirements of permit application, permit issuance, inspections, and permitting fees. County shall be responsible for ensuring adequate plan review, inspections, and compliance with State and County standards for work in the public right of way.



County shall waive, to the full extent permissible under applicable law, all County permitting fees for municipal Surtax-Funded Projects.

6.4. Road Closures. Municipality shall institute and comply with a cooperative notification program that ensures County is promptly notified and promptly provided with data reasonably requested by County regarding all municipal roads that are closed for any reason, including but not limited to the Project, other construction, or flooding, in a format prescribed by County. Providing Municipality consistently utilizes the cooperative notification program established by County and promptly cures any nonperformance upon notice by County, nonrecurring or isolated incidents of failure by Municipality to timely notify as required by this Section 6.4 shall not be a basis for withholding or nonpayment of funding by County under this Agreement.

6.5. Branding and Marketing. At County's request, Municipality shall participate in reasonable branding and marketing in the form and content prescribed by County, including, but not limited to, signage prominently acknowledging the surtax funding source of Surtax-Funded Projects, utilizing County-approved wording, logo, or other imagery, which branding and marketing will acknowledge the project contributions of County and Municipality. The costs for all branding and marketing requested by County pursuant to this Section 6.5 shall be fully funded by County. Provided Municipality cures any nonperformance within thirty (30) days after notice by County, nonrecurring or isolated incidents of failure by Municipality to comply with this Section 6.5 shall not be a basis for withholding or nonpayment of funding by County under this Agreement.

6.6. Data Collection and Sharing. To the extent requested by County, Municipality shall ensure the Project includes incorporation and placement of sensors or other devices on municipal roads, rights of way, properties, and assets for County-approved applications for mobility-related data collection purposes, provided such placement shall not unreasonably interfere with the aesthetics or Municipality's use of such roads, rights of way, properties, or assets. The costs for any such incorporation and placement requested by County shall be funded by County. Municipality shall ensure the collection of data includes and is consistent with the scope, type, frequency, quantity, and format requested by County in order to facilitate countywide collection and utilization of transportation data. For the useful life of the Project, to the extent requested by County, Municipality shall provide County any and all access to such data as may be requested by County, including recurring or real-time access or periodic download. Provided Municipality cures any nonperformance within thirty (30) days after notice by County, nonrecurring or isolated incidents of Municipality's failure to comply with this Section 6.6 shall not be a basis for withholding or nonpayment of funding by County under this Agreement.

6.7. Conflict of Interest.

6.7.1. Municipality represents and agrees that it has not contracted, and will not contract during the term of this Agreement, with the MPO for the MPO to perform any of the following services (collectively, the "Contracting Prohibitions"):

- 6.7.1.1. Any design, construction, oversight, or management services relating to any Surtax-Funded Project or any proposed project for which transportation surtax funding is being or will be sought;
- 6.7.1.2. Any planning, oversight, or reporting services relating to any receipt by Municipality of community shuttle surtax funding; or
- 6.7.1.3. Any grant writing or grant consultation services in connection with any Surtax-Funded Project (or proposed Surtax-Funded Project).

6.7.2. The foregoing Contracting Prohibitions:

- 6.7.2.1. Shall not apply to any state- or federally-mandated services provided by the MPO for which services the MPO does not receive any compensation from Municipality beyond Municipality's annual contribution to the MPO;
- 6.7.2.2. May be waived by the County Administrator in connection with any Surtax-Funded Project for which the County Administrator determines, in his or her sole discretion, that such waiver is in the best interest of Broward County for reasons including, but not limited to, that such waiver would permit the performance of services reasonably necessary to obtain significant state or federal matching funds in connection with any project or proposed project. No such waiver shall be effective unless approved by the County Administrator in writing; and
- 6.7.2.3. Do not prohibit or in any way impede the ability of Municipality to contract with any entity other than the MPO for transportation planning services whether or not such services are in connection with any Surtax-Funded Project.

The Parties agree that any violation of the Contracting Prohibitions will constitute a material breach of this Agreement which, in addition to all other remedies available to County under this Agreement, would permit County to terminate this Agreement, withhold all funds otherwise payable to Municipality under this Agreement, and require Municipality to repay County in full for any funds previously paid by County under this Agreement.

6.8. Sale, Transfer, or Disposal of Surtax-Funded Property: Municipality shall not sell or otherwise transfer or dispose of its title, rights, or interests, or any portion thereof, in real property, facilities, or equipment, funded in any part by County under this Agreement, without prior written approval from County. If a sale, transfer, or disposal occurs in violation of this section, unless otherwise agreed in writing by the Parties, Municipality shall pay County, within ninety (90) days after the sale, transfer, or disposal, an amount equal to the greater of County's

share of the fair market value or the straight line depreciated value of the improvements plus land value. "County's share of the fair market value" as used herein means the percentage of surtax funding in the Project multiplied by the best obtainable price for the item, and the resulting product then reduced by reasonable sales costs. If the property has never been used for the intended purpose of the Project, Municipality shall pay the greater of County's share of the fair market value or the entire amount of surtax funding provided for the Project.

6.9. Affirmation of MPO Prioritization and Ranking Process. Municipality acknowledges that the prioritization and ranking process of municipal capital projects for fiscal year 2020 was completed in compliance with all applicable obligations of County and the MPO; and was informed by each project's ability to alleviate traffic congestion and improve connectivity, as well as shovel-readiness, construction work planned in the vicinity of a proposed project, corridor delivery timing, and other existing conditions that allow surtax revenues to be utilized responsibly, efficiently, and with the least interruption to residents and businesses. Municipality hereby waives and releases any and all claims it has or may have that accrued at any time prior to the effective date of this Agreement, which claims, in any way, relate to, result from, or are in connection with the prioritization and ranking process of municipal capital projects for fiscal year 2020 or the County's funding decisions related thereto. Municipality agrees and stipulates that the MPO prioritization and ranking process for fiscal year 2020 was proper and consistent with the applicable interlocal agreements and that the County is not, as of the effective date of this agreement, in breach or default of any provision of any applicable interlocal agreement relating in any way to expenditure of transportation surtax proceeds.

#### **ARTICLE 7. INDEMNIFICATION**

Municipality shall indemnify, hold harmless, and defend County and all of County's current, past, and future officers, agents, servants, and employees (collectively, "Indemnified Party") from and against any and all causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including attorneys' fees, court costs, and expenses, including through the conclusion of any appellate proceedings, raised or asserted by any person or entity not a party to this Agreement, and caused or alleged to be caused, in whole or in part, by any intentional, reckless, or negligent act or omission of Municipality, its officers, employees, agents, or servants, arising from, relating to, or in connection with this Agreement (collectively, a "Claim"). If any Claim is brought against an Indemnified Party, Municipality shall, upon written notice from County, defend each Indemnified Party against each such Claim by counsel satisfactory to County or, at County's option, pay for an attorney selected by the County Attorney to defend the Indemnified Party. The obligations of this section shall survive the expiration or earlier termination of this Agreement. If considered necessary by the Contract Administrator and the County Attorney, any sums due Municipality under this Agreement may be retained by County until all Claims subject to this indemnification obligation have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by County.

## ARTICLE 8. AUDITING

8.1. Audit Rights and Retention of Records. County shall have the right to audit the books, records, and accounts of Municipality, Contractor, Consultant, and Subcontractors (the "Audited Entities") that are related to the Project or this Agreement (the "Contract Records"). Audits, reviews, monitoring, inspections, and investigations conducted pursuant to this Agreement may include, but are not limited to, on-site visits by County staff, interviews of staff of any of the Audited Entities, review of performance and financial reports, determining and monitoring appropriate corrective action, and issuing management letters on deficiencies or weaknesses identified. Audited Entities shall fully comply and cooperate with any auditing and monitoring activities deemed appropriate by County.

Audited Entities shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement and performance under this Agreement. All such books, records, and accounts shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request by the Contract Administrator to do so, Audited Entities shall make same available in written form at no cost to County.

Contract Records include any and all information, materials, and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, drawings, receipts, vouchers, and memoranda, and any and all other documents that pertain to rights, duties, obligations, or performance relating to the Project. Contract Records include hard copy and electronic records, written policies and procedures, time sheets, payroll records and registers, cancelled payroll checks, estimating work sheets, correspondence, invoices and related payment documentation, general ledgers, insurance rebates and dividends, and any other records pertaining to rights, duties, obligations, or performance relating to the Project of any of the Audited Entities.

Audited Entities shall preserve and make available, at reasonable times within Broward County, Florida, for examination and audit, all financial records, supporting documents, statistical records, and any other documents pertinent to the Project or this Agreement until the later of five (5) years after expiration or termination of this Agreement, resolution of any audit findings, or as otherwise required by law. Any audit or inspection pursuant to this section may be performed by any County representative (including any outside representative engaged by County) or the Oversight Board. The Project and all expenditures relating to the Project shall be subject to the Oversight Board's review, critique, and analysis for the duration of the Project.

Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for County's disallowance and recovery of any payment made or based upon such entry. If an audit or inspection in accordance with this section discloses overpricing or overcharges to County of any nature in excess of five percent (5%) of the total contract billings reviewed by County, the reasonable actual cost of County's audit shall be reimbursed to County by Municipality in addition to any required adjustments for the overcharges. Any adjustments or payments due as a result

of such audit or inspection shall be made by Municipality to County within thirty (30) days after presentation of County's findings to Municipality.

Municipality shall ensure that the requirements of this section are included in all agreements with any other Audited Entity. Municipality shall further include in its contract with Contractor and its contract with Consultant the following provision:

"If an audit inspection or examination in accordance with this provision discloses overpricing or overcharges to Municipality (of any nature) by the contractor or the contractor's subcontractors in excess of five percent (5%) of the total contract billings reviewed, the reasonable actual cost of any audit conducted by or on behalf of Municipality, Broward County, or the Independent Transportation Surtax Oversight Board shall be reimbursed by contractor to the Municipality or Broward County, as applicable, along with any required adjustments for the overpricing or overcharges. Any adjustments or payments that must be made as a result of any such audit or inspection of the contractor's invoices or records shall be made within a reasonable amount of time (not to exceed 30 days) after presentation of the audit findings to contractor."

8.2. Performance Audit. The Project, and all funding received, maintained, or expended by Municipality for the Project, shall be subject to audits and reviews by the Oversight Board at its expense (and subject to reimbursement pursuant to this article) for the duration of the Project and continuing until five (5) years after the later of completion of the project, expiration or termination of this Agreement, or resolution of any audit findings. Municipality shall fully cooperate and provide any and all requested Contract Records as may be requested by the Oversight Board. The Project and all funds received, maintained, or expended relating to the Project shall be subject to the Oversight Board's review, critique, and analysis for the duration of the Project.

## **ARTICLE 9. TERMINATION**

9.1. This Agreement may be terminated for cause by the aggrieved Party if the Party in breach has not corrected the breach within thirty (30) days after receipt of written notice from the aggrieved Party identifying the breach. This Agreement may also be terminated by the Board upon sixty (60) days' prior written notice if the Board determines that the Project cannot be funded with surtax funding under applicable law, including Section 212.055, Florida Statutes. This Agreement may be immediately terminated by written notice by the County Administrator if the transportation surtax is determined by a court of competent jurisdiction to be invalid, void, or illegal.

9.2. This Agreement may be terminated for cause by County for reasons including, but not limited to, any of the following:

9.2.1. Inability of Municipality, including through Contractor or Consultant, to perform or complete the Project in compliance with this Agreement, including the Project

Schedule (including any extensions approved by Contract Administrator, approval of which shall not be unreasonably withheld);

9.2.2. Repeated submission (whether negligent or intentional) for payment of false or incorrect invoices;

9.2.3. Fraud, misrepresentation, or material misstatement in the performance of this Agreement or the Project by Municipality, Contractor, or Consultant;

9.2.4. Contractor's or Consultant's act or omission that violates any applicable requirement of Section 1-81, Broward County Code of Ordinances; or

9.2.5. Utilization of the funding provided by County under this Agreement in a manner that violates applicable law or for uses or purposes that are not permitted uses for transportation surtax funds under Section 212.055, Florida Statutes.

9.3. Notice of termination shall be provided in accordance with the "Notices" section of this Agreement.

9.4. If this Agreement is terminated by County, Municipality shall be paid from proceeds of the surtax levied pursuant to Section 212.055, Florida Statutes, if funding is available, for any work on the Project properly performed through the termination date specified in the written notice of termination, subject to any right of County to retain any sums otherwise due and payable.

9.5. In addition to any right of termination stated in this Agreement, County and Municipality shall be entitled to seek any and all available remedies, whether stated in this Agreement or otherwise available at law or in equity, all such remedies being cumulative.

9.6. Municipality may terminate this Agreement upon thirty (30) days' prior written notice to County if Municipality determines not to proceed with the Project and either (a) the written notice of termination is provided prior to Municipality's receipt of any funding from County under this Agreement, or (b) prior to the effective date of termination, Municipality returns all funding received from County under this Agreement, including any interest earned by Municipality on any funds provided by County under this Agreement.

#### **ARTICLE 10. EQUAL EMPLOYMENT OPPORTUNITY AND CBE COMPLIANCE**

10.1. No Party may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement. Municipality shall include the foregoing or similar language in its contracts with Contractor and Consultant, and shall require inclusion of the foregoing or similar language in their contracts with Subcontractors, except that any project assisted by the U.S. Department of Transportation funds shall comply with the nondiscrimination requirements in 49 C.F.R. Parts 23 and 26.

10.2. Unless otherwise approved in advance in writing by County's Director of Office of Economic and Small Business Development ("OESBD"), Municipality shall comply with all applicable requirements of the County Business Opportunity Act, Section 1-81, et seq., Broward County Code of Ordinances, in the award and administration of any contract or agreement regarding the Project. Failure by Municipality to carry out any of the requirements of this article shall constitute a material breach of this Agreement, which shall permit County to terminate this Agreement or exercise any other remedy provided under this Agreement, the Broward County Code of Ordinances, the Broward County Administrative Code, or under other applicable law, all such remedies being cumulative.

10.3. Unless otherwise approved in advance in writing by County's Director of OESBD, Municipality will meet the required CBE goal for the Project by utilizing (or requiring the utilization of) CBE firms for at least thirty percent (30%) of total Project costs, except that no CBE commitment shall apply to agreements that are subject to other participation goals (e.g., federal DBE program or SBE reserves), agreements that are expressly exempt from the County's Procurement Code, agreements that are otherwise ineligible by state or federal law, and agreements to which goals are not assigned by the County (e.g., sole source, sole brand, and emergency agreements) (the "Commitment").

10.4. Each CBE firm utilized to meet the Commitment must be certified by OESBD. Municipality shall inform County immediately when a CBE firm is not able to perform or if Municipality believes the CBE firm should be replaced for any other reason, so that OESBD may review and verify the good faith efforts of Municipality to substitute the CBE firm with another CBE firm, as applicable. Whenever a CBE firm is terminated for any reason, Municipality shall provide written notice to OESBD and, upon written approval of the Director of OESBD, shall substitute another CBE firm in order to meet the CBE goal, unless otherwise provided in this Agreement or agreed in writing by the Parties. Such substitution shall not be required if the termination results from modification of the Project and no CBE firm is available to perform the modified Project; in which event, Municipality shall notify County, and OESBD may adjust the Commitment by written notice to Municipality. Municipality shall not terminate a CBE firm for convenience without County's prior written consent, which consent shall not be unreasonably withheld.

10.5. Municipality shall include the following provision in its contract with Contractor:

"The parties stipulate that if Contractor fails to meet the CBE utilization obligation in the Interlocal Agreement between Municipality and Broward County (the "Commitment"), the damages to Broward County and Municipality arising from such failure are not readily ascertainable at the time of contracting. If Contractor fails to meet the Commitment and Broward County determines, in the sole discretion of the OESBD Program Director, that Contractor failed to make Good Faith Efforts (as defined in Section 1-81, Broward County Code of Ordinances) to meet the Commitment, Contractor shall pay Municipality liquidated damages in an amount equal to fifty percent (50%) of the actual dollar amount by which Contractor failed to achieve the Commitment, up to a maximum amount of ten percent (10%) of the total contract amount excluding costs and reimbursable expenses.

An example of this calculation is stated in Section 1-81.7, Broward County Code of Ordinances. As elected by Broward County, such liquidated damages amount shall be either credited against any amounts due Contractor from Municipality, or must be paid by Municipality to Broward County within thirty (30) days after written demand by Broward County. Any failure to meet the Commitment attributable solely to force majeure, changes to the Project, or inability to substitute a CBE Subcontractor where the OESBD Program Director has determined that such inability is due to no fault of Contractor, shall not be deemed a failure by Contractor to meet the Commitment.”

10.6. Municipality shall require Contractor and Consultant to provide written monthly reports to the Municipality and the Contract Administrator no later than ten (10) business days after the end of the month regarding Contractor’s and Consultant’s compliance with the Commitment stated in this article. In addition, Municipality shall require Contractor and Consultant to allow County to engage in onsite reviews to monitor Contractor’s and Consultant’s progress in achieving the Commitment and maintaining the applicable contractual and CBE obligations.

#### **ARTICLE 11. MISCELLANEOUS**

11.1. Contract Administrator Authority; Dispute Resolution; Escalation. The Contract Administrator is authorized to coordinate and communicate with Municipality to manage and supervise the performance of this Agreement. Any determination by the Contract Administrator that this Agreement authorizes the Contract Administrator to make shall be binding on the Parties. Unless expressly stated otherwise in this Agreement or otherwise set forth in an applicable provision of the Broward County Procurement Code, Broward County Code of Ordinances, or Broward County Administrative Code, the Contract Administrator may exercise any ministerial authority in connection with the day-to-day management of this Agreement. In the event of a dispute regarding the performance of this Agreement, both Parties stipulate and agree to expedited dispute resolution procedures as follows: if either Party provides notice of a dispute that the respective staff have failed to resolve despite diligent good faith efforts, the Contract Administrator and the Project Manager (or other appropriate representative(s) designated by County or Municipality, respectively) shall meet in person or via videoconference within ten (10) business days and attempt in good faith to resolve the dispute and report potential resolutions to their respective governing bodies for consideration; if either Party thereafter provides written notice of impasse, the Mayors or Vice-Mayors of the County and Municipality shall meet in person or via videoconference within ten (10) business days and attempt in good faith to resolve the dispute and report potential resolutions to their respective governing bodies for consideration; any resolution must be approved by the governing bodies of both Parties to be effective. If either Party thereafter provides written notice of impasse, either Party may proceed to seek any available judicial remedies and the Parties agree and stipulate that the requirements of Chapter 164 shall be deemed fully met and both Parties waive and agree not to assert any defense based upon failure to fully comply with the intergovernmental dispute resolution proceedings otherwise required under Chapter 164.



11.2. Public Records. The Parties agree and stipulate that both Parties are subject to Florida public records laws and shall fully comply with same. At the request of County, Municipality shall, in accordance with applicable law, respond to any request for public records received by County relating to the Project. Any other public records request shall be responded to by the receiving party. Each Party shall cooperate upon request by the other Party and provide any requested records to enable the Party to respond to a public records request.

Any material submitted to County that Municipality, Contractor, or Consultant contends constitutes or contains trade secrets or is otherwise exempt from production under Florida public records laws (including Chapter 119, Florida Statutes) (“Trade Secret Materials”) must be separately submitted and conspicuously labeled “EXEMPT FROM PUBLIC RECORD PRODUCTION – TRADE SECRET.” In addition, Municipality, Contractor, or Consultant, as applicable, must, simultaneous with the submission of any Trade Secret Materials, provide a sworn affidavit from a person with personal knowledge attesting that the Trade Secret Materials constitute trade secrets under Section 812.081, Florida Statutes, and stating the factual basis for same. If a third party submits a request to County for records designated by Municipality, Contractor, or Consultant as Trade Secret Materials, County shall refrain from disclosing the Trade Secret Materials, unless otherwise ordered by a court of competent jurisdiction or authorized in writing by Municipality, Contractor, or Consultant, as applicable. Municipality shall indemnify and defend, and shall require Contractor and Consultant to indemnify and defend, County and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments and liabilities of any kind, including attorneys’ fees, litigation expenses, and court costs, relating to the nondisclosure of any Trade Secret Materials in response to a public records request by a third party.

11.3. Independent Contractor. Nothing in this Agreement constitutes or creates a partnership, joint venture, or any other relationship between the Parties or any Party and Contractor, Consultant, or any Subcontractor. Neither Party nor its agents shall act as officers, employees, or agents of the other Party. Neither Party shall have the right to bind the other Party to any obligation not expressly undertaken by that Party under this Agreement.

11.4. Sovereign Immunity. Except to the extent sovereign immunity may be deemed to be waived by entering into this Agreement, nothing herein is intended to serve as a waiver of sovereign immunity by County or Municipality, nor shall anything included herein be construed as consent by County or Municipality to be sued by third parties in any matter arising out of this Agreement. County and Municipality are subdivisions of the State of Florida, as defined in Section 768.28, Florida Statutes, and shall be responsible for the negligent or wrongful acts or omissions of their respective employees pursuant to Section 768.28, Florida Statutes.

11.5. Third-Party Beneficiaries. Neither Municipality nor County intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge 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. In order for a notice to a Party to be effective under this Agreement, notice must be sent via U.S. first-class mail, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via email, to the addresses listed below and shall be effective upon mailing or hand delivery (provided the contemporaneous email is also sent). The addresses for notice shall remain as set forth in this section unless and until changed by providing notice of such change in accordance with the provisions of this section.

FOR COUNTY:

Broward County Administrator  
Attn: Monica Cepero  
115 South Andrews Avenue, Room 409  
Fort Lauderdale, Florida 33301  
Email address: mcepero@broward.org

*With a copy to:*

Broward County Attorney's Office:  
Attn: Angela J. Wallace  
115 South Andrews Avenue, Room 423  
Fort Lauderdale, Florida 33301  
Email address: ajwallace@broward.org

FOR MUNICIPALITY:

Karen M. Brooks, City Manager  
4800 West Copans Road  
Coconut Creek, FL 33063  
Email address: kbrooks@coconutcreek.net

11.7. Assignment. Neither this Agreement nor any right or interest in it may be assigned, transferred, subcontracted, or encumbered by Municipality without the prior written consent of County. Any assignment, transfer, encumbrance, or subcontract in violation of this section shall be void and ineffective, constitute a breach of this Agreement, and permit County to immediately terminate this Agreement, in addition to any other remedies available to County at law or in equity, all such remedies being cumulative.

11.8. Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth in this Agreement was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth in this Agreement is substantial and important to the formation of this Agreement, and each is, therefore, a material term of this Agreement. County's or Municipality'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. To be effective, any waiver must be in writing signed by an authorized signatory of the Party granting the waiver.

11.9. Compliance with Laws. Municipality and the Project must comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations including, without limitation, American with Disabilities Act, 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and any related federal, state, or local laws, rules, and regulations.

11.10. Representation of Authority. The Parties represent and warrant that this Agreement constitutes the legal, valid, binding, and enforceable obligation of each Party, that execution of this Agreement is within each Party's legal powers, and that each individual executing this Agreement is duly authorized by all necessary and appropriate action to do so on behalf of that Party and does so with full legal authority.

11.11. Severability. If any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.

11.12. Joint Preparation. This Agreement has been jointly prepared by the Parties, and shall not be construed more strictly against either Party.

11.13. Interpretation. The titles and headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include any other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or article of this Agreement, such reference is to the section or article as a whole, including all of the subsections of such section, unless the reference is made to a particular subsection or subparagraph of such section or article. Any reference to "days" means calendar days, unless otherwise expressly stated.

11.14. Priority of Provisions. Unless otherwise expressly stated in this Agreement, if there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached to, referenced by, or incorporated in this Agreement and any provision of Articles 1 through 11 of this Agreement, the provisions contained in Articles 1 through 11 shall prevail and be given effect. In the event of a conflict between this Agreement and the Transportation System Surtax Interlocal Agreement, executed by County on August 29, 2018, as amended, the provisions of this Agreement shall prevail and be given effect.

11.15. Law, 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. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS**

**AGREEMENT, EACH OF MUNICIPALITY AND COUNTY HEREBY EXPRESSLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

11.16. Amendments. No modification, amendment, or alteration in the terms or conditions contained in this Agreement shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by duly authorized representatives of County and Municipality.

11.17. Prior Agreements. This Agreement represents the final and complete understanding of the Parties regarding the subject matter and supersedes all prior and contemporaneous negotiations and discussions regarding that subject matter. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document.

11.18. Payable Interest

11.18.1. Payment of Interest. County shall not be liable to pay any interest to Municipality for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Municipality waives, rejects, disclaims, and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim arising from, related to, or in connection with this Agreement. This subsection shall not apply to any claim for interest, including for post-judgment interest, if such application would be contrary to applicable law.

11.18.2. Rate of Interest. If the preceding subsection is inapplicable or is determined to be invalid or unenforceable by a court of competent jurisdiction, the annual rate of interest payable by County under this Agreement, whether as prejudgment interest or for any other purpose, shall be, to the full extent permissible under applicable law, one quarter of one percent (0.25%) simple interest (uncompounded).

11.19. Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated in this Agreement by reference. The attached exhibits are incorporated into and made a part of this Agreement.

11.20. Prevailing Wage Requirement. If construction work in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) is required of, or undertaken by, Municipality as a result of this Agreement, Section 26-5, Broward County Code of Ordinances, as amended from time to time, shall be deemed to apply to such construction work. Municipality shall ensure Contractor fully complies with the requirements of such ordinance and satisfies, complies with, and completes the required forms as set forth in the Surtax-Funded Projects Form Construction Contract or such other contract as is approved pursuant to this Agreement.

11.21. Counterparts and Multiple Originals. This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

11.22. Living Wage Requirement. To the extent Contractor is a “covered employer” within the meaning of the Broward County Living Wage Ordinance, Sections 26-100 through 26-105, Broward County Code of Ordinances, Municipality shall include in its written agreement with Contractor that Contractor agrees to and shall pay to all of its employees providing “covered services,” as defined in the ordinance, a living wage as required by such ordinance, and shall fully comply with the requirements of such ordinance, and that Contractor shall ensure all of its Subcontractors that qualify as “covered employers” fully comply with the requirements of such ordinance.

11.23. Workforce Investment Program. Municipality acknowledges the Broward Workforce Investment Program, Section 19.211, Broward County Administrative Code (“Workforce Investment Program”). Municipality shall include in its contract with Contractor the requirements of the Workforce Investment Program and Contractor’s agreement to use good faith efforts to meet the First Source Referral Goal and the Qualifying New Hires Goal as set forth in the Workforce Investment Program, including by (a) publicly advertising exclusively with CareerSource Broward for at least five (5) business days any vacancies that are the direct result of this Agreement (whether those vacancies are with Municipality or its Subcontractors) and using good faith efforts to interview any qualified candidates referred under the Workforce Investment Program, and (b) using good faith efforts to hire Qualifying New Hires, as defined by the Workforce Investment Program, for at least fifty percent (50%) of the vacancies that are the direct result of this Agreement.

11.24. Survivability. Notwithstanding any expiration or termination of this Agreement, the following provisions shall survive expiration and termination: Section 3.2 (Municipal Responsibility for the Project); Section 5.6 (Overpayments; Refunds); Article 6 (Transportation Surtax Project Coordination and Participation); Article 7 (Indemnification); Article 8 (Auditing); Section 11.2 (Public Records); Section 11.15 (Law, Jurisdiction, Venue, Waiver of Jury Trial); and Section 11.18 (Payable Interest).

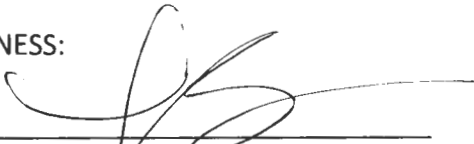
11.25. Approvals. To be effective, any approval under this Agreement made by or on behalf of the County, County Administrator, Contract Administrator, Project Manager, or other representative of either Party must be in writing.

(The remainder of this page is intentionally blank.)

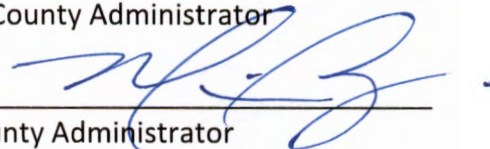
IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: BROWARD COUNTY, through its BOARD OF COUNTY COMMISSIONERS, signing by and through its County Administrator, authorized to execute same by Board action on the 25th day of August, 2020, Agenda Item No. 86, and Municipality, signing by and through its Mayor duly authorized to execute same.

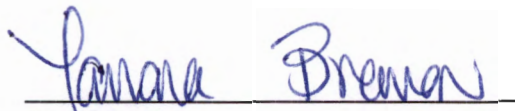
COUNTY

WITNESS:

  
\_\_\_\_\_  
(Signature)  
Kyle Bienkowski  
\_\_\_\_\_  
(Print Name of Witness)

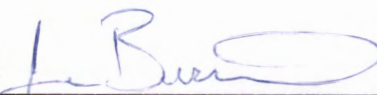
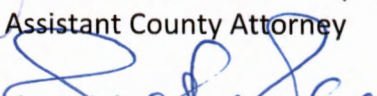
BROWARD COUNTY, by and through its County Administrator

By   
\_\_\_\_\_  
County Administrator  
25<sup>th</sup> day of March, 2022

  
\_\_\_\_\_  
(Signature)  
TAMARA BRANNON  
\_\_\_\_\_  
(Print Name of Witness)

Approved as to form by  
Andrew J. Meyers  
Broward County Attorney  
Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600



By  3/17/22  
\_\_\_\_\_  
William J. Bucciero (Date)  
Assistant County Attorney  
By  3/18/22  
\_\_\_\_\_  
Angela J. Wallace (Date)  
Transportation Surtax General Counsel

Municipal Interlocal Agreement-COCO-024  
2/18/2022  
#21-114.00

INTERLOCAL AGREEMENT BETWEEN BROWARD COUNTY AND THE CITY OF COCONUT CREEK  
FOR SURTAX-FUNDED MUNICIPAL TRANSPORTATION PROJECT:  
COCO-024/ADA ACCESSIBLE BUS PADS

MUNICIPALITY

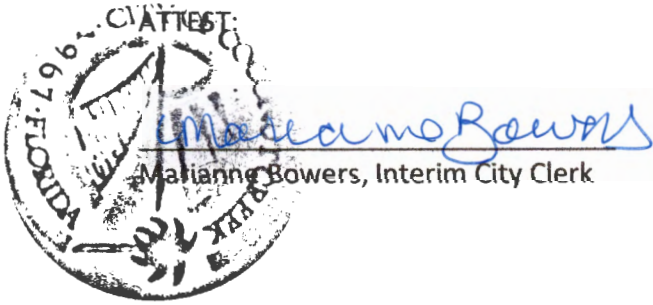
CITY OF COCONUT CREEK

By: Rebecca A. Tooley  
Rebecca A. Tooley, Mayor

10<sup>th</sup> day of March, 2022

I HEREBY CERTIFY that I have approved  
this Agreement as to form and legal  
sufficiency subject to execution by the parties:

Terrill C. Pyburn  
Terrill C. Pyburn, City Attorney



**EXHIBIT A**  
**Project Description and Project Schedule**  
**Design Services for ADA Accessible Bus Pads- Surtax Project**

**1. Project Description:** As further detailed in the Scope of Services attached hereto as Exhibit A-1, this Project includes the following:

The project consists of upgrading approximately sixty-five (65) Community Shuttle bus stop locations along city owned and maintained streets within the City of Coconut Creek (locations shown in Attachment 1) to the latest ADA and Broward County Transit standards. The proposed design work only pertains to stops that are utilized by the City's Community Shuttle. Each bus stop location will be assessed, and construction ready plans will be created to bring the existing bus stop into compliance with current ADA standards. The overall design effort will include creating ADA improvements such as pads, sidewalks, curbing, drainage conveyance systems, permitting through multiple agencies, utility coordination, topographic survey, and optional post design services. The purpose of this scope is to provide final engineering design and construction plans services.

The following items described in the Scope of Services are ineligible for transportation surtax funding and all costs associated with such services must be adequately and separately itemized and paid by Municipality with non-transportation surtax funds.

- Improvements to bus stop locations that are not utilized by the City's Community Shuttle service.
- Utility system adjustments as described in the attached Scope of Services are ineligible for transportation surtax funding.
- The following drainage improvements are not eligible for transportation surtax funding: (i) increases to the stormwater system to accommodate a drainage area greater than the eligible size; and (ii) improvements to address runoff from private roads and/or developments.

A drainage analysis is required for the proposed drainage system design services.

All costs associated with work ineligible for surtax funding must be adequately and separately itemized and paid by Municipality with non-transportation surtax funds.

**2. Deliverables:**

Municipality shall provide quantifiable, measurable, and verifiable units of Deliverables as set forth below. Each Deliverable must specify the required minimum level of work to be performed and the criteria for evaluating successful completion of the Deliverable.

Municipality shall provide a certification from a professional engineer which states all documents



submitted meet a level of completeness in accordance with local engineering standards; this applies to all Deliverables listed in this Agreement.

**DELIVERABLES: Phase 1 - Design**

Sample Deliverable Schedule for Design

No.	Description	Duration/Deadline	Acceptance Criteria
0	Executed ILA	March 14, 2022	ILA executed by Municipality.
1	Bid Advertisement and Award; Consultant Agreement	90 days	Advertised Solicitation Package, Award Letter, fully executed Consultant Agreement with County terms and conditions.
2	Notice to Proceed and Commencement of Work	30 days after Contract Award	NTP Issued by Municipality
3	Basis of Design Report	90 days after NTP	The basis of design report shall establish the design criteria and standards to be used and describe the conceptual design plan and scope of the project. The report must include a lighting justification report if lighting is proposed, and conceptual drainage design for review and approval by County.
4	30% Design Submittal	180 days after acceptance of Basis of Design Report	Typical and standard sections must be included in 30% Design Submittal for review and approval by County.
5	60% Design Submittal	180 days after acceptance of 30% Design Submittal	Complete Drainage Analysis must be included in 60% Design Submittal as well as typical and standard sections. Subject to review and approval by County
6	90% Design Submittal	160 days after acceptance of 60% Design Submittal	Subject to review and approval by County.
7	Final Plans, Specification Package, and Final Cost Estimate Submittal Permitting completed.	24 months after NTP	Signed, sealed, and complete construction plans, specifications, and cost estimate, prepared in accordance with applicable State, County, and local standards. All required permits issued. Subject to review and approval by County.

**3. Project Schedule:**

Sample Project Schedule for Design Contract

Phase: 1	Estimated Date of <b>Completion</b>
ILA fully executed by County and Municipality	March 14, 2022
Project Consultant Bid Advertising and Award; Consultant Agreement Execution	June 14, 2022
Notice to Proceed Issued	July 14, 2022
Basis of Design Report/Preliminary Investigation/Surveying	October 14, 2022
30% Design Submittal	April 14, 2023
60% Design Submittal	October 14, 2023
90% Design Submittal	April 14, 2024
Final Design Completion	July 14, 2024
Public Involvement	On-going
Post-Design Services During Construction	TBD

**EXHIBIT A-1  
SCOPE OF SERVICES**

**City of Coconut Creek Consulting Services for Project No. COCO-024/Design Services for ADA Accessible Bus Pads- Surtax Project**

**1. PROJECT DESCRIPTION**

The project consists of upgrading approximately sixty-five (65) bus stop locations along city owned and maintained streets within the City of Coconut Creek (Locations shown in Attachment “A”) to the latest ADA and Broward County Transit standards. The proposed ADA design work only pertains to stops that are utilized by the City’s Community Shuttle. A flyer showing the City’s Community Bus Routes is also attached as Attachment “B” for reference purposes. Each bus stop location will be assessed, and construction ready plans will be created to bring the existing bus stop into compliance with current ADA standards. The overall design effort will include creating ADA improvements such as pads, sidewalks, curbing, drainage conveyance systems, permitting through multiple agencies, utility coordination, topographic survey, and optional post design services. The purpose of this scope is to provide final engineering design and construction plans services.

This project is funded by Broward County’s transportation surtax pursuant to Section 31½- 71 et seq., of the Broward County Code of Ordinances (Transportation Surtax) and in accordance with Section 212.055(1), Florida Statutes.

The following items are ineligible for Transportation Surtax:

- Improvements to bus stop locations that are not utilized by the City’s Community Shuttle service.
- Utility system adjustments.
- The following drainage improvements: (i) increases to the stormwater system to accommodate a drainage area greater than the eligible size; and (ii) improvements to address runoff from private roads and/or developments.

A drainage analysis is required for the proposed drainage system design services.

All costs associated with work ineligible for surtax funding must be adequately and separately itemized and paid by City with funds other than Transportation Surtax funds.

**2. BASIC SERVICES**

Basic Services will include complete sets of signed and sealed plans, specifications, permits, and other documentation required for construction. This effort will include (at a minimum): Key Sheet, Summary of Quantities, Bus Stop Details, General Notes, Plan and Profile Sheets, Cross Sections, Erosion Control, Maintenance of Traffic, Cost Estimates, and other detail sheets as necessary to produce final construction bid plans. All design, plans, and contract documents will be prepared in accordance with the latest editions of the Broward County Standards, the latest edition of the Manual on Uniform Traffic Control Devices (MUTCD), FDOT Standard Plans, FDOT Standard

Specifications for Road and Bridge Construction, FDOT Design Manual (FDM), and any other applicable FDOT manual/guideline/standard.

## **2.1 Bus Pad Design**

### **A. Horizontal Alignment Analysis**

- 1) Provide standard Broward County Transit Bus Pad at each existing bus stop location listed.
- 2) Provide sidewalks for pedestrian access to all Bus Pads where there is currently no accessible route to the bus stops.
- 3) All proposed facilities should be designed to be within the existing right of way.

### **B. Vertical Alignment**

- 1) Design vertical alignment to assess impacts on existing conditions. Provide profiles for proposed sidewalks and any required curb and gutter.

### **C. Temporary Traffic Control Plan**

- 1) Coordinate with the City, Broward County Traffic Division, and the FDOT as required to develop a traffic control plan. Traffic control shall be with phasing notes. Provide details as required for any areas that require a more detailed traffic control.

### **D. Drainage Design**

- 1) Provide drainage analysis to determine impacts to the existing drainage patterns and drainage systems in the areas of the improved bus stops and routes.
- 2) Adjust existing drainage system that is impacted by proposed improvements to maintain positive drainage and required water quality.
- 3) Conceptual drainage design for review and approval by County submitted with Basis of Design Report.
- 4) Complete Drainage Analysis submitted with 60% Design submittal.

### **E. Permitting**

- 1) Secure all permits required to complete the proposed improvements.

### **F. Utility Coordination**

- 1) Coordinate to provide initial plan sheets to utility agency owners (UAO's) to identify their existing and proposed facilities. Show existing utilities in the plans based on UAO's marked plan.
- 2) Prepare potential conflict matrix and provide to UAO's with progress plans.
- 3) Coordinate resolution of utility conflicts and request utility relocation schedules from UAO's.
- 4) Lighting justification report if lighting is proposed.

### **G. Horizontal Control Reference Sheets**

- 1) Incorporate horizontal control and benchmark information. Consultant surveyor shall provide sign and sealed survey control sheets for the incorporation in the final plans.

#### **H. Erosion Control Sheets**

1) Prepare any erosion control and storm water pollution prevention plans as required for permitting.

#### **I. Traffic Control Sheets**

1) Prepare a traffic control plan with all applicable FDOT MOT Design Standards that addresses traffic issues to include any required sidewalk closures and associated required detours.

#### **J. Opinion of Probable Cost**

1) Prepare and submit an opinion of probable construction cost with the submittal of 90% plans and adjust costs based upon plan review comments with a final revised cost opinion submitted with the 100% construction ready plans. It is acknowledged that opinions of probable costs are based on the information known to the Consultant at the time and represent only the Consultant's judgment as a design professional familiar with the construction industry.

#### **K. Survey Services**

1) In general, topographic design and right of way survey will be obtained within the area of anticipated work at each bus stop location, plus 25' in each direction. The designer will provide anticipated survey areas to the City for approval prior to commencement. The survey will depict:

- Benchmark Information
- Reference points
- Ties to section corners
- Each change in direction of the right-of-way
- Underground utilities and above ground features within proposed construction areas
- The right-of-way will be calculated based on the title search performed by the design surveyor.

### **3. OPTIONAL SERVICES**

#### **A. Post Design Services**

1) Provide services during the construction phase of the project including but not limited to bidding assistance, attending progress meetings, shop drawing review, and responses to requests for information (RFI's).

### **4. GENERAL REQUIREMENT FOR WORK**

All plans will be submitted on 11x17 size sheets and in digital format unless otherwise indicated.

#### **4.1 Deliverables**

A. Basis of Design Report, 30%, 60%, and 90% plans submittals – required components as defined in the FDM. Submittals will include at a minimum:

- 5 sets of plans
- Response to comments for previous reviews
- 3 copies of reports

- PDF copy of all deliverables

B. Final Plans Submittal

- 5 sets of plans
- Up to three (3) sets of sign and sealed plans as required for permitting
- 1 copy of all required permits
- Response to comments
- Computation Book
- Modifications to Specifications
- CADD files
- PDF copy of all deliverables

**4.2 Schedule**

A. Consultant will submit a mutually agreed upon schedule of project milestones. The Design Team shall allow a minimum of 3-week review time for each submittal.

B. The Basic Services will be completed within eighteen (18) months from the date of the Notice to Proceed.

**5. CITY RESPONSIBILITIES**

The City shall provide the Design Team with adequate information regarding the City's requirements for the project including any desired or required design or construction schedule, any budgetary requirements, and any existing files, plans or other engineering information deemed appropriate.

The City shall review any documents submitted by the Design Team requiring the City's decision and shall render any required decision pertaining thereto. If the City becomes aware of any fault or defect in the project or of any errors, omissions or inconsistencies in the design documents or specifications, the City shall give prompt notice to the Design Team.

The City's review of any documents prepared by the Design Team or its sub-consultants shall be solely for the purpose of determining whether such documents are generally consistent with the City's standards and intent of the project. No review of such documents shall relieve the Design Team of its responsibility for the accuracy, adequacy, or suitability and coordination of its work product.

The City shall designate a representative or representatives to represent the City in all technical matters pertaining to and arising from the work and performance of this Scope of Services.

**EXHIBIT B**  
**Funding Schedule**  
**Design Services for ADA Accessible Bus Pads- Surtax Project**

**Funding Amounts:** The amounts stated in this Funding Schedule are the maximum amounts payable for the Phase(s) stated, and shall be invoiced and paid only in accordance with the remainder of this Funding Schedule (as may be amended from time to time) and the terms and conditions of the Agreement. In the event of a conflict between anything stated in this Funding Schedule and anything stated elsewhere in the Agreement, the provisions stated in Articles 1 through 11 of the Agreement shall govern and control.

**Invoicing/Application for Funding Documentation:** Municipality shall submit the following with each invoice or Application for Funding (as defined below): an updated progress schedule; documentation of all invoices received from or payments made to Contractor or Consultant for which funding is sought; a statement indicating the cumulative amount of CBE participation to date; and a certification that all funding amounts sought are statutorily eligible for funding under Section 212.055, Florida Statutes.

**Additional Invoicing Requirements:** If checked, the checked requirements apply to all invoices/Applications for Funding under this Agreement:

- All costs invoiced shall be supported by properly certified payrolls, time records, invoices, contracts, or vouchers evidencing in appropriate detail the amounts invoiced/expended and the nature and purpose of such amounts.
- Pay Application documents consistent with AIA Document G702 and G703.
- \_\_\_\_\_

**Funding Parameters:** The checked expenses are ineligible for funding under this Agreement:

- Costs incurred by Municipality prior to the execution of this Agreement
- Costs incurred after the expiration of this Agreement
- Costs that are not expressly permitted in Exhibit A or B
- Amounts that Contractor, Consultant, or Subcontractors are contractually responsible to pay, credit, or reimburse to Municipality or County (e.g., liquidated damages for not meeting the Project Schedule, audit costs, etc.)
- Amounts attributable to good or services received under a contract or other arrangement that was not approved by County
- Audit costs incurred by Municipality
- Legal and accounting fees and expenses
- Costs for operation, support, or maintenance of the Project
- Interest expenses incurred by Municipality
- Municipality's staff or other personnel costs in directly performing the Project

**Advance Payment of Maximum Not-to-Exceed Amount  
(Quarterly Draws in Advance of Expenditures for projects over \$250,000)**

Municipality shall invoice County for up to a quarter of the applicable Total Maximum Not-To-Exceed Amount specified below in advance of the applicable Deliverable or Phase (“Application for Funding”). The first Application for Funding shall be submitted to the Contract Administrator no later than thirty (30) days after the full execution of this Agreement. Municipality shall submit no more than four separate Applications for Funding per funding schedule provided below.

Each quarter will be funded in advance by County per the schedule(s) stated below, with each funding amount determined by the Maximum Not-to-Exceed Amount for the applicable Deliverable less any unexpended funding for prior Deliverables. Unexpended funds for prior Deliverables shall be deducted from subsequent Applications for Funding or refunded to County, as requested by the Contract Administrator.

Each Application for Funding (after the first) shall include the information required in the Agreement including the following information for the prior Deliverables (as applicable): the amount of funding received and evidence of actual expenditures (including documentation demonstrating all invoices received from and payments made to Consultant); a statement indicating the cumulative amount of CBE participation; an updated progress schedule; and all required certifications including that all Deliverables sought are statutorily eligible for funding under Section 212.055, Florida Statutes.

Absent prior written approval by the Contract Administrator, Municipality may not submit an Application for Funding for a Deliverable until all prior Deliverables have been satisfactorily completed.

<b>Deliverable/Phase Description</b>	<b>Maximum Not-To-Exceed Amount</b>
Deliverables 0-3: Solicitation Advertisement, Award, and Consultant Agreement Execution; Notice to Proceed Issued and Commencement of Work; Basis of Design Report/Preliminary Investigation/Surveying	\$108,000
Deliverable 4: 30% Design Submittal	\$108,000
Deliverable 5: 60% Design Submittal which includes Complete Drainage Analysis	\$108,000
Deliverable 6-7: 90% Design Submittal; Final Plans, Specification Package, and Final Cost Estimate Submittal; Permitting completed.	\$108,000
<b>TOTAL MAXIMUM NOT-TO-EXCEED AMOUNT:</b>	<b>\$432,000</b>



**EXHIBIT C**  
**Reporting Requirements**  
**Design Services for ADA Accessible Bus Pads- Surtax Project**

Municipality shall submit to County and the Oversight Board, on a quarterly and annual basis, a detailed Financial Report that includes the information contained in the attached Sample Financial Report.

Municipality shall submit to County on a monthly basis a detailed report of the Project Metrics and progress towards applicable goals in a form prescribed by County (see attached MAP PMO Project Report Status Template). The reports must include sufficient information to enable County's Program Management Office ("PMO") to track and document on a monthly basis:

- Key activities and Project milestones since the previous report;
- Expected activities/milestones to be completed before the next report;
- If applicable, key issues/challenges the Project faces and the plan to resolve or manage the issues/challenges; and
- Overall status of the Project.

Municipality's annual financial report for the Project must be audited and certified by an independent CPA, at Municipality's expense, with an opinion as to whether the financial information in the report is presented in accordance with Generally Accepted Accounting Principles and whether the Project is in accordance with the operative interlocal agreements for surtax funding. The audit shall contain sufficient information for County and the Oversight Board to determine if the Project expenditures conform to this Agreement and applicable law. The annual financial report must also include cumulative financial information for each individual Surtax-Funded Project undertaken by Municipality. The annual financial report must include appropriate footnote disclosures in support of the financial information items presented, including disclosure of any issue of noncompliance with this Agreement or applicable law.

### Sample Financial Report

<b>Project Name:</b>	
<b>Quarterly Period:</b>	

**Section A: Total/Maximum Project Funding**

1.	Surtax Maximum Funding Amount (per Section 5.4)	\$
2.	Non-Surtax Funding Awarded/Committed	\$
3.	<b>Total Project Funding</b> (Total lines 1 + 2)	<b>\$</b>
4.	Less Proceeds (as defined in Section 5.6)	(\$ )
5.	<b>Adjusted Project Funding</b> (Line 3 minus Line 4)	<b>\$</b>

**Section B: Funding Received to Date**

		Quarter Reported	Fiscal Year to Date	Total
6.	Surtax Funding Received	\$	\$	\$
7.	Non-Surtax Funding Received	\$	\$	\$
8.	<b>Total Project Funding Received</b> (Total lines 6 + 7)	<b>\$</b>	<b>\$</b>	<b>\$</b>

**Section C: Expenditures to Date**

		Quarter Reported	Fiscal Year to date	Total
9.	Surtax Funding Expended	\$	\$	\$
10.	Non-Surtax Funding Expended	\$	\$	\$
11.	<b>Total Project Funding Expended</b> (Total lines 9 + 10)	<b>\$</b>	<b>\$</b>	<b>\$</b>

**Section D: Available Funding to Date**

12.	<b>Adjusted Project Funding</b> (Line 5 above)	\$
13.	Total Project Funding Expended to Date (Line 11 above)	\$
14.	<b>Available Project Funding to date</b> (Line 12 minus line 13)	<b>\$</b>

**Section E: Contract Financials** *(complete for each of Contractor and Consultant)*

Original Contract amount	\$
Changes (increases or decreases)	\$
<b>Revised contract amount</b>	<b>\$</b>
Total Work Completed to Date	\$
Retainage Held to Date	\$
<b>Total Earned Less Retainage</b>	<b>\$</b>
<b>Total Amount Paid to Date</b>	<b>\$</b>
Work Completed this Quarter	\$

Retainage Held for Work Completed this Quarter	\$
Retainage Released this Quarter	\$
Amount Paid this Quarter	\$

**Section F: Quarterly Detailed Expenditures (for Quarter Reported)**

Invoice No.	Invoice Date	Vendor Name	Description of Work	Invoice Amount	Amount Paid





**Section G: Project Schedule & Status**

15.	Project Schedule Completion Date	
16.	Total Project Schedule Time Remaining	
17.	Amount Project Is Ahead/Behind Schedule	<input type="checkbox"/> Ahead by ___ Days <input type="checkbox"/> Behind by ___ Days
18.	Explanation for Change in Project Schedule:	
19.	Project Run Rate (Actual vs. Planned Expenditures)	
20.	Percentage of Project Phases/Milestones Met	%

**Section H: Performance Metrics**

- A. [To be provided by the PMO as applicable]
- B. [To be provided by the PMO as applicable]

# MAP PMO Project Status Report *Template*

<b>&lt;Agency&gt; Project:</b> <i>&lt;fill in project name or id&gt;</i>		<b>Owner:</b> <i>&lt;fill in&gt;</i>	<b>July 15, 2019</b>
<b>Progress update</b> <ul style="list-style-type: none"> <li>▪ <i>Key activities since the last status report</i></li> <li>▪ ?</li> </ul>		<b>Overall Progress</b>  <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <ul style="list-style-type: none"> <li> Red - Execution critical delay</li> <li> Amber - Delay; but recoverable</li> <li> Green - On track</li> </ul> </div>	
<b>Key activities to be completed in the next &lt;2-4&gt; weeks:</b> <ul style="list-style-type: none"> <li>▪ ?</li> <li>▪ ?</li> </ul>		<b>Summary: (may include)</b> <ul style="list-style-type: none"> <li>▪ <i>Key take-aways for BoCC, OB and SurTax Admin</i></li> <li>▪ <i>Project run rate; actual vs. planned</i></li> <li>▪ <i>% Milestones met</i></li> <li>▪ <i>Days over budget</i></li> <li>▪ <i>Leverage ratio</i></li> <li>▪ <i>Key reminders of critical decisions/milestones/etc.</i></li> </ul>	
<b>Issues/Challenges:</b>		<b>Proposed solutions:</b>	

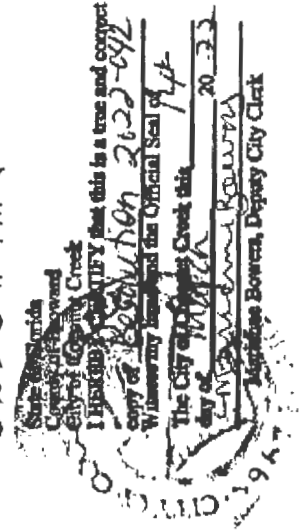
**Exhibit D      Form Contracts**  
**Design Services for ADA Accessible Bus Pads- Surtax Project**

**Surtax-Funded Projects Form Consultant Contract:**

Exhibit E

RESOLUTION NO. 2022-042

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF COCONUT CREEK, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE THE INTERLOCAL AGREEMENT BETWEEN BROWARD COUNTY AND THE CITY OF COCONUT CREEK FOR THE SURTAX-FUNDED MUNICIPAL TRANSPORTATION PROJECT: ADA ACCESSIBLE BUS PADS, SURTAX PROJECT NUMBER COCO-024; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.



**WHEREAS**, there are one hundred sixty-four (164) designated bus stops within the City of Coconut Creek; and

**WHEREAS**, Broward County and the State of Florida are responsible for seventy-nine (79) of these stops, and the City is responsible for the remaining eighty-five (85) stops; and

**WHEREAS**, the City-maintained bus stops are located on City roads and are utilized by the City's community buses; and

**WHEREAS**, approximately sixty-five (65) of these City-maintained bus stops have been determined to be out of compliance with current Americans with Disabilities Act (ADA) standards; and

**WHEREAS**, engineer design services are necessary to create construction ready plans for these proposed ADA improvements; and

**WHEREAS**, on September 27, 2018, the City Commission adopted Resolution No. 2018-217, approving the Transportation System Surtax Interlocal Agreement (ILA) with Broward County (County), the Broward Metropolitan Planning Organization (MPO), and other Broward County municipalities (Municipalities), for purposes of implementing the transportation surtax; and

**WHEREAS**, on November 6, 2018, Broward County voters approved the

Transportation Surtax Ballot measure to fund transportation projects throughout Broward County such as the City's ADA Accessible Bus Pads project; and

**WHEREAS**, on July 11, 2019, the City Commission adopted Resolution No. 2019-169, approving the First Amendment to the ILA with the County, the MPO, and the Municipalities for purposes of implementing the transportation surtax; and

**WHEREAS**, on January 28, 2021, the City Commission adopted Resolution No. 2021-007, approving the Second Amendment to the ILA with the County, the MPO, and the Municipalities to fully restate the Interlocal Agreement, as amended, including to (i) document the completion of the MPO's first cycle (Cycle 1) of evaluating and ranking municipal capital projects to be funded with Transportation Surtax proceeds, (ii) document the allocation of FY2019, FY2020, and FY2021 Transportation Surtax proceeds for approved Municipal Capital Projects (MCP), (iii) set forth the MPO's criteria going forward for evaluating, ranking, and recommending funding for municipal capital projects in future County annual five-year capital improvement plans, (iv) outline the County's general process for evaluation and ranking of municipal rehabilitation and maintenance projects and document completion of that process for FY2020, (v) document the allocation of FY2019 and FY2020 Transportation Surtax proceeds for approved municipal rehabilitation and maintenance projects, and (vi) document an agreed upon process for funding municipal capital projects, including the timing of funding and the process for adjusting the County's annual five-year capital improvement plans; and for the purpose of documenting the completion of the MPO's Cycle 1 of evaluating and ranking municipal capital projects to be funded with Transportation Surtax proceeds; and

**WHEREAS**, the ADA Accessible Bus Pads, Surtax Project Number COCO-024, is an approved Cycle 1 MCP eligible for funding with surtax proceeds in the amount of \$432,000; and

**WHEREAS**, the City Commission finds it in the best interest of the City to approve the Interlocal Agreement ("Funding Agreement") between Broward County and the City for the surtax-funded municipal transportation project, ADA Accessible Bus Pads, Surtax

Project Number COCO-024 (Exhibit "A," attached hereto and made a part hereof) (Exhibit "B" consists of the relevant RFQ Specifications and Exhibit "C" consists of the Draft Design Services Contract); and

**WHEREAS**, the City Commission finds it in the best interest of the City to approve the Funding Agreement (Exhibit "A") and the Bid Specifications and Draft Design Services Contract (Exhibits "B" and "C") even if there are some additional changes to the language in Exhibits "B" and "C" without these items having to come back before the City Commission so long as there are no substantive changes or changes to the approved amounts in the interest of time based on the fast approaching deadlines provided in the Funding Agreement and the fact that the County requires the City to approve the RFQ Specifications and Draft Design Services Contract as part of the Funding Agreement.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF COCONUT CREEK, FLORIDA:**

**Section 1:** That the foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this resolution. All exhibits attached hereto are incorporated herein and made a specific part of this resolution.

**Section 2:** That the City Commission has reviewed and hereby approves the attached Interlocal Agreement between Broward County and the City of Coconut Creek for the surtax-funded municipal transportation project, ADA Accessible Bus Pads, Surtax Project Number COCO-024 (Exhibit "A") and the RFQ Specifications (Exhibit "B") and Draft Design Services Contract (Exhibit "C").

**Section 3:** That the Mayor is hereby authorized to execute said agreement.

**Section 4:** That if any clause, section, other part or application of this resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or in application, it shall not affect the validity of the remaining portion or applications of this resolution.

**Section 5:** That this resolution shall be in full force and effect immediately upon its adoption.

**Adopted this 10th day of March, 2022.**



Rebecca A. Tooley  
Rebecca A. Tooley, Mayor

Attest:



Marianne Bowers

Marianne Bowers, Interim City Clerk

Tooley Aye

Rydell Aye

Sarbone Aye

Welch Aye

Railey Aye

Exhibit B



**REQUEST FOR QUALIFICATIONS**



**DESIGN SERVICES FOR ADA ACCESSIBLE BUS PADS  
ACCESSIBILITY IMPROVEMENTS  
(SURTAX COCO-024)**

**RFQ NO. 05-05-22-11**

**PROCUREMENT DIVISION  
4800 WEST COPANS ROAD, COCONUT CREEK, FLORIDA 33063  
eBid System: [www.coconutcreek.net/procurement](http://www.coconutcreek.net/procurement)**

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# CITY OF COCONUT CREEK

FINANCE AND ADMINISTRATIVE SERVICES  
PROCUREMENT DIVISION  
LINDA JEETHAN, PROCUREMENT MANAGER  
4800 WEST COPANS ROAD

April 3, 2022

## LEGAL NOTICE REQUEST FOR QUALIFICATIONS

The City of Coconut Creek, Florida is actively seeking proposals from qualified consultants to provide design services for ADA accessible bus pads. The project consists of designing upgrades to approximately sixty-five (65) bus stop locations along City owned and maintained streets within the City of Coconut Creek to the latest ADA standards. Proposals shall be in full accordance with the scope of services, terms, and conditions contained in this Request for Qualifications (RFQ).

**RFQ No.:** 05-05-22-11  
**RFQ Name:** Design Services for ADA Accessible Bus Pads Accessibility Improvements  
– Surtax COCO-024  
**Pre-Proposal Conference:** April 13, 2022 at 11:00am  
**Due Date/Time:** Thursday, May 5, 2022 at 11:00 a.m. EST

A Cone of Silence is in effect with respect to this RFQ. The Cone of Silence prohibits certain communications between potential Respondents and/or Vendors and the City. All communication regarding this RFQ shall be directed to Althea Pemsel, MA, CPSM, Procurement Supervisor via email at [apemsel@coconutcreek.net](mailto:apemsel@coconutcreek.net)

Consultant must be registered on the City's eBid System in order to respond to this RFQ. A complete RFQ document may be downloaded for free from the eBid System as a pdf at [www.coconutcreek.net/fin/procurement](http://www.coconutcreek.net/fin/procurement). The City is not responsible for the accuracy or completeness of any documentation the Consultant receives from **any source** other than from the eBid System.

**\*\*NOTE\*\***This is a Broward County Municipal Transportation Surtax Project with a goal for Certified Broward County Business Enterprises (CBE) participation of thirty percent (30%) of the value of the project.

A mandatory pre-proposal meeting will be held at the Coconut Creek Government Center, City Hall, 4800 West Copans Road, Coconut Creek, Florida 33063 with the City of Coconut Creek staff and a representative from Broward County to discuss the 30% County Business Enterprise (CBE) goal requirements for this Surtax project. Proposers or their representative(s) must attend. Please ensure that your company has reviewed the design specifications as this meeting presents an opportunity to clarify any concerns regarding the solicitation requirements. Failure to attend the pre-proposal meeting will automatically result in Proposer being deemed non-responsive.

Sealed proposals shall be submitted electronically through the eBid System on or before the due date/time stated above. Consultant is solely responsible for downloading all required documents. Responses will be electronically unsealed in a public forum and read aloud. Any proposal received after the date and time specified, whether by mail or otherwise, will not be considered. Any uncertainty regarding the time a proposal is received will be resolved against the Consultant.

Please be advised that City Hall is closed on Fridays and on holidays observed by the City. City Hall hours of operation are 7:00 a.m. to 6:00 p.m. EST, Monday through Thursday.

Pursuant to Section 119.071, Florida Statutes, sealed bids, proposals or replies by an agency pursuant to a competitive solicitation are exempt from inspection until such time as the agency provides notice of an intended decision or until thirty (30) days after the opening of the bids, proposals, or final replies, whichever is earlier.

Linda Jeethan, Procurement Manager  
Procurement Division  
Finance and Administrative Services

Publish Dates: Sunday, April 3, 2021

## **PART 1 – General Information**

### **1.1 Definition - Request for Qualifications (RFQ)**

- 1.1.1 An RFQ is a formal competitive advertised solicitation method that typically describes a project in enough detail to let potential vendors determine if they wish to compete. The RFQ forms the basis for requesting all documents, whether attached or incorporated by reference, utilized for obtaining qualifications and performance data, including but not limited to financial capability, reputation, experience and competency from which the most highly qualified vendor(s) can be identified.
- 1.1.2 The vehicle for securing the consultant shall be in compliance with the State of Florida Competitive Consultants Negotiations Act (CCNA), Florida Statute Section 287.055. Pricing is not submitted as a part of this evaluation process for submitted qualification proposals. Award will be based on the criteria set forth herein to the most qualified firm(s) as indicated by the Statement of Work, herein.

### **1.2 Introduction**

The City of Coconut Creek is soliciting Statements of Qualifications from qualified Consultants with a minimum of five (5) years' experience in civil engineering design work to include projects that require ADA accessibility design to provide the City with a packet on qualifications and experience. Also, Consultant will participate in public meetings and presentations necessary to accomplish the scope of work.

Respondents to this Request for Qualifications shall be licensed to practice professional engineering services within the State of Florida. Statements submitted with license applications pending shall not be considered responsive.

Interested firms are invited to submit their responses in conformance with the criteria outlined herein.

It is the City's intention to:

- (a) Solicit responses from interested parties;
- (b) Evaluate the responses;
- (c) Conduct oral presentations (if necessary);
- (d) Verify the information presented; and
- (e) Negotiate and award a contract to the selected Consultant.

The selected Consultant must agree to abide by and be governed by all Federal, State, County and City laws, rules, and regulations, some of which may have a bearing on the services involved in any agreement(s) issued as a result of this RFQ.

#### **Broward County's Office of Economic and Small Business Development Requirements are applicable to this Contract**

On September 25, 2018 (Item No. 69), the Board of County Commissioners of Broward County, Florida, (County Commission) adopted a thirty percent (30%) County Business Enterprise Program (CBE) participation goal for projects funded with proceeds from the transportation surtax. The project that is the subject of this solicitation will be funded with proceeds from the transportation surtax. Therefore, the Broward County Business Opportunity Act of 2012, Section 1-81, Broward County Code of Ordinances, as amended (the "Business Opportunity Act" or "CBE Program"), is applicable to this solicitation and the contract that will result from this solicitation. All vendors/firms

responding to this solicitation are required to utilize CBE firms to perform the assigned participation goal for this contract.

The Broward County Office of Economic and Small Business Development (OESBD) has established the CBE participation goal for this project based upon the proposed scope of services/work for the project. Potential alternate/additional scopes of services/work, optional services and allowances were not considered by OESBD when the CBE participation goal for this project was established. If the City subsequently chooses to authorize any alternate/additional scopes of services/work, optional services and/or allowances, that are determined by OESBD and the Contract Administrator to be funded with proceeds from the transportation surtax, OESBD may apply the established CBE participation goal to the alternate/additional services/work, optional services, and/or allowances. In such an instance, the City will issue a written notice to the selected Consultant that the CBE participation goal will also apply to the alternate/additional services/work and/or allowances. The selected Consultant shall submit all required forms pertaining to its compliance with the CBE participation goal, as applicable. Failure by Consultant to submit the required forms regarding CBE participation may result in the rejection of Consultant's solicitation submittal.

CBE Program Requirements (see Section 2.9 of the General Terms and Conditions and Exhibit D): Compliance with CBE participation goal requirements is a matter of responsibility; Consultant should submit all required forms and information with its solicitation submittal. If the required forms and information are not provided with the Consultant's solicitation submittal, then Consultant must supply the required forms and information no later than three (3) business days after receipt of a request from OESBD. Consultant may be deemed non-responsible for failure to fully comply with CBE Program Requirements within these stated timeframes.

**1.3 Point of Contact**

To ensure fair consideration for all Consultants, the City prohibits communication to or with any department, elected official or employee during the submission process, other than the Procurement Analyst, regarding the requirements for this submittal. Any such contact may be considered grounds for disqualification. The City shall not be responsible for oral interpretations given by any City employee or its representative.

All inquiries concerning clarifications of this solicitation or for additional information shall be submitted in writing by mail, email, or facsimile and directed as follows:

City of Coconut Creek – Procurement Division  
 Attn: Althea Pemsel, MA, CPSM, Procurement Supervisor  
 4800 West Copans Road  
 Coconut Creek, Florida 33063  
 Fax:(954) 973-6754  
 Email:apemsel@coconutcreek.net

All responses to questions/clarifications will be sent to all prospective Consultants in the form of an addendum. Such contact is to be for clarification purposes only. Material changes, if any, to the scope of services, or bid procedures will only be transmitted electronically through the eBid System.

**1.4 Schedule of Events**

The City will use the following tentative time schedule in the selection process. The City reserves the right to change and/or delay scheduled dates.

<b>Event</b>	<b>Date</b>
RFQ Available	04-03-2022



Mandatory Pre-Proposal Meeting (10:00 a.m. EST)	04-13-2022
Last Date of Receipt of Questions (5:00 p.m. EST)	04-18-2022
Addendum Release (if required)	04-21-2022
Proposals Due (11:00 a.m. EST)	05-4-2022
Proposal Review	Week of May 9, 2022
Commission Review and Approval (Target)	June 14, 2022

**PART 2 – General Terms and Conditions**

**2.1 General Terms and Conditions**

These General Terms and Conditions apply to offers made to the City of Coconut Creek by all prospective Proposers. If any term in the Special Conditions in this RFQ or Exhibit D, the City of Coconut Creek Consultant Agreement for Surtax Projects is in variance or conflict with these General Terms and Conditions, such conflict will be resolved in the following order of priority: (1) City of Coconut Creek Consultant Agreement for Surtax Projects; then (2) Special Condition in the RFQ. If no changes or deletions to the General Terms and Conditions are made in the Special Conditions, then the General Terms and Conditions shall prevail in their entirety except with respect to the City of Coconut Creek Consultant Agreement for Surtax Projects.

**2.2 Special Conditions**

Where there appears to be variances or conflicts between the General Terms and Conditions and any Special Conditions and/or the Statement of Work outlined in this proposal, the Special Conditions and/or the Statement of Work shall prevail. However, the terms of Exhibit D, the City of Coconut Creek Consultant Agreement for Surtax Projects shall take precedence over and prevail in the event of a conflict with these General Terms and Conditions, any other terms in the RFQ, and the Statement of Work.

**2.3 Defined Terms**

**Agreement:** Shall mean the City of Coconut Creek Consultant Agreement for Surtax Projects.

**City:** Shall mean the City of Coconut Creek, a political subdivision of the State of Florida.

**Cone of Silence:** Means a prohibition on any communications between a potential officer, bidder, lobbyist, Consultant, to a City Commissioner, the City Attorney, the City Manager, and all City employees (except the Procurement Official), and any non-employees appointed to evaluate or recommend selection in such procurement process regarding a particular Request for Proposals (RFP), Request for Qualifications (RFQ), Invitation for Bids (IFB), or any other advertised solicitation from the time a solicitation is advertised to contract award recommendation and does not include written communications on file with the City Clerk.

**Consultant:** Successful Bidder or Proposer who is awarded a contract to provide professional services to the City.

**Contract:** A deliberate verbal or written agreement between two (2) or more competent parties to perform or not to perform a certain act or acts, including all types of agreements, regardless of what they may be called, for the procurement or disposal of equipment, materials, supplies, services or construction.

**Contract Administrator:** An individual responsible for the management of all actions required for initiating and issuing procurements, along with all contract-related actions performed during the course of the work from award until closeout of the contract.

**Contract Documents:** Means the official documents setting forth bidding information, requirements, and contractual obligations for the Project and includes the Agreement, RFQ, Addenda, Exhibits, and any additional documents, the submission of which is required by this Project. To the extent of any inconsistency between this Request for Qualifications and the Agreement, the Agreement language shall control.

**County Business Enterprise or CBE:** means an entity certified as meeting the applicable requirements of Section 1-81, Broward County Code of Ordinances.

**Evaluation Criteria:** Factors relating to management capability, technical capability, meeting performance requirements, price and other important considerations used to evaluate which proposer has made the most advantageous offer in a competitive solicitation.

**Firm:** The individual(s) or firm(s) to whom the award is made and who executes the contract documents.

**First Ranked Proposer:** That Proposer, responding to a City RFQ, whose proposal is deemed by the City, the most advantageous to the City after applying the evaluation criteria contained in the RFQ.

**OESBD:** Means Broward County's Office of Economic and Small Business Development.

**Offeror:** Means a person submitting an offer in response to a Request for Qualifications or other solicitation.

**Professional Services:** Services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the state, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice.

**Proposal:** An offer made by one party to another as a basis for negotiations for entering into a contract. A proposal received in response to an RFQ.

**Proposer:** One who submits a proposal in response to a solicitation. The terms "Consultant" and "Proposer" are used interchangeably and have the same meaning.

**Selection Committee:** A group of at least three (3) reviewers comprised of qualified City staff or other persons selected by the City who aid in the evaluation of the proposals.

**Services:** means the work set forth in the Scope of Services, and shall include civil, structural, mechanical, and electrical engineering, architectural services, and other professional design services as applicable for the Project, and any Optional Services procured under this Agreement.

**Small Business Enterprise or SBE:** means an entity certified as meeting the applicable requirements of Section 1-81, Broward County Code of Ordinances.

**Subconsultant:** means an entity or individual providing services to City through Consultant for all or any portion of the work under this Agreement. The term "Subconsultant" shall include all subcontractors.

**Successful Consultant:** Consultant who is awarded a contract to provide professional services to the City.

**Waiver of Mistake or Informality:** The act of disregarding errors or technical nonconformities in proposals which do not change the substance of the proposal and will not adversely affect the competition between proposers.

## 2.4 Cone of Silence

2.4.1 “Cone of Silence” means a prohibition on any communication regarding a particular Request for Proposals (RFP), Request for Qualifications (RFQ), Invitation for Bids (IFB), or other competitive solicitation between:

- (a) Any person who seeks an award therefrom, including a potential vendor or vendor’s representative, and
- (b) The City Commission, the City Attorney, City Manager, and all City employees, and any non-employees appointed to evaluate or recommend selection in such procurement process.

The Cone of Silence shall not apply to communications with the Procurement Official to obtain clarification or information concerning the subject solicitation. Any such contact with anyone other than the Procurement Official may be considered grounds for disqualification. The City shall not be responsible for oral interpretations given by any City employee or its representative. For purposes of this section, “vendor’s representative” means an employee, partner, director, or officer of a potential vendor, or Consultant, lobbyist, or actual or potential subcontractor or subconsultant of a vendor, or any other individual acting through or on behalf of any person seeking an award.

2.4.2 The Cone of Silence shall be applicable to each RFP, RFQ, IFB, or other competitive solicitation during the solicitation and review of responses. At the time of issuance of the solicitation, the Procurement Official shall include in any advertisement and public solicitation for goods and services a statement disclosing the requirements of this section.

2.4.3 The Cone of Silence shall terminate at the time the City awards or approves a contract, votes to reject all bids or responses, or otherwise takes action which ends the solicitation and review process.

2.4.4 Nothing contained herein shall prohibit any potential vendor or vendor’s representative from:

- (a) Making public presentations at duly noticed pre-bid conferences or at meetings before a duly noticed Selection Committee;
- (b) Communicating with the City Commission during any duly noticed public meeting;
- (c) Communicating verbally or in writing with any City employee or official for the limited purpose of seeking clarification or additional information, when such employee is specifically designated in the applicable RFP, RFQ, IFB, or other competitive solicitation documents;
- (d) Communicating in writing with the Procurement Official or other staff person specifically designated in the procurement document.

The potential vendor or vendor’s representative shall deliver a copy of any such written communication to the Office of the City Clerk, who shall make copies available to the public upon request. The written communication shall include a reference to the RFP, RFQ, IFB, or other competitive bid document number.

2.4.5 Any violation of this rule shall be investigated by the Procurement Official and the City Attorney’s Office and/or the City Manager’s Office and may result in disqualification of said violating potential vendor or any recommendation for award, or any RFP award, or IFB, or

RFQ award to said violating potential vendor or vendor's representative being deemed void or voidable. The potential vendor or vendor's representative determined to have violated this rule, shall be subject to penalties up to and including debarment. In addition, to any other penalty provided by law, violation of this rule by a City employee shall subject the employee to disciplinary action up to and including termination.

## **2.5 Public Records (See Section 11.4 of the Agreement attached as Exhibit "D" for additional terms.)**

2.5.1 To the extent Consultant is acting on behalf of City as stated in Section 119.0701, Florida Statutes, Consultant shall:

- (a) Keep and maintain public records required by City to perform the services under this Agreement;
- (b) Upon request from City, provide City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
- (c) Ensure that public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion or termination of this Agreement if the records are not transferred to City; and
- (d) Upon completion or termination of this Agreement, transfer to City, at no cost, all public records in possession of Consultant or keep and maintain public records required by City to perform the services. If Consultant transfers the records to City, Consultant shall destroy any duplicate public records that are exempt or confidential and exempt. If Consultant keeps and maintains the public records, Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to City upon request in a format that is compatible with the information technology systems of City.
- (e) A request for public records regarding this Agreement must be made directly to City, who will be responsible for responding to any such public records requests. Consultant will provide any requested records to City to enable City to respond to the public records request.
- (f) Any material submitted to City that Consultant contends constitutes or contains trade secrets or is otherwise exempt from production under Florida public records laws (including Chapter 119, Florida Statutes) ("Trade Secret Materials") must be separately submitted and conspicuously labeled "EXEMPT FROM PUBLIC RECORD PRODUCTION – TRADE SECRET." In addition, Consultant must, simultaneous with the submission of any Trade Secret Materials, provide a sworn affidavit from a person with personal knowledge attesting that the Trade Secret Materials constitute trade secrets under Section 812.081, Florida Statutes, and stating the factual basis for same. If that a third party submits a request to City for records designated by Consultant as Trade Secret Materials, City shall refrain from disclosing the Trade Secret Materials, unless otherwise ordered by a court of competent jurisdiction or authorized in writing by Consultant. Consultant shall indemnify and defend City and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments, and liabilities of any kind, including attorneys' fees,

litigation expenses, and court costs, relating to the nondisclosure of any Trade Secret Materials in response to a records request by a third party.

**(g) IF CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (954) 973-6774, PublicRecords@coconutcreek.net, 4800 WEST COPANS RD., COCONUT CREEK, FLORIDA 33063.**

**2.6 Audit Rights and Retention of Records (See Section 11.5 of the Agreement attached as Exhibit "D" for additional terms.)**

- 2.6.1 Consultant shall preserve all Contract Records (as defined below) for a minimum period of three (3) years after expiration or termination of this Agreement or until resolution of any audit findings, whichever is longer. Contract Records shall, upon reasonable notice, be open to inspection and subject to audit and reproduction during normal business hours. Audits and inspections pursuant to this section may be performed by any City representative or Broward County representative (including any outside representative engaged by either). City or Broward County may conduct audits or inspections at any time during the term of this Agreement and for a period of three (3) years after the expiration or termination of this Agreement (or longer if required by law). City or Broward County may, without limitation, verify information, payroll distribution, and amounts through interviews, written affirmations, and on-site inspection with Consultant's employees, Subconsultants, vendors, or other labor.
- 2.6.2 Contract Records include any and all information, materials and data of every kind and character, including, without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, drawings, receipts, vouchers, memoranda, and any and all other documents that pertain to rights, duties, obligations, or performance under this Agreement. Contract Records include hard copy and electronic records, written policies and procedures, time sheets, payroll records and registers, cancelled payroll checks, estimating work sheets, correspondence, invoices and related payment documentation, general ledgers, insurance rebates and dividends, and any other records pertaining to rights, duties, obligations or performance under this Agreement, whether by Consultant or Subconsultants.
- 2.6.3 City and Broward County shall have the right to audit, review, examine, inspect, analyze, and make copies of all Contract Records at a location within Broward County. Consultant hereby grants City and Broward County the right to conduct such audit or review at Consultant's place of business, if deemed appropriate by City or Broward County, with seventy-two (72) hours' advance notice. Consultant agrees to provide adequate and appropriate work space. Consultant shall provide reasonable access to Consultant's facilities, and City and Broward County shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Agreement.
- 2.6.4 Consultant shall, by written contract, require its Subconsultants to agree to the requirements and obligations of this section.

2.6.5 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. If an audit or inspection in accordance with this section discloses overpricing or overcharges to City of any nature by Consultant or its Subconsultants in excess of five percent (5%) of the total contract billings reviewed by City or Broward County, the reasonable actual cost of the audit shall be reimbursed to City or Broward County (as applicable) by Consultant in addition to making adjustments for the overcharges. Any adjustments or payments due as a result of such audit or inspection shall be made within thirty (30) days after presentation of audit findings to Consultant.

## **2.7 Drug-Free Workplace**

To the extent required under Section 21.31(a) (2), Broward County Administrative Code, or Section 287.087, Florida Statutes, Consultant certifies that it has a drug-free workplace program and that it will maintain such drug-free workplace program for the duration of this Agreement.

## **2.8 Domestic Partnership Requirement (See Section 7.9 if the Agreement attached as Exhibit "D" for additional terms.)**

Unless this Agreement is exempt from the provisions of the Broward County Domestic Partnership Act, Section 16½-157, Broward County Code of Ordinances, Consultant certifies and represents that it will comply with the provisions of Section 16½-157 for the duration of this Agreement. The contract language referenced in Section 16½-157 is deemed incorporated in this Agreement as though fully set forth in this section.

## **2.9 Equal Employment Opportunity and CBE Program Requirements (See Article 10 of the Agreement attached as Exhibit "D" for additional terms.)**

2.9.1 No Party may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement. Consultant shall include the foregoing or similar language in its contracts with any Subconsultants, except that any project assisted by the U.S. Department of Transportation funds shall comply with the nondiscrimination requirements in 49 C.F.R. Parts 23 and 26.

2.9.2 Consultant shall comply with all applicable requirements of Section 1-81, Broward County Code of Ordinances, in the award and administration of this Agreement. Failure by Consultant to carry out any of the requirements of this article shall constitute a material breach of this Agreement, which shall permit City to terminate this Agreement or exercise any other remedy provided under this Agreement, the Broward County Code of Ordinances, the Broward County Administrative Code, or under other applicable law, all such remedies being cumulative.

2.9.3 Consultant should include in its solicitation submittal a Letter of Intent Between Bidder/Offeror and County Business Enterprise (CBE) Subcontractor/Supplier for each CBE firm Consultant intends to use to achieve the assigned CBE participation goal. The form is available at the following link:  
<https://www.broward.org/EconDev/SmallBusiness/Documents/SurtaxProjectsServicesIntent.pdf>

2.9.4 Consultant will meet the required CBE goal by utilizing the CBE firms listed in the online directory of CBE firms. The online directory is available for use by Consultant at <https://www.broward.org/EconDev/DoingBusiness/Pages/CertifiedFirmDirectories.aspx> (or a CBE firm substituted for a listed firm, if permitted) for thirty percent (30%) of total Services under this Agreement (the "Commitment").

- 2.9.5 In performing the Services Consultant shall utilize the CBE firms listed in the online directory <https://www.broward.org/EconDev/DoingBusiness/Pages/CertifiedFirmDirectories.aspx>, for the scope of work and the percentage of work amounts identified on each Letter of Intent. Promptly upon execution of the Agreement by City, Consultant shall enter into formal contacts with the CBE firms listed in Exhibit "B" and, upon request, shall provide copies of the contracts to the Contract Administrator and the Director of the Broward County Office of Economic and Small Business Development ("OESBD").
- 2.9.6 If Consultant is unable to attain the CBE participation goal, Consultant should include in its solicitation submittal an Application for Evaluation of Good Faith Efforts and all required supporting information. The form is available at the following link: <https://www.broward.org/EconDev/SmallBusiness/Documents/GoodFaithEffortsEvaluation.pdf>
- 2.9.7 Each CBE firm utilized by Consultant to meet the CBE goal must be certified by OESBD. Consultant shall inform City immediately when a CBE firm is not able to perform or if Consultant believes the CBE firm should be replaced for any other reason, so that OESBD may review and verify the good faith efforts of Consultant to substitute the CBE firm with another CBE firm. Whenever a CBE firm is terminated for any reason, Consultant shall provide written notice to OESBD and, upon written approval of the Director of OESBD, shall substitute another CBE firm in order to meet the CBE goal, unless otherwise provided in this Agreement or agreed in writing by the Parties. Such substitution shall not be required in the event the termination results from modification of the Scope of Services and no CBE firm is available to perform the modified Scope of Services; in which event Consultant shall notify OESBD, and OESBD may adjust the CBE goal by written notice to Consultant. Consultant shall not terminate a CBE firm for convenience without written OESBD's prior written consent, which consent shall not be unreasonably withheld.
- 2.9.8 The Parties stipulate that if Consultant fails to meet the Commitment, the damages to City arising from such failure are not readily ascertainable at the time of contracting. If Consultant fails to meet the Commitment and Broward County determines, in the sole discretion of the OESBD Program Director, that Consultant failed to make Good Faith Efforts (as defined in Section 1-81, Broward County Code of Ordinances) to meet the Commitment, Consultant shall pay City liquidated damages in an amount equal to fifty percent (50%) of the actual dollar amount by which Consultant failed to achieve the Commitment, up to a maximum amount of ten percent (10%) of the total contract amount, excluding costs and reimbursable expenses. An example of this calculation is stated in Section 1-81.7, Broward County Code of Ordinances. As elected by City, such liquidated damages amount shall be either credited against any amounts due from City, or must be paid to City within thirty (30) days after written demand. These liquidated damages shall be City's sole contractual remedy for Consultant's breach of the Commitment, but shall not affect the availability of administrative remedies under Section 1-81. Any failure to meet the Commitment attributable solely to force majeure, changes to the scope of work by City, or inability to substitute a CBE Subconsultant where the OESBD Program Director has determined that such inability is due to no fault of Consultant, shall not be deemed a failure by Consultant to meet the Commitment.
- 2.9.9 Consultant acknowledges that OESBD may make minor administrative modifications to Section 1-81, Broward County Code of Ordinances, which shall become applicable to this Agreement if the administrative modifications are not unreasonable. Written notice of any such modification shall be provided to Consultant and shall include a deadline for Consultant to notify City in writing if Consultant concludes that the modification exceeds the authority under this section. Failure of Consultant to timely notify City of its conclusion that

the modification exceeds such authority shall be deemed acceptance of the modification by Consultant.

- 2.9.10 OESBD may modify the required participation of CBE firms under this Agreement in connection with any amendment, extension, modification, change order, or Work Authorization to this Agreement that, by itself or aggregated with previous amendments, extensions, modifications, change orders, or Work Authorizations, increases the initial Agreement price by ten percent (10%) or more. Consultant shall make a good faith effort to include CBE firms in work resulting from any such amendment, extension, modification, change order, or Work Authorization, and shall report such efforts, along with evidence thereof, to OESBD.
- 2.9.11 Consultant understands that the City and County will monitor Consultant's compliance with the CBE Program requirements. Consultant must provide the City with a Monthly Utilization Report (MUR) by the 10<sup>th</sup> of each month to confirm its compliance with the Commitment agreed to in the contract; MURs can be submitted to the City to Brian Rosen, Contract Administrator at [Brosen@coconutcreek.net](mailto:Brosen@coconutcreek.net) and online through the Broward County's iContractsCentral application, at the following webpage: <https://www.broward.org/Purchasing/Pages/contractscentral.aspx>. Timely submission of the MUR every month throughout the term of the contract, including amendment and extension terms, is a condition precedent to the City's payment of Consultant under the contract.
- 2.9.12 The presence of a "pay when paid" provision in a Consultant's contract with a CBE firm shall not preclude City or its representatives from inquiring into allegations.
- 2.9.13 Consultant shall pay its CBE subcontractors and suppliers, within fifteen (15) days following receipt of payment from the Municipality, for all completed subcontracted work and supplies. If Consultant withholds an amount from CBE subcontractors or suppliers as retainage, such retainage shall be released and paid within fifteen (15) days following receipt of payment of retained amounts from the City.
- 2.9.14 For detailed information regarding the CBE Program contact the OESBD at (954) 357-6400 or visit the website at: <https://www.broward.org/EconDev/SmallBusiness/Pages/Small-Business.aspx>

## **2.10 Addendum**

- 2.10.1 If the Consultant should be in doubt as to the meaning of any of the RFQ document, or is of the opinion that the scope of services contains errors, contradictions or reflects omissions, Consultant shall submit a written request directed to the Lorie Messer, Procurement Analyst to be forwarded to the appropriate person or department for interpretations or clarification. Interpretations or clarifications deemed necessary by the Public Works Department in response to such questions will be issued on official addendum.
- 2.10.2 The issuance of any addendum shall be issued through the eBid System to all Consultants registered for this RFQ. The addendum is the only official method whereby interpretation, clarification, changes or additional information can be given. It is the Consultant's responsibility to check the eBid System prior to the due date and time to ensure that the Consultant has a complete, up-to-date package.

## **2.11 Time for Performance; Contractor Damages (See Article 4. of the Agreement attached hereto as Exhibit "D" for additional terms.)**



- 2.11.1 Consultant shall perform the Services within the time periods specified in Exhibit A. Time periods shall commence from the date of the applicable Notice to Proceed.
- 2.11.2 Consultant must receive a Notice to Proceed from the Contract Administrator prior to commencement of Services and any phase of Services under this Agreement. Prior to granting approval for Consultant to proceed to any phase, the Contract Administrator may, at his or her sole option, require Consultant to submit the itemized deliverables and documents identified in Exhibit "A" (Scope of Services) for the Contract Administrator's review.
- 2.11.3 If the Contract Administrator determines that Consultant is unable to complete Services because of delays resulting from untimely review by City or other governmental agencies having jurisdiction over the Project and such delays are not the fault of Consultant, or because of delays caused by factors outside the control of Consultant, City shall grant a reasonable extension of time for completion of the Services and shall provide reasonable compensation, if appropriate. It shall be the responsibility of Consultant to notify the Contract Administrator in writing whenever a delay in approval by a governmental agency is anticipated or experienced, and whenever a delay has been caused by factors outside of Consultant's control, and to inform the Contract Administrator of all facts and details related to the delay. Consultant must provide such written notice to the Contract Administrator within three (3) business days after the occurrence of the event causing the delay.
- 2.11.4 If (a) Consultant fails to substantially complete the Project on or before the substantial completion date specified in its agreement with City, or (b) if Consultant is granted an extension of time beyond said substantial completion date and Consultant's Services are extended beyond the substantial completion date through no fault of Consultant, then Consultant shall be compensated in accordance with the compensation and method of payment established for all Services rendered by Consultant beyond the substantial completion date.
- 2.11.5 Notwithstanding Section 2.11.4, if Consultant fails to substantially complete the Project on or before the substantial completion date specified in its agreement with City, and the failure to substantially complete is caused in whole or in part by Consultant, then Consultant shall pay to City its proportional share of any claim for damages to Consultant arising out of the delay. The provisions for the computation of delay costs, damages, or any other amounts, whether direct or indirect, in the agreement between the Consultant and City are incorporated herein. This section shall not affect the indemnification rights or obligations of either Party otherwise set forth in this Agreement.
- 2.11.6 If Services are scheduled to end due to the expiration of this Agreement, at the request of the Contract Administrator, Consultant agrees to continue to provide Services for an extension period, not to exceed three months, upon the same terms and conditions as contained in this Agreement. Consultant shall be compensated for such Services at the rate in effect when the extension is invoked by City. To exercise an extension authorized by this section, the Purchasing Director shall notify Consultant in writing prior to the end of the term of this Agreement.

**2.12 Reimbursable Expenses (See Sections 5.1.4, 5.1.6, 5.3, 5.4, 5.5, and 10.5 of the Agreement attached as Exhibit "D" for additional terms).**

For reimbursement of any travel costs, travel-related expenses, or other direct non-salary expenses directly attributable to this Project permitted under this Agreement, Consultant agrees to adhere to Section 112.061, *Florida Statutes*, except to the extent otherwise stated herein. City shall not be liable for any such expenses that have not been approved in writing in advance by the Contract

Administrator. Reimbursable Subconsultant expenses must also comply with the requirements of this section.

**2.13 Method of Billing (See Sections 5.1.5, 5.2.2, and 5.4 of the Agreement attached as Exhibit “D” for additional terms).**

2.13.1 Maximum Amount Not-To-Exceed Compensation. For Basic Services identified in Exhibit A as payable on a “Maximum Amount Not-To-Exceed” basis, compensation to Consultant shall be based upon the maximum billing rates payable by City for each of Consultant’s employee categories.

Consultant shall submit billings that are identified by the specific project number on a monthly basis in a timely manner for all Salary Costs and Reimbursable Expenses 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 Reimbursable Expenses by category and identify 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 Reimbursable Expenses, a copy of said approval shall accompany the billing for such reimbursable. Billings shall also indicate the cumulative amount of CBE participation to date. The statement shall show a summary of Salary Costs and Reimbursable Expenses with accrual of the total and credits for portions paid previously. External Reimbursable Expenses and Subconsultant fees must be documented by copies of invoices or receipts that describe the nature of the expenses and contain a project number or other identifier that clearly indicates the expense is identifiable to the Project. Subsequent addition of the identifier to the invoice or receipt by Consultant is not acceptable except for meals and travel expenses. 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, Reimbursable Expenses by category, and Subconsultant fees on a task basis, so that total hours and costs by task may be determined.

2.13.2

After contract award and notice to proceed, Consultant shall submit billings that are identified by the specific project number on a monthly basis in a timely manner. These billings shall identify the nature of the work performed, the phase of work, and the estimated percent of work accomplished. Billings for each phase shall not exceed the amounts allocated to said phase. Billings shall also indicate the cumulative amount of CBE participation to date. The statement shall show a summary of fees with accrual of the total and credits for portions paid previously. When requested, Consultant shall provide backup for past and current invoices that record hours, salary costs, and expense costs on a task basis, so that total hours and costs by task may be determined.

**2.14 Salary Costs (See Section 5.1.5, 5.1.6, 5.2, and 5.4 of the Agreement attached as Exhibit “D” for additional terms,)**

The term Salary Costs as used herein shall mean the hourly rate actually paid to all personnel engaged directly on the Project, as adjusted by an overall multiplier that consists of the following: 1) a fringe benefits factor; 2) an overhead factor; and 3) an operating margin. Said Salary Costs are to be used only for time directly attributable to the Project. The fringe benefit and overhead rates shall be Consultant’s most recent and actual rates determined in accordance with Federal Acquisition Regulation (“FAR”) guidelines and audited by an independent Certified Public Accountant. For the purposes of this Agreement, the rates must be audited for fiscal periods of Consultant within eighteen (18) months preceding the execution date of this Agreement. These

rates shall remain in effect for the term of this Agreement except as provided for in this Section 2.14 inclusive of the subsections below.

2.14.1 Consultant shall require all of its Subconsultants to comply with the requirements of this section.

## 2.15 Proposal Submission

2.15.1 Consultant shall use the electronic eBid System to submit a response. **The proposal shall be signed by a representative who is authorized to contractually bind the Consultant. Consultant shall upload the response as one (1) file to the eBid System.** The maximum file size is 100 MB, however, that maximum applies to each file, not the Proposal itself. You are allowed an unlimited number of attachments with the 100 MB being the maximum file size.

2.15.2 Consultant's response shall not contain any alteration to the document posted other than entering data in spaces provided or including attachments as necessary. By submission of a response, Consultant affirms that a complete set of bid documents was obtained from the eBid System or from the Procurement Division only and no alteration of any kind has been made to the solicitation.

2.15.3 All blanks on the proposal form(s) must be completed and notarized, if applicable. Names must be typed or printed below the signature. Facsimile proposals will not be accepted.

2.15.4 Each Consultant for services further represents that the Consultant has examined and is familiar with the local conditions under which the work is to be done and has correlated the observations with the requirements of the contract documents.

2.15.5 Only one (1) proposal from any individual, firm, partnership, or corporation, under the same or different names, will be considered. Should it appear to the City that more than one proposal was submitted, this will lead to rejection of all responses in which the Consultant is involved, except for circumstances where Consultant is the subcontractor listed on another Consultant's response.

2.15.6 Each Consultant by signature and by submission of a response, represents that the Consultant has read and understands the contract documents, has completed all required fields and the proposal has been made in accordance therewith.

2.15.7 The submittal of a proposal by a Consultant will be considered by the City as constituting an offer by the Consultant to perform the required services at the stated prices.

2.15.8 All proposals received from Consultants in response to this Request for Qualifications will become the property of City and will not be returned to the Consultants. In the event of Contract award, all documentation produced as part of the Contract shall become the exclusive property of the City.

2.15.9 As the best interest of the City may require, the right is reserved to reject any and all proposals or waive any minor irregularity or technicality in proposals received. The City will determine which Consultants are "responsible and responsive".

## 2.16 RFQ Postponement/Cancellation

The City may, at its sole and absolute discretion, reject any and all, or parts of any and all proposals; re-advertise this RFQ; postpone or cancel, at any time, this RFQ process; or waive any irregularities in this RFQ or in the proposals received as a result of this RFQ.

**2.17 Costs Incurred by Consultants**

All expenses involved with the preparation/and or presentation and submission of proposals to the City, or any work performed in connection therewith, shall be the sole responsibility of the Consultant(s) and shall not be reimbursed by the City.

**2.18 Insurance**

The respondent, if awarded a contract, shall maintain insurance coverage reflecting the minimum amounts and conditions as required by the City.

**2.19 Public Entity Crimes (See Section 7.6 of the Agreement attached as Exhibit “D” for additional terms.)**

Pursuant to Paragraph 2(a) of Section 287.133, Florida Statutes, a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a proposal for a contract to provide any goods or services to a public entity; may not submit a proposal on a contract with a public entity for the construction or repair of a public building or public work; may not submit proposals on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and, may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes for Category TWO (\$35,000) for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

**2.20 Legal Requirements**

The Consultant shall observe and comply with all federal, state, county laws and local ordinances, rules and regulations that apply to this Contract. Failure to familiarize himself/herself with applicable laws will in no way relieve him/her from responsibility.

**2.21 Assignment and Sub-Letting (See Section 11.7 of the Agreement attached as Exhibit “D” for additional terms.)**

No assignment of this contract or any right occurring under this contract shall be made, in whole or in part, by the Consultant without the express written consent of the City Commission which consent shall not be unreasonably withheld. In the event of any assignment, the assignee shall assume the rights, duties and responsibilities of the Consultant.

**2.22 Venue (See Section 11.25 of the Agreement attached as Exhibit “D” for additional terms.)**

The parties waive the privilege of venue and agree that all litigation between them in the state courts shall take place exclusively in the Seventeenth Judicial Circuit Court in and for Broward County, Florida and that all litigation between them in the federal courts shall take place exclusively in the United States District Court for the Southern District of Florida.

**2.23 References**

As part of the proposal evaluation process, the City may conduct an investigation of references, including a record check or consumer affairs complaints. Consultant's submission of a proposal constitutes acknowledgment of the process and consent to investigate. The City is the sole judge in determining Consultants qualifications.

**2.24 Conflict of Interest**

The award of any contract hereunder is subject to the provisions of Chapter 112, *Florida Statutes*. Consultants must disclose with their proposal the name of any officer, director, partner, proprietor, associate or agent who is also an officer or employee of the City or any of its agencies. Further,

all Consultants must disclose the name of any officer or employee of the City who owns, directly or indirectly, an interest of five percent (5%) or more in the Consultant's firm or any of its branches or affiliate companies.

## **2.25 Officials Not to Benefit**

Each Consultant shall certify, upon signing a proposal, that to the best of their knowledge, no City of Coconut Creek official or employee having official responsibility for the procurement transaction, or member of his or her immediate family, has received or will receive any financial benefit relating to the award of this Agreement. If such a benefit has been received or will be received, this fact shall be disclosed with the proposal or as soon thereafter as it appears that such a benefit will be received. Failure to disclose the information prescribed above may result in suspension, debarment, or rescission of the Agreement made, or could affect payment pursuant to the terms of the Agreement.

## **2.26 Collusion**

The Consultant certifies that its proposal is made without previous understanding, agreement, or connection either with any previous firms or corporations offering a proposal for the same items, or with the City. The Consultant also certifies that its proposal is in all respects fair, without outside control, collusion, fraud, or otherwise illegal action.

## **2.27 Default**

### **2.27.1 Termination for Cause: Immediate**

In the event the Consultant defaults in or violates any of the terms, obligations, restrictions or conditions of this contract, the City may, upon written notice to the Consultant, terminate this contract effective immediately upon receipt of notice. The notice for immediate termination shall state the date of termination and Consultant shall discontinue all work under this contract on that date. In the event of immediate termination by the City shall have all legal and equitable remedies available to it, and may hold the Consultant liable for any and all damages sustained by the City arising out of such default, including but not limited to costs of re-procurement and cover.

### **2.27.2 Termination for Cause: Time to Correct**

In the event the Contractor defaults in or violates any of the terms, obligations, restrictions or conditions of this contract, the City may, upon written notice to the Consultant, set forth the reason(s) for said termination and state a reasonable time-frame, not to exceed five (5) calendar days, for the Consultant to correct the conditions to the satisfaction of the City. In the event the Consultant has failed to correct the conditions(s) of the default or the default is not remedied to the satisfaction and approval of the City within the time-frame prescribed, the City may terminate the contract effective immediately as provided above. If Consultant requests a hearing before the City Manager within the time-frame prescribed for correction, the City Manager may extend such time for correction to accommodate such hearing. Notwithstanding the above, the City shall have all legal and equitable remedies available to it, including, but not limited to termination of the Contract in which case the Consultant shall be liable for any and all damages arising from the default and breach of the contract.

### **2.27.3 Termination for Convenience of City**

Upon thirty (30) calendar days written notice to the Consultant as provided in Section 2.31, "Notice," above, the City may without cause and without prejudice to any other right or remedy, terminate the contract for the City's convenience whenever the City determines that such termination is in the best interest of the City. Where the contract is terminated for the convenience of the City the notice of termination to the Consultant must state that the contract is being terminated for the convenience of the City under the termination clause

and the extent of termination. The Consultant shall discontinue all work on the appointed last day of service.

**2.28 Truth-In-Negotiation Representation**

2.28.1 Consultant’s compensation under this Agreement is based upon its representations to City, and Consultant certifies that the wage rates, factual unit costs, and other information supplied to substantiate Consultant’s compensation, including, without limitation, in the negotiation of this Agreement, are accurate, complete, and current as of the date Consultant executes this Agreement. Consultant’s compensation will be reduced to exclude any significant sums by which the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs.

**2.29 Notice**

2.29.1 Whenever either party desires to give legal notice unto the other, it must be given by written notice, sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified for giving notice in compliance with the provisions of this Section. For the present, the parties designate the following as the respective places for giving notice, to wit:

**CITY:** Karen M. Brooks, City Manager  
City of Coconut Creek  
4800 West Copans Road  
Coconut Creek, FL 33063  
Phone: (954) 973-6720  
kbrooks@coconutcreek.net

**COPY TO:** Terrill C. Pyburn, City Attorney  
City of Coconut Creek  
4800 West Copans Road  
Coconut Creek, FL 33063  
Phone: (954) 973-6797  
tpyburn@coconutcreek.net

**CONSULTANT:**

**2.30 Indemnification (See Section 11.8 of the Agreement attached as Exhibit “D” for additional terms.)**

2.30.1 Consultant shall indemnify and hold harmless City and its current, past, and future officers and employees from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys’ fees, to the extent caused by the negligence, recklessness or intentionally wrongful conduct of Consultant or other persons employed or utilized by Consultant in the performance of this Agreement. The provisions of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by Contract Administrator and City Attorney, any sums due Consultant under this Agreement may be retained by City until all of City’s claims subject to this indemnification obligation have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by City.

**2.31 Antitrust Violations; Denial or Revocation of the Right to Transact Business with Public Entities; Denial of Economic Benefits**

Pursuant to Section 287.137, Florida Statutes, a person or an affiliate who has been placed on the antitrust violator vendor list (electronically published and updated quarterly by the State of Florida) following a conviction or being held civilly liable for an antitrust violation may not submit a bid, proposal, or reply for any new contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply for a new contract with a public entity for the construction or repair of a public building or public work; may not submit a bid, proposal, or reply on new leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a new contract with a public entity; and may not transact new business with a public entity. A finding that a person or affiliate was on the antitrust violator vendor list prior to entering this Agreement will be cause to terminate this Agreement at the option of the City.

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## **PART 3 – Minimum Requirements for Consultant**

### **3.1 Minimum Qualifications**

The required technical staff of the Consultant shall have a minimum of five (5) years of verifiable experience in civil engineering design work to include projects that require ADA accessibility design. Consultant shall demonstrate significant knowledge of current trends and be able to provide visual samples of completed projects that showcase the firm's ability to complete this project.

### **3.2 Licenses**

Professional Engineer (PE) from the state of Florida and the requirement to obtain a certification for out of state firms is no longer required, instead of certificate of authorization to practice engineering in the state, a Florida-licensed engineer must qualify the firm to practice engineering in the state under specified conditions.

## **PART 4 –Submission of Proposals**

### **4.1 Rules for Submission**

The submission must name all persons or entities interested in the submission as principals. The proposal must declare that it is made without collusion with any other person, or entity, submitting a proposal pursuant to the RFQ.

The proposal shall be written in sufficient detail to permit the City to conduct a meaningful evaluation of the proposed services. Each page should be titled as described below, i.e. *work plan, key personnel* etc. and inserted with its specific "Tab". The statement of qualifications shall respond to each item outlined below. Please limit response to the information requested. The proposal must include the following information:

**Note: The proposal shall be signed by a representative who is authorized to contractually bind the Consultant.**

#### **4.1.1 Transmittal Letter**

This letter shall be a two (2) page single sided document and shall summarize in a brief and concise statement, the respondent's qualifications. The letter shall provide the name, title, address, email, telephone and fax number of the official corporate contact, and an alternate. An official authorized to negotiate for the respondent must sign the letter of transmittal.

#### **4.1.2 Office Location**

The location of the office where the work will be prepared, and the key personnel in that office. The consultant may identify all of their offices, but the location of the main office responsible for the actual production of the work and key personnel in that office must be identified.

#### **4.1.3 Organization Profile and Qualifications**

This section of the proposal must describe the respondent, including the size of the office responsible for the work activities. The respondent shall provide the City with the resumes of all key personnel who will actually be assigned to perform the work. The respondent must supply all proper Florida business license(s). In addition, the respondent must supply the following information:

- (a) Type of organization (i.e. individual, partnership, corporation, joint venture, etc.) and year established.



- (b) Principals of firm and core values.
- (c) Person in charge of this project and diagram of proposed organizational structure.

#### 4.1.4 **References**

This section of the submission must include a list of all projects completed of similar work listed in Part 3 – Statement of Work, the responsible office, or employees, have completed within the last five (5) years. The list must include:

- (a) A brief description of the project.
- (b) Total final cost of the project.
- (c) Owner of the project.
- (d) The name and telephone number of a contact person.
- (e) The date the project was completed.

**Note: A separate reference document is not required, if the reference information requested above is listed in Standard Form 330.**

#### 4.1.5 **Standard Form 330 Architect-Engineer Qualifications**

Submit Standard Form 330 (Part 1 and Part 2) as part of your response.

#### 4.1.6 **Other Information**

This section shall be for other information the respondent wishes to include, but is not limited to:

- (a) The successful respondent will provide evidence of liability insurance as a condition of the contract.
- (b) Any other information respondent feels is appropriate to assist in selection.

## 4.2 **Confidential and/or Proprietary Information**

In accordance with Section 119.07(1) (a), Florida Statutes as amended from time to time, and except as may be provided by other applicable state and federal law, the Request for Qualifications and the responses thereto are in the public domain. However, Proposers are requested to specifically identify in the submitted proposal any financial information considered confidential and/or proprietary which may be considered exempt under Florida Statute Section 119.071.

## 4.3 **Proposals Received from Consultants**

All proposals received from Consultants in response to the Request for Qualifications will become the property of City and will not be returned. In the event of contract award, all documentation produced as part of the contract shall become the exclusive property of City.

## 4.4 **Modification and Withdrawal of Proposals**

4.4.1 Proposals may be modified or withdrawn **prior** to the due date for submitting electronic proposals. Proposals may be retracted from the eBid System. Retracting a response allows the Consultant to change all or part of the response that was previously submitted. Retracting a response **does** not delete the response currently entered; however, by retracting your response, it is no longer submitted. You must click "Submit Response" on the Response Submission Tab for your retracted bid to be submitted again.

4.4.2 Withdrawal of a proposal will not prejudice the rights of a Consultant to submit a new proposal prior to the proposal opening date and time. No proposal may be withdrawn or modified after the date of proposal opening has passed.

- 4.4.3 If within twenty-four (24) hours after proposals are opened, and Consultant files a duly signed, written notice with the Procurement Office, and within five (5) calendar days thereafter demonstrates to the reasonable satisfaction of City, by clear and convincing evidence, that there was a material and substantial mistake in the preparation of its proposal, or that the mistake is clearly evident on the face of the proposal, but the intended correct proposal is not similarly evident, Consultant may withdraw its proposal and any bid security will be returned, if applicable.

#### **4.5 Insurance Requirements (See Article 9. of the Agreement attached as Exhibit “D” for additional terms.)**

The Consultant shall provide the Procurement Division original certificates of coverage prior to engaging in any activities under this contract. The Consultant’s insurance is subject to the approval of the City’s Risk Manager. Further modification of the insurance requirements may be made at the sole discretion of the City’s Risk Manager if circumstances change or adequate protection of the City is not presented. Consultant, by submitting a proposal, agrees to abide by such modifications. Throughout the term of this Contract, Successful Consultant shall maintain in force at their own expense, insurance as follows:

##### **4.5.1 Workers’ Compensation**

Statutory Limits of coverage to apply for all employees in compliance with all applicable State of Florida and federal laws. The policy must include Employers Liability with a limit of \$100,000.00 each accident.

**Note:** Consultants who are exempt from Florida’s Workers’ Compensation law must provide proof of such exemption issued by the Florida Department of Financial Services, Bureau of Workers’ Compensation.

##### **4.5.2 General Liability**

Commercial General Liability insurance with limits not less than \$1,000,000.00 each occurrence combined single limit for Bodily Injury and Property Damage including coverages for premises/operations, contractual liability, personal injury, explosion, collapse, underground hazard, products/completed operations, broad form property damage, cross liability and severability of interest clause. This policy of insurance shall be written in an “occurrence” based format.

##### **4.5.3 Automobile Liability**

Comprehensive or Business Automobile Liability insurance with limits not less than \$500,000.00 each occurrence combined single limit for Bodily Injury and Property Damage including coverage’s for owned, hired, and non-owned vehicles and/or equipment as applicable. This policy of insurance shall be written in an “occurrence” based format.

##### **4.5.4 Professional Liability / Errors and Omissions Coverage**

If the Bidder is to provide professional services under this Agreement, the Bidder must provide the City with evidence of Professional Liability insurance with, at a minimum of \$1,000,000.00 per occurrence and in the aggregate. “Claims-Made” forms are acceptable for Professional Liability insurance. Coverage shall include all claims arising out of the Consultant’s operations or premises, any person directly or indirectly employed by the Consultant, and the Consultant’s obligations under indemnification under this contract.

Consultant acknowledges that the City is relying on the competence of the Consultant to design the project to meet its functional intent. If it is determined during construction of the project that changes must be made due to Consultant’s negligent errors and omissions,

Consultant shall promptly rectify them and shall be responsible for additional costs, if any, of the project to the proportional extent caused by such negligent errors or omissions at no cost to City.

#### 4.5.5 **General**

Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit and provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence limits specified above.

Should any required insurance lapse during the Contract term, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Contract, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option terminate this Agreement effective on the date of such lapse of insurance.

Auto Liability and General Liability policies shall be endorsed to provide the following:

- (a) Name as Additional Insured the City of Coconut Creek and its Officers, Agents, Employees and Commission Members and Broward County and its Officers, Agents, Employees, and Commission Members.
- (b) That such insurance is primary to any other insurance available to the additional insured with respect to claims covered under the policy and that insurance applies separately to each insured against whom claims are made or suit is brought, but the inclusion of more than one insured shall not operate to increase the insurer's limit of liability.

All policies shall be endorsed to provide thirty (30) days prior written notice of cancellation, non-renewal or reduction in coverage or limits to:

City of Coconut Creek  
 Risk Manager  
 4800 West Copans Road  
 Coconut Creek, Florida 33063

The issuing agency shall include full name, address and telephone number in each insurance certificate issued.

Certificates of Insurance, in form and evidencing all required insurance and endorsements, shall be submitted with the Consultant's Proposal response through the eBid System. If Consultant is Successful Consultant, then prior to commencement of Contract, Consultant must submit a revised Certificate of Insurance naming the City of Coconut Creek as Additional Insured for all liability policies.

#### 4.5.6 **Insurance Company and Agent**

All insurance policies herein required of the Successful Consultant shall be written by a company with a A.M. Best rating of A-VII or better that is duly authorized and licensed to do business in the State of Florida and shall be executed by agents, thereof that are duly licensed as agents in said state.

**Note:** A copy of **any** current Certificate of Insurance shall be included with your proposal.

#### **4.6 Warranties (See Article 7. of the Agreement attached as Exhibit “D” for additional terms.)**

- 4.6.1 Successful Consultant warrants to City that is not insolvent, it is not in bankruptcy proceedings or receivership, nor is it engaged in or threatened with any litigation, arbitration or other legal or administrative proceedings or investigations of any kind which would have an adverse effect on its ability to perform its obligations under the contract.
- 4.6.2 All warranties made by Successful Consultant together with service warranties and guarantees shall run to City and the successors and assigns of City.

#### **PART 5 – Summary of Documents to be Submitted with Proposal**

- 5.1. The following documents are to be executed, notarized (if applicable), and submitted as a condition to this Request for Qualifications:
- 5.1.1 Completed Standard Form 330 (Part 1 and Part 2) Architecture-Engineer Qualifications
  - 5.1.2 Certificate of Insurance
  - 5.1.3 Licenses (Including Business Tax Receipt)
  - 5.1.4 Consultant’s Qualification Statement
  - 5.1.5 Acknowledgement of Consultant’s Qualification Statement
  - 5.1.6 Indemnification of City and Broward County
  - 5.1.7 Non-Collusive Affidavit
  - 5.1.8 Drug-Free Workplace Form
  - 5.1.9 Sworn Statement on Public Entity Crimes
  - 5.1.10 Scrutinized Companies Certificate
  - 5.1.11 E-Verify Form
  - 5.1.12 Surtax Form: Surtax Projects and Services, Letter of Intent
  - 5.1.13 Surtax Form: Application for Evaluation of Good Faith Efforts

#### **PART 6 – Evaluation of Submissions**

##### **6.1 General**

The City shall be the sole judge of its own best interest, the submission and the resulting negotiated agreement. In all instances, the City’s decision will be final.

Due to the complexity of the project, verifiable experience in civil engineering design work that require ADA accessibility is essential criterion for selection. As part of the package, firms are asked to submit statements of qualifications, experience, and references of other projects that have involved their respective firms.

The respondent understands that this RFQ does not constitute an agreement or a contract with the City. An official contract, or agreement, is not binding until the submission is reviewed and accepted by the City Commission and by all parties.

A City of Coconut Creek Consultant Agreement for Surtax Projects will form the basis of the contract between the successful Consultant(s) and the City. Through negotiations with the successful Consultant additional terms and conditions may be added to the Agreement.

##### **6.2 Selection Procedure**

All Statements of Qualifications received by the specified deadline will be reviewed by the Selection Committee for content, completeness, qualifications, and experience. After those firms deemed the most qualified are selected, further evaluation and interviews of the selected firms may be conducted as part of the final selection process. However, the City of Coconut Creek reserves the

right to complete the selection process without proceeding to an interview phase, and may choose to select a Consultant based upon the information supplied in the Statement of Qualifications. The City of Coconut Creek reserves the right to waive any informality in any submittal and to reject any or all submittals.

**6.3 Evaluation Criteria**

Following the opening of the qualification submissions, the Selection Committee, comprised of qualified City staff or other persons selected by the City, will evaluate the submittals and rank them in the order of the most responsive Consultant. Proposals will be evaluated and ranked in accordance with the criteria listed below:

Criteria	
6.3.1	Qualifications of the firm and key staff (a) Stability of key staff. How is this quantifiable?
6.3.2	Past performance (a) References for projects (b) Demonstrated experience with governmental agencies
6.3.3	Ability to meet time and budget requirements
6.3.4	Experience and Technical Capabilities (a) Current and projected workload (b) Firm demonstrates consistency meeting project time and budget constraints (c) Demonstrated minimization of change orders/amendments
6.3.5	Knowledge of and approach to project
6.3.6	Ability to adhere to the 30% CBE Goal [RPD1]

**6.4 Contract Award**

6.4.1 Through the CCNA process, the City wishes to identify all firms interested in this project and then shorten that list of interested firms down to three (3) highly qualified Consultants. This RFQ is intended as the means to identify these highly qualified Consultants. The City of Coconut Creek anticipates entering into a contract for a specific project with the respondent who submits the qualifications judged by the City to be the most advantageous to the City.

6.4.2 Responses will be electronically unsealed in a public forum and read aloud. A Selection Committee will evaluate the proposals based on the criteria stated herein. The City is the sole judge in evaluation considerations. It is the City’s intent to award the contract to one (1) Consultant; however, the City reserves the right to award the contract to two (2) or more Consultants if the City deems it is in its best interest.

6.4.3 The Contract will be awarded only to a responsible and responsive Consultant(s) licensed and qualified by experience to do the work specified. The Consultant shall submit, prior to award of Contract, satisfactory evidence of his/her experience in like work and that he/she is fully prepared with the necessary organization, capital, and equipment to complete the scope of work. Consultant shall be insured, licensed, and certified by all applicable local, county, and state agencies.

6.4.4 All Consultants will be notified in writing when the City Commission makes an award. The Contract award, if any, shall be made to the Consultant whose proposal shall be deemed by the City Commission to be in the best interest of the City. The Commission’s decision shall be final.

6.4.5 This signed proposal is considered an offer on the part of the Consultant, which offer shall be considered accepted upon approval by the City Commission of Coconut Creek. Within ten (10) days after receiving Notice of Award, the Successful Consultant shall submit a revised Certificate of Insurance naming the City of Coconut Creek as Additional Insured for all liability policies for approval by the City's Risk Manager.

#### **6.5 Oral Presentations**

The City may require the top three (3) short-listed Consultants to give oral presentations in support of their proposals or to exhibit or otherwise demonstrate the information contained therein prior to a recommendation being presented to the City Commission. Should the City require such oral presentation, the Consultant will be notified seven (7) days in advance.

#### **6.6 Negotiations**

After the Selection Committee ranks the firms, the Procurement Analyst will request, accept and consider proposals for the compensation to be paid under the contract during competitive negotiations with the number one (1) ranked firm. Staff will present the results of the negotiations to the City Commission with its recommendation. If the City Commission determines that staff is unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a price the City determines to be fair, competitive and reasonable, then negotiations with that firm, or firms, shall be formally terminated. Should the City be unable to negotiate a satisfactory contract with the selected firm, the City may select additional firm(s) in order of their competence and qualifications and continue negotiations until an agreement is reached with the additional firm(s). However, the City reserves the right to reject all qualifications, waive any irregularities and solicit and re-advertise for other qualifications.

### **PART 7 – Payment Method**

#### **7.1 VISA PURCHASING CARD**

The City of Coconut Creek has implemented a Visa Procurement Card (P-Card) Program through SunTrust Bank. The City's preference is to pay for goods/services with the P-Card. This program allows the City to expedite payment to our vendors. Some of the benefits of the P-Card Program to the vendor are: payment received within 72 hours of receipt and acceptance of goods, reduced paperwork, issue receipts instead of generating invoices, resulting in fewer invoice problems, and deal directly with the cardholder (in most cases).

Vendors accepting payment by the P-Card may not require the City (Cardholder) to pay a separate or additional convenience fee, surcharge or any part of any contemporaneous finance charge in connection with a transaction. Such charges are allowable, however must be included in the total cost of their response. Vendors are not to add notations such as "+3% service fee" in their response. All responses shall be inclusive of any and all fees associated with the acceptance of the P-Card.

Vendors agreeing to accept payment by P-Card must presently have the capability to accept Visa or take whatever steps necessary to implement the ability before the start of the agreement term.

#### **7.2 EFT**

The City of Coconut Creek's Electronic Funds Transfer (EFT) Program allows the City to process payments to vendors electronically, directly to their financial institution of choice. With EFT payments, funds are deposited to vendor's bank account and are available the date the bank receives them. There will be no more waiting to receive payments in the mail, and no trips to the bank to make deposits. EFT payments also reduced the risk of misrouting, theft, and forgery.

Additionally, an automated e-mail of the remittance advice will be sent to the e-mail specified by the vendor.

**7.3 PAPER CHECK**

Paper checks can also be processed by the City for vendor payments.

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**Purchase Level 2**

To qualify for the Visa Level 2 Interchange Rates, the sales tax amount must be reported and the value must be greater than zero.

**Purchase Level 3**

To qualify for the Visa Level 3 Interchange Rate, Level 3 data (item description, product code, quantity, unit of measure and commodity code) must be reported. If the Sales tax is not applied, a value of zero (0.00) is required.

**Purchase Large Ticket**

To qualify for the Visa Large Ticket Interchange Rate, Level 2 and Level 3 data must be reported. Any transaction greater than \$6,980 that has the required data elements will qualify for the Visa Large Ticket Rate.

**City of Coconut Creek Preferred Product Solution Pricing**

Type	Solution Name	Price
Software-based Application	Payment Software	Set-up (one-time): Waived Monthly Access: \$0.00 Per Transaction:\$0.00
Internet-based Solution	Global Gateway e4	Set-up (one-time): Waived Monthly Access: \$9.95 Per Transaction:\$0.05

**Value-Added Services**

- Preferred Supplier status
- Set preferred processing fees for B2B acceptance
- No cost computer application
- No set-up fee
- No early termination fees
- Online reporting

**Supplier Sign-Up:**

To begin the supplier enrollment process, please call 855.468.0317.

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## **PART 8 - REQUIRED FORMS**

**BIDDER SHALL UPLOAD COMPLETED  
FORMS TO THE EBID SYSTEM**

**[WWW.COCONUTCREEK.NET/FIN/PROCUREMENT](http://WWW.COCONUTCREEK.NET/FIN/PROCUREMENT)**

**CONSULTANT’S QUALIFICATION STATEMENT**

The undersigned certifies under oath the truth and correctness of all statements and of all answers to questions made hereinafter:

SUBMITTED TO:City of Coconut Creek  
Procurement Division  
4800 West Copans Road  
Coconut Creek, FL 33063

Check One

Submitted By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip \_\_\_\_\_  
Telephone No. \_\_\_\_\_  
Fax No. \_\_\_\_\_

- Corporation
- Partnership
- Individual
- Other

1. State the true, exact, correct and complete name of the partnership, corporation, trade or fictitious name under which you do business and the address of the place of business.

The correct name of the Consultant is:

\_\_\_\_\_

The address of the principal place of business is:

\_\_\_\_\_

- 2.If Consultant is a corporation, answer the following:

- a. Date of Incorporation:\_\_\_\_\_
- b. State of Incorporation:\_\_\_\_\_
- c. President's Name:\_\_\_\_\_
- d. Vice President's Name:\_\_\_\_\_
- e. Secretary's Name:\_\_\_\_\_
- f. Treasurer's Name:\_\_\_\_\_
- g. Name and Address of Resident Agent:\_\_\_\_\_

- 3.If Consultant is an individual or a partnership, answer the following:

- a. Date of Organization:\_\_\_\_\_
- b. Name, Address and Ownership Units of all Partners:\_\_\_\_\_
- \_\_\_\_\_
- c. State whether general or limited partnership:\_\_\_\_\_

4. If Consultant is other than an individual, corporation or partnership, describe the organization and give the name and address of principals:

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5. If Consultant is operating under a fictitious name, submit evidence of compliance with the Florida Fictitious Name Statute.

6. How many years has your organization been in business under its present business name? \_\_\_

a. Under what other former names has your organization operated?

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7. Indicate registration, license numbers or certificate numbers for the businesses or professions, which are the subject of this RFQ. Please attach certificate of competency and/or state registration.

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8. Litigation/Judgments/Settlements/Debarments/Suspensions:  
Submit information on any pending litigation and any judgments and settlements of court cases relative to providing the statement of work listed herein that have occurred within the last three (3) years. Also indicate if your firm has been debarred or suspended from bidding or proposing on a procurement project by any government during the last five (5) years.

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9. Have you ever failed to complete any work awarded to you? If so, state when, where and why?

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10. List the pertinent experience of the key individuals of your organization (continue on insert sheet, if necessary).

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11. State the name of the individual(s) and titles who will personally supervise the work:

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12. State the name and address of the attorney, if any, for the business of the Consultant:

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13. State the names and addresses of all businesses and/or individuals who own an interest of more than five percent (5%) of the Consultant's business and indicate the percentage owned of each such business and/or individual:

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14. State the names, addresses and the type of business of all firms that are partially or wholly owned by Consultant:

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15. Have you personally inspected the site of the proposed work?

Yes  No

16. Do you have a complete set of documents, including drawings and addenda, if applicable?

Yes  No

17. Did you attend the pre-proposal conference if any such conference was held?

Yes  No  No Conference Held

18. Is your firm a certified Broward County Business Enterprise (CBE)? If yes, please include your certification with your submittal.

Yes  No

The Consultant acknowledges and understands that the information contained in response to this Qualification Statement shall be relied upon by City in awarding the contract and such information is warranted by Consultant to be true. The discovery of any omission or misstatement that materially affects the Consultant's qualifications to perform under the contract shall cause the City to reject the proposal, and, if after the award, to cancel and terminate the award and /or contract.

Consultant' s Signature : \_\_\_\_\_ Date : \_\_\_\_\_

**CONSULTANT’S QUALIFICATION STATEMENT  
ACKNOWLEDGEMENT**

State of \_\_\_\_\_

County of \_\_\_\_\_

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2022, before me, the undersigned Notary Public of the State of Florida, Personally appeared

\_\_\_\_\_ and  
*(Name(s) of individual(s) who appeared before notary)*

whose name(s) is/are Subscribed to within the instrument, and he/she/they acknowledge that he/she/they executed it.

WITNESS my hand and official seal.

NOTARY PUBLIC

SEAL OF OFFICE:

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA

\_\_\_\_\_  
(Name of Notary Public: Print, Stamp, or Type as Commissioned)

- Personally known to me, or
- Produced identification:

\_\_\_\_\_  
(Type of Identification Produced)

- DID take an oath, or
- DID NOT take an oath

## INDEMNIFICATION OF CITY AND BROWARD COUNTY

**The parties agree that one percent (1%) of the total compensation paid to Consultant for the work of the contract shall constitute specific consideration to Consultant for the indemnification to be provided under the Contract.** The Consultant shall indemnify and hold harmless the City of Coconut Creek, and its Commissioners, agents and employees as well as Broward County (“County”) and its Commissioners, agents and employees from and against all liabilities, damages, losses and costs including attorney's fees arising out of or resulting from the performance of the work provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of the Consultant, any subconsultant, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

In any and all claims against the City and/or County, or any of their agents or employees by any employee of the Consultant, any subconsultant, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph shall not be limited in any way by any limitation on this amount or type of damages compensation or benefits payable by or for the Consultant or any subconsultant under Workers’ Compensation Acts, Disability Benefit Acts or other Employee Benefit Acts. Nothing in this section shall affect the immunities of the City and/or County pursuant to Chapter 768, Florida Statutes, as amended from time to time, nor shall it constitute an agreement by the City and/or County to indemnify Consultant, its officers, employers, subconsultants or agents against any claim or cause of action. This section shall not be construed as consent to be sued by any third parties in any matter arising out of this Agreement. The foregoing indemnification and release shall survive the expiration or earlier termination of this Agreement.

To the extent considered necessary by Contract Administrator and City Attorney, any sums due Consultant under this Agreement may be retained by City until all of City’s claims subject to this indemnification obligation have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by City.

\_\_\_\_\_

Consultant's Name

\_\_\_\_\_

Signature

\_\_\_\_\_

Date

**NON-COLLUSIVE AFFIDAVIT**

State of \_\_\_\_\_ )  
 )ss.  
County of \_\_\_\_\_ )

\_\_\_\_\_ being first duly sworn, deposes and says that:

- (1) He/she is the \_\_\_\_\_  
(Owner, Partner, Officer, Representative or Agent)  
of \_\_\_\_\_ the Consultant that has submitted the attached proposal;
- (2) He/she is fully informed respecting the preparation and contents of the attached proposal and of all pertinent circumstances respecting such proposal;
- (3) Such proposal is genuine and is not a collusive or sham proposal;
- (4) Neither the said Consultant nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, have in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Consultant, firm, or person to submit a collusive or sham proposal in connection with the work for which the attached proposal has been submitted; or to refrain from bidding in connection with such work; or have in any manner, directly or indirectly, sought by agreement or collusion, or communication, or conference with any Consultant, firm or person to fix the price or prices in the attached proposal of any other Consultant, or to fix an overhead, profit, or cost elements of the proposal price or the proposal price of any other Consultant, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against (Recipient), or any person interested in the proposed work;
- (5) The price or prices quoted in the attached proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Consultant or any other of its agents, representatives, owners, employees or parties in interest, including this affiant.

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

**DRUG-FREE WORKPLACE FORM**

The undersigned vendor in accordance with *Florida Statutes*, Chapter 287, Section 287.087 hereby certifies that            does:

(Name of Business)

- 1) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
- 2) Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
- 3) Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
- 4) In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of *Florida Statutes*, Chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
- 5) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
- 6) Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

\_\_\_\_\_  
Consultant's Signature

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Date



**SWORN STATEMENT  
ON PUBLIC ENTITY CRIMES  
UNDER FLORIDA STATUTES CHAPTER 287.133(3)(a).**

THIS FORM MUST BE SIGNED IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICER AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted with RFQ No. 08-04-21-11 for Design Services for ADA Accessible Bus Pads Surtax COCO-024.
2. This sworn statement is submitted by \_\_\_\_\_ (name of entity submitting sworn statement) whose business address is \_\_\_\_\_ and (if applicable) its Federal Employer Identification Number (FEIN) is \_\_\_\_\_. (If the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement: \_\_\_\_\_.)
3. My name is \_\_\_\_\_ and my  
(Please print name of individual signing)  
relationship to the entity named above is \_\_\_\_\_.
4. I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
5. I understand that a "convicted" or "conviction" as defined in Paragraph 287.133(1)(b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.
6. I understand that an "affiliate" as defined in Paragraph 287.133(1)(a), Florida Statutes, includes but is not limited to:
  1. A predecessor or successor of a person convicted of a public entity crime: or
  2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The Ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

7. I understand that a "person" as defined in Section 287.133(1)(e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, who are active, or who have been active, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity within the last five (5) years of this sworn statement.
8. Based on information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement. **Please check all statements that are applicable.**
- Neither the entity submitting this sworn statement, nor any officers, directors, executives, partners, shareholders, employees, members, or agents who are active in management of the entity, nor any affiliate of the entity have been charged with and convicted of a public entity crime subsequent to July 1, 1989.
- The entity submitting this sworn statement, or one or more of the officers, directors, executives, partners, shareholders, employees, members, or agents who are active in management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989, AND (Please indicate which additional statement applies.)
- There has been a proceeding concerning the conviction before a hearing officer of the State of Florida, Division of Administrative Hearings. The final order entered by the hearing officer did not place the person or affiliate on the convicted vendor list. (Please attach a copy of the final order.)
- The person or affiliate was placed on the convicted vendor list. There has been a subsequent proceeding before a hearing officer of the State of Florida, Division of Administrative Hearings. The final order entered by the hearing officer determined that it was in the public interest to remove the person or affiliate from the convicted vendor list. (Please attach a copy of the final order.)
9. Based on information and belief, the statement that I have marked below is true in relation to the entity submitting this sworn statement. **Please check if statement is applicable.**
- The person or affiliate has not been placed on the convicted vendor list.  
**(If the box is not checked, please describe any action taken by or pending with the Department of General Services.)**
10. The herein sworn statement shall be subject to and incorporate all the terms and conditions contained in Section 287.133 of the Florida Statutes.
11. Conviction of a public entity crime shall be cause for disqualification.

---

 Consultant's Signature

---

 Company Name

---

 Date

**SCRUTINIZED COMPANIES  
CERTIFICATION PURSUANT TO  
FLORIDA STATUTE § 215.4725 AND § 215.473**

I, \_\_\_\_\_, on behalf of \_\_\_\_\_,  
Print Name Company Name

certifies that \_\_\_\_\_ does not:  
Company Name

1. Participate in a boycott of Israel; and
2. Is not on the Scrutinized Companies that Boycott Israel list; and
3. Is not on the Scrutinized Companies with Activities in Sudan List; and
4. Is not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; and
5. Has not engaged in business operations in Cuba or Syria.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Date

**E-VERIFY FORM**

Project Name:	Design Services for ADA Bus Pads Accessibility Improvements - Surtax COCO-024
Project No.:	RFQ No. 05-05-22-11

ACKNOWLEDGEMENT

**Definitions:**

“Contractor” means a person or entity that has entered or is attempting to enter into a contract with a public employer to provide labor, supplies, or services to such employer in exchange for salary, wages, or other remuneration.

“Subcontractor” means a person or entity that provides labor, supplies, or services to or for a contractor or another subcontractor in exchange for salary, wages, or other remuneration.

Effective January 1, 2021, public and private employers, contractors and subcontractors will begin required registration with, and use of the E-verify system in order to verify the work authorization status of all newly hired employees. Vendor/Consultant/Contractor acknowledges and agrees to utilize the U.S. Department of Homeland Security’s E-Verify System to verify the employment eligibility of:

- a) All persons employed by Vendor/Consultant/Contractor to perform employment duties within Florida during the term of the contract; and
- b) All persons (including subvendors/subconsultants/subcontractors) assigned by Vendor/Consultant/Contractor to perform work pursuant to the contract with the Department. The Vendor/Consultant/Contractor acknowledges and agrees that use of the U.S. Department of Homeland Security’s E-Verify System during the term of the contract is a condition of the contract with the City of Coconut Creek; and
- c) *Should vendor become successful Contractor awarded for the above-named project, by entering into this Contract, the Contractor becomes obligated to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes but is not limited to utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The contractor shall maintain a copy of such affidavit for the duration of the contract. Failure to comply will lead to termination of this Contract, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination. If this contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract for a period of 1 year after the date of termination.*

COMPANY CONTACT INFORMATION

Company Name:
Authorized Signature:
Print Name:
Title
Date:
Phone:
Email:
Website:



**SURTAX PROJECTS AND SERVICES (MUNICIPALITY)  
LETTER OF INTENT  
BETWEEN BIDDER/OFFEROR AND  
COUNTY BUSINESS ENTERPRISE (CBE) FIRM/SUPPLIER**

This form is to be completed and signed for each CBE firm. If the PRIME is a CBE firm, please indicate the percentage performed with your own forces.

**Municipality (City/Town/Village):** \_\_\_\_\_

**Solicitation No.:** \_\_\_\_\_ **Project Title:** \_\_\_\_\_

**Bidder/Offeror Name:** \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Authorized Representative: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

**CBE Firm/Supplier Name:** \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Authorized Representative: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

- A. This is a letter of intent between the bidder/offeror on this project and a CBE firm for the CBE to perform work on this project.
- B. By signing below, the bidder/offeror is committing to utilize the above-named CBE to perform the work described below.
- C. By signing below, the above-named CBE is committing to perform the work described below.
- D. By signing below, the bidder/offeror and CBE affirm that if the CBE subcontracts any of the work described below, it may only subcontract that work to another CBE.

**WORK TO BE PERFORMED BY CBE FIRM(S)**

Description	NAICS <sup>1</sup>	CBE Contract Amount <sup>2</sup>	CBE Percentage of Total Project Value

**AFFIRMATION:** I hereby affirm that the information above is true and correct.

**CBE Firm/Supplier Authorized Representative**

Signature: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

**Bidder/Offeror Authorized Representative**

Signature: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

<sup>1</sup> Visit <https://www.census.gov/eos/www/naics/> to search and identify the correct NAICS codes. Match each type of work with the most appropriate NAICS code.

<sup>2</sup> To be provided only when the solicitation requires that the bidder/offeror include a dollar amount in its bid/offer.

*In the event the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.*



**APPLICATION FOR EVALUATION OF  
GOOD FAITH EFFORTS  
SURTAX PROJECTS AND SERVICES (MUNICIPALITY)**

**Municipality (City/Town/Village):** \_\_\_\_\_

**Solicitation No.:** \_\_\_\_\_

**Project Name:** \_\_\_\_\_

**Bidder/Offeror Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Phone:** \_\_\_\_\_

**Email:** \_\_\_\_\_

The undersigned representative of the Bidder/Offeror attests that he/she has authority to bind the Bidder/Offeror and certifies that the Bidder/Offeror has made Good Faith Efforts, as defined in Section 1-81.5 of the Broward County Business Opportunity Act of 2012, as amended (the "Business Opportunity Act"), to meet the County Business Enterprise (CBE) goal established for this solicitation by contacting CBE-certified firms to serve as subcontractors for the Project. However, the Bidder/Offeror has been unable to recruit enough CBE-certified firms to meet the CBE participation goal. Consistent with the requirements of the Business Opportunity Act, the Bidder/Offeror hereby **submits documentation (attached to this form)** of its recruitment efforts, for evaluation by Broward County's Office of Economic and Small Business Development (OESBD), to determine whether the Bidder/Offeror's efforts are sufficient to be deemed Good Faith Efforts, in lieu of goal attainment, under the Business Opportunity Act.

The Bidder/Offeror understands that a determination of Good Faith Efforts to meet the CBE participation goal is contingent upon the information provided by the Bidder/Offeror with this application and the other factors listed in Section 1-81.5(d) of the Business Opportunity Act, as applicable with respect to this solicitation. See § 1-81.5(d), County Code of Ordinances. The Bidder/Offeror acknowledges that the determination of Good Faith Efforts is made by the OESBD Director and is not subject to appeal.

**Bidder/Offeror Authorized Representative**

Signature: \_\_\_\_\_

Name / Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**  
**SCOPE OF SERVICES**  
**Design Services for ADA Accessible Bus Pads-Surtax Project**  
**City of Coconut Creek**  
**Project No. COCO-024 ADA Accessible Bus Pads**

**1. PROJECT DESCRIPTION**

The project consists of upgrading approximately sixty-five (65) bus stop locations along city owned and maintained streets within the City of Coconut Creek (Locations shown in Attachment "A") to the latest ADA and Broward County Transit standards. The proposed ADA design work only pertains to stops that are utilized by the City's Community Shuttle. A flyer showing the City's Community Bus Routes is also attached as Attachment "B" for reference purposes. Each bus stop location will be assessed and construction ready plans will be created to bring the existing bus stop into compliance with current ADA standards. The overall design effort will include creating ADA improvements such as pads, sidewalks, curbing, drainage conveyance systems, permitting through multiple agencies, utility coordination, topographic survey, and optional post design services. The purpose of this scope is to provide final engineering design and construction plans services.

This project is funded by Broward County's transportation surtax pursuant to Section 31½- 71 et seq., of the Broward County Code of Ordinances (Transportation Surtax) and in accordance with Section 212.055(1), Florida Statutes.

The following items are ineligible for Transportation Surtax:

- Improvements to bus stop locations that are not utilized by the City's Community Shuttle service.
- Utility system adjustments.
- The following drainage improvements: (i) increases to the stormwater system to accommodate a drainage area greater than the eligible size; and (ii) improvements to address runoff from private roads and/or developments.

A drainage analysis is required for the proposed drainage system design services.

All costs associated with work ineligible for surtax funding must be adequately and separately itemized and paid by City with funds other than Transportation Surtax funds.

**2. BASIC SERVICES**

Basic Services will include complete sets of signed and sealed plans, specifications, permits, and other documentation required for construction. This effort will include (at a minimum): Keysheet, Summary of Quantities, Bus Stop Details, General Notes, Plan and Profile Sheets, Cross Sections, Erosion Control, Maintenance of Traffic, Cost Estimates, and other detail sheets as necessary to produce final construction bid plans. All design, plans, and contract documents will be prepared in accordance with the latest editions of the Broward County Standards, the latest edition of the Manual on Uniform Traffic Control Devices (MUTCD), FDOT Standard Plans, FDOT Standard

Specifications for Road and Bridge Construction, FDOT Design Manual (FDM), and any other applicable FDOT manual/guideline/standard.

## **2.1 Bus Pad Design**

### **A. Horizontal Alignment Analysis**

- 1) Provide standard Broward County Transit Bus Pad at each existing bus stop location listed.
- 2) Provide sidewalks for pedestrian access to all Bus Pads where there is currently no accessible route to the bus stops.
- 3) All proposed facilities should be designed to be within the existing right of way.

### **B. Vertical Alignment**

- 1) Design vertical alignment to assess impacts on existing conditions. Provide profiles for proposed sidewalks and any required curb and gutter.

### **C. Temporary Traffic Control Plan**

- 1) Coordinate with the City, Broward County Traffic Division, and the FDOT as required to develop a traffic control plan. Traffic control shall be with phasing notes. Provide details as required for any areas that require a more detailed traffic control.

### **D. Drainage Design**

- 1) Provide drainage analysis to determine impacts to the existing drainage patterns and drainage systems in the areas of the improved bus stops and routes.
- 2) Adjust existing drainage system that is impacted by proposed improvements to maintain positive drainage and required water quality.
- 3) Conceptual drainage design for review and approval by County submitted with Basis of Design Report.
- 4) Complete drainage analysis submitted with 60% design submittal for review and approval by County.

### **E. Permitting**

- 1) Ensure that all construction ready plans are compliant with all permit requirements. Permits applications will be submitted by the awarded contractor.

### **F. Utility Coordination**

- 1) Coordinate to provide initial plan sheets to utility agency owners (UAO's) to identify their existing and proposed facilities. Show existing utilities in the plans based on UAO's marked plan.
- 2) Prepare potential conflict matrix and provide to UAO's with progress plans.
- 3) Coordinate resolution of utility conflicts and request utility relocation schedules from UAO's
- 4) Lighting justification report consistent with Broward County and FDOT policies and criteria in the current version of the Florida Greenbook is required for improvements to lighting systems eligible for Transportation Surtax funding.



**G. Horizontal Control Reference Sheets**

- 1) Incorporate horizontal control and benchmark information. Consultant surveyor shall provide sign and sealed survey control sheets for the incorporation in the final plans.

**H. Erosion Control Sheets**

- 1) Prepare any erosion control and storm water pollution prevention plans as required for permitting.

**I. Traffic Control Sheets**

- 1) Prepare a traffic control plan with all applicable FDOT MOT Design Standards that addresses traffic issues to include any required sidewalk closures and associated required detours.

**J. Opinion of Probable Cost**

- 1) Prepare and submit an opinion of probable construction cost with the submittal of 90% plans and adjust costs based upon plan review comments with a final revised cost opinion submitted with the 100% construction ready plans. It is acknowledged that opinions of probable costs are based on the information known to the Consultant at the time and represent only the Consultant's judgment as a design professional familiar with the construction industry.

**K. Survey Services**

- 1) In general, topographic design and right of way survey will be obtained within the area of anticipated work at each bus stop location, plus 25' in each direction. The designer will provide anticipated survey areas to the City for approval prior to commencement. The survey will depict:
  - a) Benchmark Information
  - b) Reference points
  - c) Ties to section corners
  - d) Each change in direction of the right-of-way
  - e) Underground utilities and above ground features within proposed construction areas
  - f) The right-of-way will be calculated based on the title search performed by the design surveyor.

**3. OPTIONAL SERVICES****A. Post Design Services**

- 1) Provide services during the construction phase of the project including but not limited to bidding assistance, attending progress meetings, shop drawing review, and responses to requests for information (RFI's).

#### 4. General Requirement for Work

All plans will be submitted on 11x17 size sheets and in digital format unless otherwise indicated.

##### 4.1 Deliverables

**B. Basis of Design Report, 30%, 60%, and 90% plans submittals** – required components as defined in the FDM. Submittals will include at a minimum:

- 1) 5 sets of plans
- 2) Response to comments for previous reviews
- 3) 3 copies of reports
- 4) PDF copy of all deliverables
- 5) The Basis of Design Report shall establish the design criteria and standards to be used, describe the conceptual design plan and scope of the project, and include a lighting justification report if lighting is proposed, and conceptual drainage design for review and approval by County.

##### C. Final Plans Submittal

- 1) 5 sets of plans
- 2) Up to three (3) sets of sign and sealed plans as required for permitting
- 3) 1 copy of all required permits
- 4) Response to comments
- 5) Computation Book
- 6) Modifications to Specifications
- 7) CADD files
- 8) PDF copy of all deliverables

##### D. Schedule

- 1) Consultant will submit a mutually agreed upon schedule of project milestones. The Design Team shall allow a minimum of 3-week review time for each submittal.
- 2) The Basic Services will be completed within twenty-four (24) months from the date of the Notice to Proceed.

#### 5. City Responsibilities

The City shall provide the Design Team with adequate information regarding the City's requirements for the project including any desired or required design or construction schedule, any budgetary requirements, and any existing files, plans or other engineering information deemed appropriate.

The City shall review any documents submitted by the Design Team requiring the City's decision and shall render any required decision pertaining thereto. If the City becomes aware of any fault or defect in the project or of any errors, omissions or inconsistencies in the design documents or specifications, the City shall give prompt notice to the Design Team.

The City's review of any documents prepared by the Design Team or its sub-consultants shall be solely for the purpose of determining whether such documents are generally consistent with the City's standards and intent of the project. No review of such documents shall relieve the Design Team of its responsibility for the accuracy, adequacy, or suitability and coordination of its work product.

The City shall designate a representative or representatives to represent the City in all technical matters pertaining to and arising from the work and performance of this Scope of Services.

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**EXHIBIT B  
CBE FIRMS LIST**

OESBD maintains an online directory of CBE firms. The online directory is available for use by vendors/firms at:

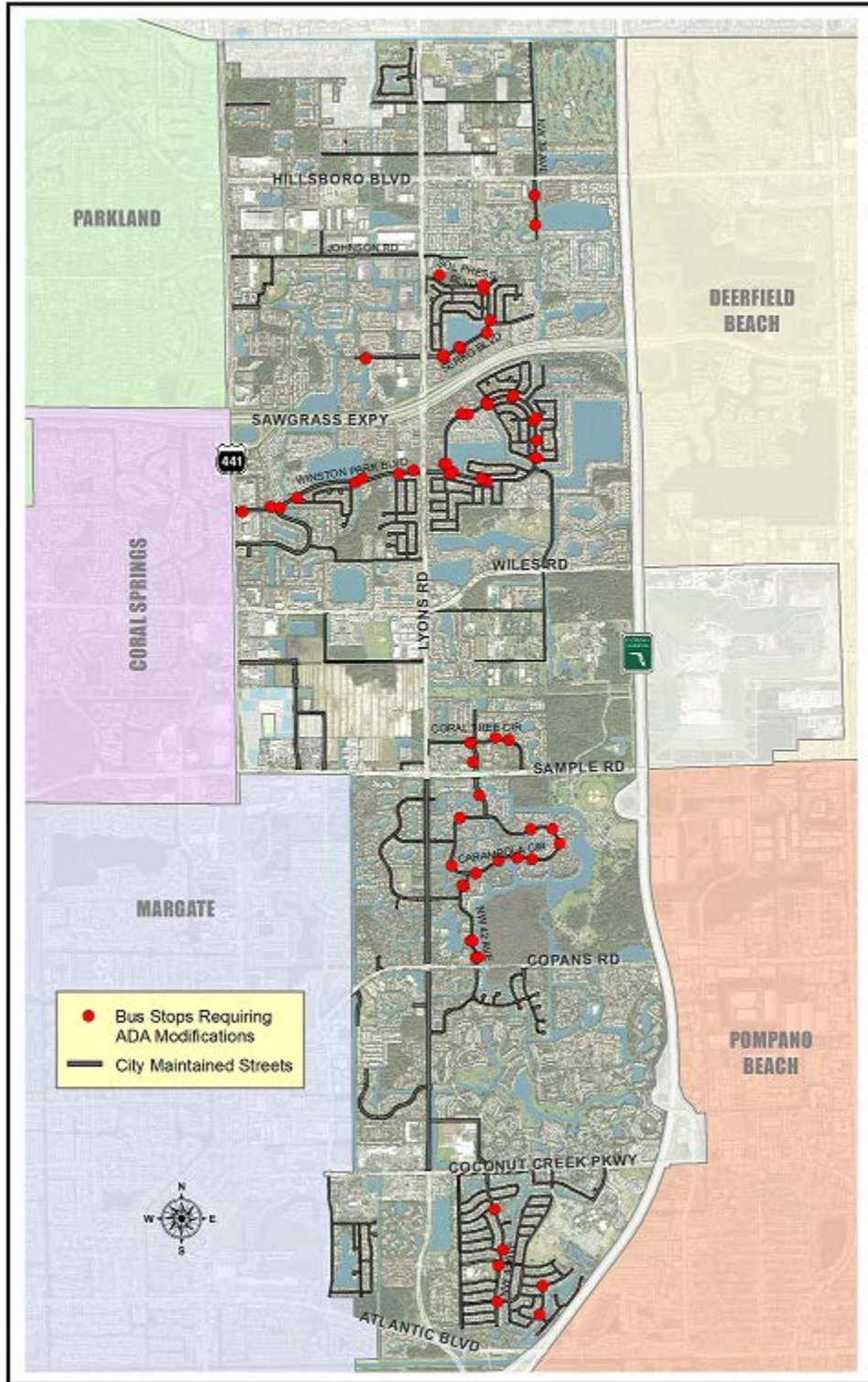
<https://www.broward.org/EconDev/DoingBusiness/Pages/CertifiedFirmDirectories.aspx>

Office of Economic and Small Business Development CBE Goals

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### EXHIBIT C MAP

PROJECT COCO-024 - CITY BUS STOPS



**EXHIBIT D**  
**CITY OF COCONUT CREEK CONSULTANT AGREEMENT FOR SURTAX PROJECTS**

**EXHIBIT C**

**AGREEMENT BETWEEN CITY OF COCONUT CREEK  
AND \_\_\_\_\_ FOR DESIGN CONSULTANT SERVICES  
FOR ADA ACCESSIBLE BUS PADS - SURTAX PROJECT  
(RFQ # 05-05-22-11)**

This Agreement (“Agreement”) is made and entered by and between the CITY OF COCONUT CREEK, a municipality of the State of Florida (“Municipality”), and [INSERT NAME OF CONSULTANT], a \_\_\_\_\_ [corporation/limited liability company] (“Consultant”) (each a “Party” and collectively referred to as the “Parties”).

**RECITALS**

A. Municipality is desirous of having Consultant design approximately sixty-five (65) bus pads throughout the City for construction in accordance with American with Disabilities Act standards; and

B. Municipality has met the requirements of Section 287.055, Florida Statutes, the Consultants’ Competitive Negotiation Act, and has selected Consultant to perform the services hereunder.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**ARTICLE 1. DEFINITIONS**

1.1 **Applicable Law** means all applicable laws, codes, advisory circulars, rules, regulations, or ordinances of any federal, state, county, municipal, or other governmental entity, as may be amended.

1.2 **Board** means the governing body of Municipality, its successors and assigns.

1.3 **Contract Administrator** means Brian Rosen, Project Manager, or such other person designated by Municipality in writing. The Contract Administrator is the representative of Municipality concerning the Project.

1.4 **Contractor** means the person, firm, corporation, or other entity who enters into an agreement with Municipality to perform the construction work for the Projects.

1.5 **Consultant** means the person, firm, corporation, or other entity who enters into an agreement with Municipality to perform the work for the Project.

1.6 **County** means Broward County, a political subdivision of the State of Florida and representatives authorized by the Board of County Commissioners or the Broward County Charter to act on behalf of County.

1.7 **County Business Enterprise** or **CBE** means an entity certified as meeting the applicable requirements of Section 1-81, Broward County Code of Ordinances.

1.8 **Notice to Proceed** means a written authorization to proceed with the Project, phase, or task, issued by the Contract Administrator.

1.9 **Project** means the project described in Exhibit A.

1.10 **Purchasing Director** means Municipality's Procurement Manager, Linda Jeethan or designee authorized to execute Work Authorization provided for in Section 6.3.

1.11 **Services** means the work set forth in Exhibit A, Scope of Services, and shall include civil, structural, mechanical, and electrical engineering, architectural services, and other professional design services as applicable for the Project, and any Optional Services procured under this Agreement.

1.12 **Small Business Enterprise** or **SBE** means an entity certified as meeting the applicable requirements of Section 1-81, Broward County Code of Ordinances.

1.13 **Subconsultant** means an entity or individual providing services to Municipality through Consultant for all or any portion of the work under this Agreement. The term "Subconsultant" shall include all subcontractors.

## ARTICLE 2. EXHIBITS

<b>Exhibit A</b>	<b>Scope of Services</b>
<b>Exhibit B</b>	<b>Maximum Billing Rates</b>
<b>Exhibit B-1</b>	<b>Reimbursables for Direct Non-Salary Expenses</b>
<b>Exhibit C</b>	<b>Minimum Insurance Requirements</b>
<b>Exhibit D</b>	<b>Work Authorization Form</b>
<b>Exhibit E</b>	<b>Schedule of Subconsultants</b>
<b>Exhibit F</b>	<b>CBE Subconsultant Schedule and Letters of Intent</b>

## ARTICLE 3. SCOPE OF SERVICES

3.1 Consultant shall provide all Services as set forth in Exhibit A, including all necessary, incidental, and related activities required for full and complete performance of this Agreement (the "Scope of Services").

3.2 This Agreement does not delineate every detail and minor work task required to be performed by Consultant to complete the Project. If Consultant determines that work should be performed to complete the Project and, in Consultant's opinion, that work is outside the level of effort originally anticipated, whether or not the Scope of Services identifies the work items, Consultant shall notify the Contract Administrator in writing in a timely manner before proceeding with the work. If Consultant proceeds with such work without notifying the Contract



Administrator, the 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 Contract Administrator does not constitute authorization or approval by Municipality to Consultant to perform the work. Any such work that would entail additional compensation to Consultant by Municipality, or additional time for performance, shall require an amendment to this Agreement pursuant to Section 6.1 or a Work Authorization pursuant to Section 6.2. Unless there is an executed amendment or Work Authorization or a dispute as set forth in Section 6.4, any work performed by Consultant outside the originally anticipated level of effort without prior written Municipality approval shall be at no additional cost to Municipality.

3.3 Exhibit A identifies the initial services related to the Project, and additional negotiations may be required for other phases or additional services. Municipality and Consultant may negotiate additional services, compensation, time of performance, and other related matters, including for other phases of the Project. Notwithstanding the foregoing, Municipality shall have the right to terminate negotiations at any time at no cost to Municipality and procure services for other Project phases from any other source.

3.4 Municipality shall assist Consultant by placing at Consultant's disposal all information Municipality has available pertinent to the Project, including previous reports and any other data relative to the Project. Municipality shall arrange for access to, and make all provisions for, Consultant to enter upon public and private property as required for Consultant to perform its Services. Municipality shall review any itemized deliverables and documents required to be submitted by Consultant and respond in writing with any comments within the time set forth in Exhibit A. Municipality shall give prompt written notice to Consultant whenever Municipality observes or otherwise becomes aware of any material defect in the work of Consultant or Subconsultants, or other material development that affects the scope or timing of Consultant's Services.

#### **ARTICLE 4. TIME FOR PERFORMANCE; DAMAGES**

4.1 The term of this Agreement shall be for the period beginning on July 14, 2022 and ending two (2) years after that date. Consultant shall perform the Services within the time periods specified in Exhibit A. Time periods shall commence from the date of the applicable Notice to Proceed.

4.2 Consultant must receive a Notice to Proceed from the Contract Administrator prior to commencement of Services and any phase of Services under this Agreement. Prior to granting approval for Consultant to proceed to any phase, the Contract Administrator may, at the Contract Administrator's sole option, require Consultant to submit the itemized deliverables and documents identified in Exhibit A for the Contract Administrator's review.

4.3 If the Contract Administrator determines that Consultant is unable to timely complete all or any portion of the Services because of delays resulting from untimely review by Municipality or other governmental agencies having jurisdiction over the Project and such delays are not the fault of Consultant, or because of delays caused by factors outside the control of Consultant, Municipality shall grant a reasonable extension of time for completion of the Services and shall

provide reasonable compensation, if appropriate. It shall be the responsibility of Consultant to notify the Contract Administrator in writing whenever a delay in approval by a governmental agency is anticipated or experienced, and whenever a delay has been caused by factors outside of Consultant's control, and to inform the Contract Administrator of all facts and details related to the delay. Consultant must provide such written notice to the Contract Administrator within three (3) business days after the occurrence of the event causing the delay.

4.4 If (a) Contractor fails to substantially complete the Project on or before the substantial completion date specified in its agreement with Municipality, or (b) if Contractor is granted an extension of time beyond said substantial completion date and Consultant's Services are extended beyond the substantial completion date through no fault of Consultant, then Consultant shall be compensated in accordance with Article 5 for all Services rendered by Consultant beyond the substantial completion date.

4.5 Notwithstanding Section 4.4, if Contractor fails to substantially complete the Project on or before the substantial completion date specified in its agreement with Municipality, and the failure to substantially complete is caused in whole or in part by Consultant, then Consultant shall pay to Municipality its proportional share of any claim for damages to Contractor arising out of the delay. The provisions for the computation of delay costs, damages, or any other amounts, whether direct or indirect, in the agreement between the Contractor and Municipality are incorporated herein. This section shall not affect the indemnification rights or obligations of either Party otherwise set forth in this Agreement.

4.6 If Services are scheduled to end due to the expiration of this Agreement, at the request of the Contract Administrator, Consultant agrees to continue to provide Services for an extension period, not to exceed three months, upon the same terms and conditions as contained in this Agreement. Consultant shall be compensated for such Services at the rate in effect when the extension is invoked by Municipality. To exercise an extension authorized by this section, the Purchasing Director shall notify Consultant in writing prior to the end of the term of this Agreement.

## **ARTICLE 5. COMPENSATION AND METHOD OF PAYMENT**

5.1 Amount and Method of Compensation. The amounts set forth in this Article 5 are the total compensation payable to Consultant and constitute a limitation upon Municipality's obligation to compensate Consultant for Services under this Agreement, but do not constitute a limitation of any sort upon Consultant's obligation to perform all Services required under this Agreement.

5.1.1 Maximum Amount Not-To-Exceed Compensation. For Basic Services identified in Exhibit A as payable on a "Maximum Amount Not-To-Exceed" basis, compensation to Consultant shall be based upon the Salary Costs as described in Section 5.2 up to a maximum not-to-exceed amount of Four Hundred Thirty-Two Thousand Dollars and 00/100 (\$432,000.00).

5.1.2 Lump Sum Compensation. For Basic Services identified in Exhibit A as payable on a “Lump Sum” basis, compensation to Consultant shall be not more than a total lump sum of Four Hundred Thirty-Two Thousand Dollars and 00/100 (\$432,000.00).

5.1.3 Optional Services. Municipality may procure Optional Services up to a maximum not-to-exceed amount of \$0 pursuant to Article 6. Unused amounts of these Optional Services monies shall be retained by Municipality.

5.1.4 Reimbursable Expenses. Municipality will reimburse authorized Reimbursable Expenses as defined in Section 5.3 up to a maximum not-to-exceed amount of \$0. Unused amounts of those monies shall be retained by Municipality.

5.1.5 Salary Costs. The maximum billing rates (“Maximum Billing Rates”) payable by Municipality for each of Consultant’s employee categories are shown on Exhibit B and are further described in Section 5.2.

5.1.6 Subconsultant Fees. Consultant shall bill Municipality for Subconsultant fees using the employee categories for Salary Costs on Exhibit B as defined in Section 5.2 and Reimbursable Expenses defined in Section 5.3. Consultant shall bill Subconsultant fees with no mark-up and within any applicable maximum not to exceed amount.

5.1.7 Phased Amounts. Payments for Basic Services shall be paid out pursuant to the Project phasing specified in Exhibit A and shall not exceed the amount set forth below for the applicable phase. The invoiced fee amount for each phase shall be subject to retainage as set forth in Section 5.5.

<b>Project Phase</b>	<b>Fee %</b>	<b>Phase Amount</b>
Predesign Services/Programming Phase	20%	\$86,400
Phase I: Schematic Design	20%	\$86,400
Phase II: Design Development	20%	\$86,400
Phase III: Construction Documents	20%	\$86,400
Phase IV: Construction Contract Close Out (Warranties, manuals, release of liens)	20%	\$86,400
<b>Total Basic Services Fee</b>		<b>100%</b>
		<b>\$432,000.00</b>

5.2 Salary Costs. The term “Salary Costs” as used herein shall mean the hourly rate actually paid to all personnel engaged directly on the Project, as adjusted by an overall multiplier that consists of the following: 1) a fringe benefits factor; 2) an overhead factor; and 3) an operating margin. Said Salary Costs are to be used only for time directly attributable to the Project. The fringe benefit and overhead rates shall be Consultant’s most recent and actual rates determined in accordance with Federal Acquisition Regulation (“FAR”) guidelines and audited by an independent Certified Public Accountant. For the purposes of this Agreement, the rates must be audited for fiscal periods of Consultant within eighteen (18) months preceding the execution date

of this Agreement. These rates shall remain in effect for the term of this Agreement except as provided for in the Agreement.

5.2.1 Consultant shall require all of its Subconsultants to comply with the requirements of Section 5.2.

5.2.2 Salary Costs for Consultant and Subconsultants as shown in Exhibit B are the Maximum Billing Rates, which are provisional, subject to audit of actual costs, and if the audit discloses that the actual costs are less than the costs set forth on Exhibit B for Consultant or any Subconsultant, Consultant shall reimburse Municipality based upon the actual costs determined by the audit. Municipality may withhold the amount Consultant is required to reimburse Municipality from any payment due Consultant.

5.2.3 Unless otherwise noted, the Salary Costs stated above are based upon Consultant's "home office" rates. Should it become appropriate during the course of this Agreement that a "field office" rate be applied, then it is incumbent upon Consultant to submit a supplemental Exhibit B reflective of such rates for approval by Contract Administrator and, upon such Municipality's approval, invoice Municipality accordingly.

5.2.4 The total hours payable by Municipality for any "exempt" or "nonexempt" personnel shall not exceed forty (40) hours per employee in any week. If the work requires Consultant's or Subconsultant's personnel to work in excess of forty (40) hours per week, any additional hours must be authorized in advance, in writing, by the Contract Administrator. If approved, Salary Costs for additional hours of service provided by nonexempt (hourly) employees or exempt (salaried) employees shall be invoiced at no more than one and one-half of the employee's hourly rate and in a manner consistent with Consultant's or Subconsultant's applicable certified FAR audit and all other provisions of Section 5.2. If a "Safe Harbor" rate is elected for use by Consultant or Subconsultant, then the additional hours are payable at no more than the employee's regular rate.

5.2.5 Consultant and any of its Subconsultants may alternatively use a "Safe Harbor" combined fringe benefit and overhead rate of 110% in lieu of providing fringe benefit and overhead cost factors certified by an independent Certified Public Accountant in accordance with the FAR guidelines. The Safe Harbor rate, once elected, shall remain in place for the entire term of this Agreement, and be applicable for use as "home" and "field" fringe benefit and overhead rates, if applicable, and shall not be subject to audit under this Agreement. All other provisions of Section 5.2 remain in place.

5.3 Reimbursable Expenses. For reimbursement of any travel costs, travel-related expenses, or other direct nonsalary expenses directly attributable to this Project permitted under this Agreement, Consultant agrees to adhere to Section 112.061, Florida Statutes, except to the extent otherwise stated herein. Municipality shall not be liable for any such expenses that have not been approved in writing in advance by the Contract Administrator. Reimbursable Subconsultant expenses must also comply with the requirements of this section.

#### 5.4 Method of Billing.

5.4.1 For Maximum Amount Not-To-Exceed Compensation. Consultant shall submit billings that are identified by the specific project number on a monthly basis in a timely manner for all Salary Costs and Reimbursable Expenses 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 Reimbursable Expenses by category and identify 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 Reimbursable Expenses, a copy of said approval shall accompany the billing for such reimbursable. Billings shall also indicate the cumulative amount of CBE participation to date. The statement shall show a summary of Salary Costs and Reimbursable Expenses with accrual of the total and credits for portions paid previously. External Reimbursable Expenses and Subconsultant fees must be documented by copies of invoices or receipts that describe the nature of the expenses and contain a project number or other identifier that clearly indicates the expense is identifiable to the Project. Subsequent addition of the identifier to the invoice or receipt by Consultant is not acceptable except for meals and travel expenses. 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, Reimbursable Expenses by category, and Subconsultant fees on a task basis, so that total hours and costs by task may be determined.

5.4.2 For Lump Sum Compensation. Consultant shall submit billings that are identified by the specific project number on a monthly basis in a timely manner. These billings shall identify the nature of the work performed, the phase of work, and the estimated percent of work accomplished. Billings for each phase shall not exceed the amounts allocated to said phase. Billings shall also indicate the cumulative amount of CBE participation to date. The statement shall show a summary of fees with accrual of the total and credits for portions paid previously. When requested, Consultant shall provide backup for past and current invoices that record hours, salary costs, and expense costs on a task basis, so that total hours and costs by task may be determined.

#### 5.5 Method of Payment.

5.5.1 Municipality shall pay Consultant within thirty (30) days after receipt of Consultant's proper invoice, as defined by the Local Government Prompt Payment Act, minus any applicable retainage or other deductions permitted by this Agreement.

5.5.2 Unless otherwise provided in this section, retainage in the amount of ten percent (10%) of each invoice shall be retained by Municipality until satisfactory completion of

the applicable phase. When the Services to be performed on all phases of the Project are fifty percent (50%) complete, upon written request by Consultant and written approval by the Contract Administrator that the Project is progressing in a satisfactory manner, the Contract Administrator, in the Contract Administrator's sole discretion, may authorize the reduction of retainage to five percent (5%) of each invoice for subsequent payments. No amount shall be withheld from payments for Reimbursable Expenses or for Services performed during the construction phase, if applicable.

5.5.3 Upon Consultant's completion of each phase to the satisfaction of the Contract Administrator, Municipality shall remit to Consultant any amounts withheld as retainage for that phase. Final payment for the Project must be approved by the Purchasing Director.

5.5.4 Payment will be made to Consultant at the following address:

[REDACTED]

5.6 Fiscal Year. The continuation of this Agreement beyond the end of any Municipality fiscal year is subject to both the appropriation and the availability of transportation surtax funds in accordance with Title XI, Chapter 129, Florida Statutes.

5.7 Consultant must pay Subconsultants and suppliers providing Services under this Agreement within fifteen (15) days after receipt of payment from Municipality for such subcontracted work or supplies. If Consultant withholds an amount as retainage from a Subconsultant or supplier, Consultant shall release such retainage and pay same within fifteen (15) days after receipt of payment of retained amounts from Municipality. The Contract Administrator may, at its option, increase allowable retainage or withhold progress payments unless and until Consultant demonstrates timely payments of sums due to all Subconsultants and suppliers. Consultant shall include requirements substantially similar to those set forth in this section in its contracts with Subconsultants and suppliers.

5.8 Withholding by Municipality. Notwithstanding any provision of this Agreement to the contrary, Municipality may withhold payment, in whole or in part, (a) in accordance with Applicable Law, or (b) to the extent necessary to protect itself from loss on account of (i) inadequate or defective work that has not been remedied or resolved in a manner satisfactory to the Contract Administrator, or (ii) Consultant's failure to comply with any provision of this Agreement. The amount withheld shall not be subject to payment of interest by Municipality.

**[DELETE IF NOT APPLICABLE]**

5.9 Foreign Entity Tax Withholding. Amounts due to certain foreign persons or entities may be subject to backup withholding taxes under federal law. If Consultant is a foreign person or entity that is required to complete Internal Revenue Service ("IRS") Form W-8ECI, Consultant shall provide Municipality a copy of Consultant's current Form W-8ECI prior to issuance of any invoice or payment under this Agreement. If Consultant fails to timely provide a completed, current Form W-8ECI, Municipality will withhold all backup withholding taxes from the amounts due Consultant, remit such sums to the IRS, and pay Consultant only the remainder. Municipality

makes no representation regarding the tax treatment of amounts due to Consultant, and Consultant releases and holds Municipality harmless from any claims or damages in any way relating to or arising from any tax withholding by Municipality pursuant to this section.

**ARTICLE 6.      OPTIONAL AND ADDITIONAL SERVICES;  
CHANGES IN SCOPE OF SERVICES**

6.1      Municipality or Consultant may request changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement. Unless otherwise expressly permitted herein, such changes must be made in accordance with the provisions of the Municipality’s procurement code and policies and must be contained in a written amendment.

6.2      If any goods or services under this Agreement, or the quantity thereof, are identified as optional (“Optional Services”), Municipality may select the type, amount, and timing of such goods or services pursuant to a work authorization (“Work Authorization”) in substantially the form attached as Exhibit D executed by Consultant and Municipality pursuant to this section. No such selection, when combined with those goods or services required under this Agreement, may result in a payment obligation exceeding the applicable maximum amount stated in Article 5. A Work Authorization for Optional Services shall specify the method of compensation applicable to that Work Authorization and the required completion date for those additional services.

6.3      Notwithstanding anything to the contrary in this Agreement, Work Authorizations (and amendments thereto) for Optional Services shall be executed on behalf of Municipality as follows: (a) the Contract Administrator may execute Work Authorizations for which the total cost to Municipality in the aggregate is less than \$50,000.00; (b) the Purchasing Director may execute Work Authorizations for which the total cost to Municipality in the aggregate is within the Purchasing Director’s delegated authority; and (c) any Work Authorization above the Purchasing Director’s delegated authority requires express approval by the Board. Consultant shall not commence work on any Work Authorization until after receipt of a purchase order and issuance of a Notice to Proceed by the Contract Administrator.

6.4      If a dispute between the Contract Administrator and Consultant arises over whether any work requested by Municipality is within the scope of contracted Services and such dispute cannot be resolved by the Contract Administrator and Consultant, such dispute shall be promptly presented to the Municipality Manager or his or her designee for resolution, whose decision shall be in writing and shall be final and binding on the Parties. During the pendency of any dispute, Consultant shall promptly perform the disputed work.

**ARTICLE 7.      REPRESENTATIONS AND WARRANTIES**

7.1      Representation of Authority. Consultant represents and warrants that this Agreement constitutes the legal, valid, binding, and enforceable obligation of Consultant, and that neither the execution nor performance of this Agreement constitutes a breach of any agreement that Consultant has with any third party or violates Applicable Law. Consultant further represents and warrants that execution of this Agreement is within Consultant’s legal powers, and each

individual executing this Agreement on behalf of Consultant is duly authorized by all necessary and appropriate action to do so on behalf of Consultant and does so with full legal authority.

7.2 Claims Against Consultant. Consultant represents and warrants that there is no action or proceeding, at law or in equity, before any court, mediator, arbitrator, governmental, or other board or official, pending or, to the knowledge of Consultant, threatened against or affecting Consultant, the outcome of which may (a) affect the validity or enforceability of this Agreement, (b) materially and adversely affect the authority or ability of Consultant to perform its obligations under this Agreement, or (c) have a material and adverse effect on the consolidated financial condition or results of operations of Consultant or on the ability of Consultant to conduct its business as presently conducted or as proposed or contemplated to be conducted.

7.3 Solicitation Representations. Consultant represents and warrants that all statements and representations made in Consultant's proposal, bid, or other supporting documents submitted to Municipality in connection with the solicitation, negotiation, or award of this Agreement, including during the procurement or evaluation process, were true and correct when made and are true and correct as of the date Consultant executes this Agreement, unless otherwise expressly disclosed in writing by Consultant.

7.4 Contingency Fee. Consultant represents that it has not paid or agreed to pay any person or entity, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. If this Agreement is subject to Section 287.055, Florida Statutes, the Parties agree and stipulate that the statutory language stated in Section 287.055(6)(a) is deemed included and fully incorporated herein.

7.5 Truth-In-Negotiation Representation. Consultant's compensation under this Agreement is based upon its representations to Municipality, and Consultant certifies that the wage rates, factual unit costs, and other information supplied to substantiate Consultant's compensation, including, without limitation, in the negotiation of this Agreement, are accurate, complete, and current as of the date Consultant executes this Agreement. Consultant's compensation will be reduced to exclude any significant sums by which the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs.

7.6 Public Entity Crime Act. Consultant represents that it is familiar with the requirements and prohibitions under the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that its entry into this Agreement will not violate that Act. Consultant further represents that there has been no determination that it committed a "public entity crime" as defined by Section 287.133, Florida Statutes, 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.

7.7 Discriminatory Vendor and Scrutinized Companies Lists; Countries of Concern. Consultant represents that it has not been placed on the "discriminatory vendor list" as provided in Section 287.134, Florida Statutes, and that it is not a "scrutinized company" pursuant to Sections



215.473 or 215.4725, Florida Statutes. Consultant represents and certifies that it is not, and for the duration of the Agreement will not be, ineligible to contract with Municipality on any of the grounds stated in Section 287.135, Florida Statutes. Consultant represents that it is, and for the duration of this Agreement will remain, in compliance with Section 286.101, Florida Statutes.

7.8 Verification of Employment Eligibility. Consultant represents that Consultant and each Subconsultant have registered with and use the E-Verify system maintained by the United States Department of Homeland Security to verify the work authorization status of all newly hired employees in compliance with the requirements of Section 448.095, Florida Statutes, and that entry into this Agreement will not violate that statute. If Consultant violates this section, Municipality may immediately terminate this Agreement for cause and Consultant will be liable for all costs incurred by Municipality due to the termination.

7.9 Domestic Partnership Requirement. Unless this Agreement is exempt from the provisions of the Broward County Domestic Partnership Act, Section 16½-157, Broward County Code of Ordinances (“Act”), Consultant certifies and represents that it shall at all times comply with the provisions of the Act. The contract language referenced in the Act is deemed incorporated in this Agreement as though fully set forth in this section.

7.10 Warranty of Performance. Consultant represents and warrants that it possesses the knowledge, skill, experience, and financial capability required to perform and provide all required and optional Services under this Agreement, and that each person and entity that will provide Services is duly qualified to perform such services by all appropriate governmental authorities, where required, and is sufficiently experienced and skilled in the area(s) for which such person or entity will render such Services. Consultant represents and warrants that the Services shall be performed in a skillful and respectful manner, and that the quality of all such services shall equal or exceed prevailing industry standards for the provision of such services.

7.11 Prohibited Telecommunications Equipment. Consultant represents and certifies that it and its Subconsultants do not use any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, as such terms are used in 48 CFR §§ 52.204-24 through 52.204-26. Consultant represents and certifies that Consultant and its Subconsultants shall not provide or use such covered telecommunications equipment, system, or services for the duration of this Agreement.

7.12 Breach of Representations. Consultant acknowledges that Municipality is materially relying on the representations, warranties, and certifications of Consultant stated in this article, and Municipality shall be entitled to exercise any or all of the following remedies if any such representation, warranty, or certification is untrue: (a) recovery of damages incurred; (b) termination of this Agreement without any further liability to Consultant; (c) set off from any amounts due Consultant the full amount of any damage incurred; and (d) debarment of Consultant.

## **ARTICLE 8.      TERMINATION**

8.1 Termination. 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 receipt of 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 Municipality, which termination date shall be not less than thirty (30) days after the date of such written notice. If this Agreement or any Work Authorization was approved by Board action, termination for cause by Municipality of the Agreement or Work Authorization, as applicable, must be by action of the Board or such other officer of Municipality designated by the Board; in all other instances termination for cause may be effected by the Municipality's representative expressly authorized under this Agreement (including any successor) who executed the Agreement or the Work Authorization, as applicable, on behalf of Municipality. This Agreement may also be terminated by the Municipality Manager upon such notice as the Municipality Manager deems appropriate under the circumstances if the Municipality Manager determines that termination is necessary to protect the public health, safety, or welfare. If Municipality erroneously, improperly, or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience and shall be effective thirty (30) days after such notice of termination for cause was provided and Consultant shall be eligible for the compensation provided in Section 8.4 as its sole remedy.

8.2 This Agreement or any Work Authorization may be terminated for cause by Municipality for reasons including, but not limited to, any of the following:

8.2.1 Consultant's failure to suitably or continuously perform the Services in a manner calculated to meet or accomplish the objectives in this Agreement or Work Authorization, or repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices;

8.2.2 By the Contract Administrator for any fraud, misrepresentation, or material misstatement by Consultant in the award or performance of this Agreement or that violates any applicable requirement of Section 1-81, Broward County Code of Ordinances; or

8.2.3 By the Contract Administrator upon the disqualification of Consultant as a CBE or SBE if Consultant's status as a CBE or SBE was a factor in the award of this Agreement and such status was misrepresented by Consultant, or upon the disqualification of one or more of Consultant's CBE or SBE participants by County's Director of the Office of Economic and Small Business Development (OESBD) if any such participant's status as a CBE or SBE firm was a factor in the award of this Agreement and such status was misrepresented by Consultant during the procurement or the performance of this Agreement.

8.3 Notice of termination shall be provided in accordance with the “Notices” section of this Agreement except that notice of termination by the Municipality Manager to protect the public health, safety, or welfare may be oral notice that shall be promptly confirmed in writing.

8.4 If this Agreement or a Work Authorization issued under this Agreement is terminated for convenience, Consultant shall be paid for any Services properly performed under this Agreement or Work Authorization through the termination date specified in the written notice of termination, subject to any right of Municipality to retain any sums otherwise due and payable. Consultant acknowledges that it has received good, valuable, and sufficient consideration for Municipality’s right to terminate this Agreement for convenience in the form of Municipality’s obligation to provide advance notice to Consultant of such termination in accordance with Section 8.1.

8.5 In addition to any termination rights stated in this Agreement, Municipality shall be entitled to seek any and all available contractual or other remedies available at law or in equity.

## **ARTICLE 9. INSURANCE**

9.1 For the duration of the Agreement, Consultant shall, at its sole expense, maintain the minimum insurance coverages stated in [Exhibit C](#) in accordance with the terms and conditions of this article. Consultant shall maintain insurance coverage against claims relating to any act or omission by Consultant, its agents, representatives, employees, or Subconsultants in connection with this Agreement. Municipality reserves the right at any time to review and adjust the limits and types of coverage required under this article.

9.2 Consultant shall ensure that Municipality “City of Coconut Creek, 4800 West Copans Road, Coconut Creek, FL 33063]” and “Broward County, 115 S. Andrews Avenue, Fort Lauderdale, Florida 33301” are both listed and endorsed as additional insureds as stated in Exhibit C on all policies required under this article.

9.3 On or before the date this Agreement is fully executed or at least fifteen (15) days prior to commencement of Services, Consultant shall provide Municipality with a copy of all Certificates of Insurance or other documentation sufficient to demonstrate the insurance coverage required in this article. If and to the extent requested by Municipality, Consultant shall provide complete, certified copies of all required insurance policies and all required endorsements within thirty (30) days after Municipality’s request.

9.4 Consultant shall ensure that all insurance coverages required by this article shall remain in full force and effect without any lapse in coverage for the duration of this Agreement and until all performance required by Consultant has been completed, as determined by Contract Administrator. Consultant or its insurer shall provide notice to Municipality any cancellation or modification of any required policy at least thirty (30) days prior to the effective date of cancellation or modification, and at least ten (10) days prior to the effective date of any cancellation due to nonpayment, and shall concurrently provide Municipality with a copy of its updated Certificates of Insurance evidencing continuation of the required coverage(s).

9.5 All required insurance policies must be issued by insurers: (1) assigned an AM Best rating of at least “A-” with a Financial Size Category of at least Class VII; (2) authorized to transact insurance in the State of Florida; or (3) a qualified eligible surplus lines insurer pursuant to Section 626.917 or 626.918, Florida Statutes, with approval by Municipality’s Risk Management Division.

9.6 If Consultant maintains broader coverage or higher limits than the insurance requirements stated in Exhibit C, Municipality shall be entitled to all such broader coverages and higher limits. All required insurance coverages shall provide primary coverage and not require contribution from any Municipality insurance, self-insurance or otherwise. All insurance held by Municipality, as well as Municipality’s self-insurance, shall be in excess of and shall not contribute to the required insurance provided by Consultant.

9.7 Consultant shall declare in writing any self-insured retentions or deductibles over the limit(s) prescribed in Exhibit C and submit to Municipality for approval at least fifteen (15) days prior to the date this Agreement is fully executed or commencement of Services. Consultant shall be solely responsible for and shall pay any deductible or self-insured retention applicable to any claim against Municipality. Municipality may, at any time, require Consultant to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. Consultant agrees that any deductible or self-insured retention may be satisfied by either the named insured or Municipality, if so elected by Municipality, and Consultant agrees to obtain same in endorsements to the required policies.

9.8 Unless prohibited by the applicable policy, Consultant waives any right to subrogation that any of Consultant’s insurer may acquire against Municipality and agrees to obtain same in an endorsement of Consultant’s insurance policies required under this article including any excess or umbrella policies.

9.9 Consultant shall require that each Subconsultant maintains insurance coverage that adequately covers the Services provided by that Subconsultant on substantially the same insurance terms and conditions required of Consultant under this article. Consultant shall ensure that all such Subconsultants comply with these requirements and that Municipality and “Broward County” are both named as additional insureds under the Subconsultants’ applicable insurance policies. Consultant shall not permit any Subconsultant to provide Services unless and until all applicable requirements of this article are satisfied.

9.10 If Consultant or any Subconsultant fails to maintain the insurance required by this Agreement, Municipality may pay any costs of premiums necessary to maintain the required coverage and deduct such costs from any payment otherwise due to Consultant. If requested by Municipality, Consultant shall provide, within one (1) business day, evidence of each Subconsultant’s compliance with this section.

9.11 If any of the policies required under this article provide claims-made coverage: (1) any retroactive date must be prior to the date this Agreement is fully executed; (2) the required coverage must be maintained after termination or expiration of the Agreement for at least the

duration stated in [Exhibit C](#); and (3) if coverage is canceled or nonrenewed and is not replaced with another claims-made policy form with a retroactive date prior to the date this Agreement is fully executed, Consultant must obtain and maintain “extended reporting” coverage that applies after termination or expiration of the Agreement for at least the duration stated in [Exhibit C](#).

## **ARTICLE 10. EQUAL EMPLOYMENT OPPORTUNITY AND CBE COMPLIANCE**

10.1 No Party may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement. Consultant shall include the foregoing or similar language in its contracts with any Subconsultants, except that any project assisted by the U.S. Department of Transportation funds shall comply with the nondiscrimination requirements in 49 C.F.R. Parts 23 and 26.

10.2 Consultant shall comply with all applicable requirements of Section 1-81, Broward County Code of Ordinances, in the award and administration of this Agreement. Failure by Consultant to carry out any of the requirements of this article shall constitute a material breach of this Agreement, which shall permit Municipality to terminate this Agreement or exercise any other remedy provided under this Agreement, the Broward County Code of Ordinances, the Broward County Administrative Code, or under other Applicable Law, all such remedies being cumulative.

10.3 Consultant must meet or exceed the required CBE goal by utilizing the CBE firms listed in Exhibit F (or a CBE firm substituted for a listed firm, if permitted) for thirty percent (30%) of total Services (the “Commitment”) for the scope of work and the percentage of work amounts identified on each Letter of Intent. Promptly upon execution of this Agreement by Municipality, Consultant shall enter into formal contracts with the CBE firms listed in Exhibit F and, upon request, shall provide copies of the contracts to the Contract Administrator and OESBD.

10.4 Each CBE firm utilized by Consultant to meet the CBE goal must be certified by OESBD. Consultant shall inform Municipality immediately when a CBE firm is not able to perform or if Consultant believes the CBE firm should be replaced for any other reason, so that OESBD may review and verify the good faith efforts of Consultant to substitute the CBE firm with another CBE firm, as applicable. Whenever a CBE firm is terminated for any reason, Consultant shall provide written notice to OESBD and, upon written approval of the Director of OESBD, shall substitute another CBE firm in order to meet the CBE goal, unless otherwise provided in this Agreement or agreed in writing by the Parties. Such substitution shall not be required if the termination results from modification of the Scope of Services and no CBE firm is available to perform the modified Scope of Services; in which event Consultant shall notify OESBD, and OESBD may adjust the CBE goal by written notice to Consultant. Consultant shall not terminate a CBE firm for convenience without OESBD’s prior written consent, which consent shall not be unreasonably withheld.

10.5 The Parties stipulate that if Consultant fails to meet the Commitment, the damages to Municipality arising from such failure are not readily ascertainable at the time of contracting. If Consultant fails to meet the Commitment and County determines, in the sole discretion of the OESBD Director, that Consultant failed to make Good Faith Efforts (as defined in Section 1-81,

Broward County Code of Ordinances) to meet the Commitment, Consultant shall pay Municipality liquidated damages in an amount equal to fifty percent (50%) of the actual dollar amount by which Consultant failed to achieve the Commitment, up to a maximum amount of ten percent (10%) of the total contract amount, excluding costs and reimbursable expenses. An example of this calculation is stated in Section 1-81.7, Broward County Code of Ordinances. As elected by Municipality, such liquidated damages amount shall be either credited against any amounts due from Municipality, or must be paid to Municipality within thirty (30) days after written demand. These liquidated damages shall be Municipality's sole contractual remedy for Consultant's breach of the Commitment, but shall not affect the availability of administrative remedies under Section 1-81. Consultant acknowledges and agrees that the liquidated damages provided in this section are proportionate to an amount that might reasonably be expected to flow from a breach of the Commitment and are not a penalty. Any failure to meet the Commitment attributable solely to force majeure, changes to the scope of work by Municipality, or inability to substitute a CBE Subconsultant where the OESBD Program Director has determined that such inability is due to no fault of Consultant, shall not be deemed a failure by Consultant to meet the Commitment.

10.6 Consultant acknowledges that County may make minor administrative modifications to Section 1-81, Broward County Code of Ordinances, which shall become applicable to this Agreement if the administrative modifications are not unreasonable. Written notice of any such modification shall be provided to Consultant and shall include a deadline for Consultant to notify Municipality in writing if Consultant concludes that the modification exceeds the authority under this section. Failure of Consultant to timely notify Municipality of its conclusion that the modification exceeds such authority shall be deemed acceptance of the modification by Consultant.

10.7 OESBD may modify the required participation of CBE firms in connection with any amendment, extension, modification, change order, or Work Authorization to this Agreement that, by itself or aggregated with previous amendments, extensions, modifications, change orders, or Work Authorizations, increases the initial Agreement price by ten percent (10%) or more. Consultant shall make a good faith effort to include CBE firms in work resulting from any such amendment, extension, modification, change order, or Work Authorization, and shall report such efforts, along with evidence thereof, to OESBD.

10.8 No later than ten (10) business days after the end of the month, Consultant shall provide written monthly reports to the Contract Administrator and to OESBD (in the form and in the manner requested by OESBD) attesting to Consultant's compliance with the Commitment. In addition, Consultant shall allow Municipality and OESBD to engage in onsite reviews to monitor Consultant's progress in achieving and maintaining the Commitment. The Contract Administrator in conjunction with OESBD shall perform such review and monitoring.

10.9 The presence of a "pay when paid" provision in a Consultant's contract with a CBE firm shall not preclude Municipality or its representatives from inquiring into claims of nonpayment or exercising any right stated in Section 5.7.

## ARTICLE 11. MISCELLANEOUS

11.1 Contract Administrator Authority. The Contract Administrator is authorized to coordinate and communicate with Consultant to manage and supervise the performance of this Agreement. Unless expressly stated otherwise in this Agreement or otherwise set forth in an applicable provision of the Municipality's codes or policies, the Contract Administrator may exercise ministerial authority in connection with the day-to-day management of this Agreement provided that such instructions and determinations do not change the Scope of Services. The Contract Administrator may designate one or more of Municipality's employees with authority pertaining to day-to-day Project management or activities. Consultant shall notify Contract Administrator in writing of Consultant's representative(s) to whom matters involving the Project shall be addressed.

11.2 Rights in Documents and Work. Any and all documents, reports, studies, photographs, surveys, drawings, maps, models, photographs, specifications, materials, data, or other work created by Consultant in connection with performing Services, whether finished or unfinished ("Documents and Work"), shall be owned by Municipality, and Consultant hereby transfers to Municipality all right, title, and interest, including any copyright or other intellectual property rights, in or to the Documents and Work. Upon expiration or termination of this Agreement, the Documents and Work shall become the property of Municipality and shall be delivered by Consultant to the Contract Administrator within fifteen (15) days after expiration or termination. Any compensation due to Consultant may be withheld until all Documents and Work are received as provided in this Agreement. Consultant shall ensure that the requirements of this section are included in all agreements with its Subconsultant(s).

11.3 Living Wage Requirement. To the extent Consultant is a "covered employer" within the meaning of the Broward County Living Wage Ordinance, Sections 26-100 through 26-105, Broward County Code of Ordinances, Consultant agrees to and shall pay to all of its employees providing "covered services," as defined in the ordinance, a living wage as required by such ordinance, and shall fully comply with the requirements of such ordinance, and that Consultant shall ensure all of its Subconsultants that qualify as "covered employers" fully comply with the requirements of such ordinance.

11.4 Public Records. To the extent Consultant is acting on behalf of Municipality as stated in Section 119.0701, Florida Statutes, Consultant shall:

11.4.1 Keep and maintain public records required by Municipality to perform the services under this Agreement;

11.4.2 Upon request from Municipality, provide Municipality with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by Applicable Law;

11.4.3 Ensure that public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by Applicable Law for the duration of this Agreement and after completion or termination of this Agreement if the records are not transferred to Municipality; and

11.4.4 Upon completion or termination of this Agreement, transfer to Municipality, at no cost, all public records in possession of Consultant or keep and maintain public records required by Municipality to perform the services. If Consultant transfers the records to Municipality, Consultant shall destroy any duplicate public records that are exempt or confidential and exempt. If Consultant keeps and maintains the public records, Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Municipality upon request in a format that is compatible with the information technology systems of Municipality.

11.4.5 A request for public records regarding this Agreement must be made directly to Municipality, who will be responsible for responding to any such public records requests. Consultant will provide any requested records to Municipality to enable Municipality to respond to the public records request.

11.4.6 Any material submitted to Municipality that Consultant contends constitutes or contains trade secrets or is otherwise exempt from production under Florida public records laws (including Chapter 119, Florida Statutes) (“Trade Secret Materials”) must be separately submitted and conspicuously labeled “EXEMPT FROM PUBLIC RECORD PRODUCTION – TRADE SECRET.” In addition, Consultant must, simultaneous with the submission of any Trade Secret Materials, provide a sworn affidavit from a person with personal knowledge attesting that the Trade Secret Materials constitute trade secrets under Section 688.002, Florida Statutes, and stating the factual basis for same. If that a third party submits a request to Municipality for records designated by Consultant as Trade Secret Materials, Municipality shall refrain from disclosing the Trade Secret Materials, unless otherwise ordered by a court of competent jurisdiction or authorized in writing by Consultant. Consultant shall indemnify and defend Municipality and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments, and liabilities of any kind, including attorneys’ fees, litigation expenses, and court costs, relating to the nondisclosure of any Trade Secret Materials in response to a records request by a third party.

**IF CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONSULTANT’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 954-973-6774, [PublicRecords@coconutcreek.net](mailto:PublicRecords@coconutcreek.net), 4800 West Copans Road, Coconut Creek, FL.**

11.5 Audit Rights and Retention of Records. Consultant shall preserve all Contract Records (as defined below) for a minimum period of three (3) years after expiration or termination of this



Agreement or until resolution of any audit findings, whichever is longer. Contract Records shall, upon reasonable notice, be open to inspection and subject to audit and reproduction during normal business hours. Audits and inspections pursuant to this section may be performed by any representative of Municipality and/or County (including any outside representative engaged by either entity). Municipality and County may conduct audits or inspections at any time during the term of this Agreement and for a period of three (3) years after the expiration or termination of this Agreement (or longer if required by Applicable Law, Municipality, and/or County). County may, without limitation, verify information, payroll distribution, and amounts through interviews, written affirmations, and on-site inspection with Consultant's employees, Subconsultants, vendors, or other labor.

- 11.5.1 Contract Records include any and all information, materials and data of every kind and character, including, without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, drawings, receipts, vouchers, memoranda, and any and all other documents that pertain to rights, duties, obligations, or performance under this Agreement. Contract Records include hard copy and electronic records, written policies and procedures, time sheets, payroll records and registers, cancelled payroll checks, estimating work sheets, correspondence, invoices and related payment documentation, general ledgers, insurance rebates and dividends, and any other records pertaining to rights, duties, obligations, or performance under this Agreement, whether by Consultant or Subconsultants.
- 11.5.2 Municipality and Broward County shall have the right to audit, review, examine, inspect, analyze, and make copies of all Contract Records at a location within Broward County, Florida. Consultant hereby grants Municipality and County the right to conduct such audit or review at Consultant's place of business, if deemed appropriate by Municipality or Broward County, with seventy-two (72) hours' advance notice. Consultant agrees to provide adequate and appropriate workspace for such review. Consultant shall provide Municipality and County with reasonable access to Consultant's facilities, and Municipality and County shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Agreement.
- 11.5.3 Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for Municipality's disallowance and recovery of any payment upon such entry.
- 11.5.4 If an audit or inspection in accordance with this section discloses overpricing or overcharges to Municipality of any nature by Consultant or its Subconsultants in excess of five percent (5%) of the total contract billings reviewed, in addition to making adjustments for the overcharges, Consultant shall pay the actual cost of the audit or, if the actual cost is unreasonably high, the reasonable cost. Any

adjustments or payments due as a result of such audit or inspection shall be made within thirty (30) days after presentation of the audit findings to Consultant.

11.5.5 Consultant shall, by written contract, require its Subconsultants to agree to the requirements and obligations as stated in Sections 11.4 and 11.5.

11.6 Subconsultants. Consultant shall utilize only the Subconsultants identified in Exhibit E, Schedule of Subconsultants, to provide the Services for this Project. Consultant shall obtain written approval of Contract Administrator prior to changing or modifying the Schedule of Subconsultants, which shall be automatically updated upon such written approval. Consultant shall bind in writing each and every approved Subconsultant to the terms stated in this Agreement, provided that this provision shall not, in and of itself, impose the insurance requirements set forth in Article 9 on Consultant's Subconsultants.

11.7 Assignment. Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered without the written consent of the other Party. Any assignment, transfer, encumbrance, or subcontract in violation of this section shall be void and ineffective, constitute a breach of this Agreement, and permit the non-assigning Party to immediately terminate this Agreement, in addition to any other remedies available to the non-assigning Party at law or in equity. Municipality reserves the right to condition its approval of any assignment, transfer, encumbrance, or subcontract upon further due diligence and an additional fee paid to Municipality to reasonably compensate it for the performance of any such due diligence.

11.8 Indemnification of Municipality. Consultant shall indemnify and hold harmless Municipality and its current, past, and future officers and employees from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness or intentionally wrongful conduct of Consultant or other persons employed or utilized by Consultant in the performance of this Agreement. The provisions of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by Contract Administrator and Municipality Attorney, any sums due Consultant under this Agreement may be retained by Municipality until all of Municipality's claims subject to this indemnification obligation have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by Municipality.

11.9 Prior Agreements. This Agreement is the final and complete understanding of the Parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and discussions regarding same. All commitments, agreements, and understandings of the Parties concerning the subject matter of this Agreement are contained herein.

11.10 Amendments. Unless otherwise expressly authorized herein, no modification, amendment, or alteration of any portion of this Agreement is effective unless contained in a written document executed with the same or similar formality as this Agreement and by duly authorized representatives of Municipality and Consultant.

11.11 Notices. In order for a notice to a Party to be effective under this Agreement, notice must be sent via U.S. first-class mail, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via e-mail, to the addresses listed below and shall be effective upon mailing or hand delivery (provided the contemporaneous email is also sent). Addresses may be changed by the applicable Party providing notice of such change in accordance with this section.

FOR MUNICIPALITY:

City of Coconut Creek  
Attn: Karen M. Brooks, City Manager  
4800 West Copans Road  
Coconut Creek, Florida 33063  
Email address: kbrooks@coconutcreek.net

WITH A COPY TO CITY ATTORNEY:

Terrill C. Pyburn, City Attorney  
4800 West Copans Road  
Coconut Creek, FL 33063  
tpyburn@coconutcreek.net

FOR CONSULTANT:

[Redacted]

Email address: [Redacted]

11.12 Interpretation. The titles and headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as “herein” refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or article of this Agreement, such reference is to the section or article as a whole, including all subsections thereof, unless the reference is made to a particular subsection or subparagraph of such section or article. Any reference to “days” means calendar days, unless otherwise expressly stated.

11.13 Consultant’s Staff. Consultant will provide the key staff identified in its proposal for Project as long as said key staff are in Consultant’s employment. Consultant will obtain prior written approval of Contract Administrator to change key staff. Consultant shall provide Contract Administrator with such information as necessary to determine the suitability of proposed new key staff. Contract Administrator will be reasonable in evaluating key staff qualifications. If Contract Administrator desires to request removal of any of Consultant’s staff, Contract Administrator shall first meet with Consultant and provide reasonable justification for said

removal; upon such reasonable justification, Consultant shall use good faith efforts to remove or reassign the staff at issue.

11.14 Drug-Free Workplace. To the extent required under Section 21.23(f), Broward County Administrative Code, or Section 287.087, Florida Statutes, Consultant certifies that it has and will maintain a drug-free workplace program for the duration of this Agreement.

11.15 Independent Contractor. Consultant is an independent contractor under this Agreement, and nothing in this Agreement shall constitute or create a partnership, joint venture, or any other relationship between the Parties. In providing Services under this Agreement, neither Consultant nor its agents shall act as officers, employees, or agents of Municipality, except as authorized by the Contract Administrator for permitting, licensing, or other regulatory requirements. Consultant shall not have the right to bind Municipality to any obligation not expressly undertaken by Municipality under this Agreement.

11.16 Regulatory Capacity. Notwithstanding the fact that Municipality is a political subdivision with certain regulatory authority, Municipality's performance under this Agreement is as a Party to this Agreement and in the capacity of Municipality as owner of the Project. If Municipality exercises its regulatory authority, the exercise of such authority and the enforcement of Applicable Law shall have occurred pursuant to Municipality's regulatory authority as a governmental body separate and apart from this Agreement, and shall not be attributable in any manner to Municipality as a Party to this Agreement.

11.17 Sovereign Immunity. Except to the extent sovereign immunity may be deemed to be waived by entering into this Agreement, nothing herein is intended to serve as a waiver of sovereign immunity by Municipality nor shall anything included herein be construed as consent by Municipality to be sued by third parties in any matter arising out of this Agreement. Municipality is a political subdivision as defined in Section 768.28, Florida Statutes, and shall be responsible for the negligent or wrongful acts or omissions of its employees pursuant to Section 768.28, Florida Statutes.

11.18 Third-Party Beneficiaries. Except for County to the extent expressly identified herein, neither Consultant nor Municipality intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that, other than County, there are no third-party beneficiaries to this Agreement and that no third party other than County shall be entitled to assert a right or claim against either of them based upon this Agreement.

11.19 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. During the term of this Agreement, none of Consultant's officers or employees shall serve as an expert witness against Municipality or County in any legal or administrative proceeding in which he, she, or Consultant is not a party, unless compelled by legal process. Further, such persons shall not give sworn testimony or issue a report or writing, as an expression of such person's expert opinion that is adverse or prejudicial to the interests of

Municipality or County in connection with any such pending or threatened legal or administrative proceeding unless compelled by legal process. The limitations of this section shall not preclude Consultant or any persons in any way from representing themselves, including giving expert testimony in support of such representation, in any action or in any administrative or legal proceeding. If Consultant is permitted pursuant to this Agreement to utilize Subconsultants to perform any Services required by this Agreement, Consultant shall require such Subconsultants, by written contract, to comply with the provisions of this section to the same extent as Consultant.

11.20 Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth in this Agreement was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth in this Agreement is substantial and important to the formation of this Agreement, and each is, therefore, a material term. Municipality'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 shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of this Agreement. To be effective, any waiver must be in writing signed by an authorized signatory of the Party granting the waiver.

11.21 Compliance with Laws. Consultant and the Services must comply with all Applicable Law, including, without limitation, American with Disabilities Act, 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and the requirements of any applicable grant agreements.

11.22 Severability. If any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.

11.23 Joint Preparation. This Agreement has been jointly prepared by the Parties and shall not be construed more strictly against either Party.

11.24 Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached to, referenced by, or incorporated in this Agreement and any provision of Articles 1 through 11 of this Agreement, the provisions contained in Articles 1 through 11 shall prevail and be given effect.

11.25 Law, 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. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **EACH PARTY HEREBY EXPRESSLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A DEMAND FOR A JURY TRIAL AFTER WRITTEN NOTICE BY THE OTHER PARTY, THE PARTY MAKING THE DEMAND FOR JURY TRIAL SHALL BE LIABLE FOR REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY**

**TO CONTEST THE DEMAND FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

11.26 Reuse of Project. Municipality may, at its option, reuse (in whole or in part) the resulting end-product or deliverables resulting from Consultant's Services (including, but not limited to, drawings, specifications, other documents, and services as described herein and in Exhibit A); and Consultant agrees to such reuse in accordance with this provision. If the Contract Administrator elects to reuse the services, drawings, specifications, and other documents, in whole or in part, prepared for this Project for other projects on other sites, Consultant will be paid a reuse fee to be negotiated between Consultant and Municipality, subject to approval by the proper awarding authority. Each reuse shall include all Basic Services and modifications to the drawings, specifications, and other documents normally required to adapt the design documents to a new site. This reuse may include preparation of reverse plans, changes to the program, provision for exceptional site conditions, preparation of documents for off-site improvements, provisions for revised solar orientation, provisions for revised vehicular and pedestrian access, and modifications to building elevations, ornament, or other aesthetic features. In all reuse assignments, the design documents shall be revised to comply with building codes and other jurisdictional requirements current at the time of reuse for the new site location. The terms and conditions of this Agreement shall remain in force for each reuse project, unless otherwise agreed by the Parties in writing.

11.27 Payable Interest.

11.27.1 Payment of Interest. Unless prohibited by Applicable Law, Municipality shall not be liable for interest to Consultant for any reason, whether as prejudgment interest or for any other purpose, and Consultant waives, rejects, disclaims, and surrenders any and all entitlement to interest in connection with a dispute or claim arising from, related to, or in connection with this Agreement.

11.27.2 Rate of Interest. If the preceding subsection is inapplicable or is determined to be invalid or unenforceable by a court of competent jurisdiction, the annual rate of interest payable by Municipality under this Agreement, whether as prejudgment interest or for any other purpose, shall be, to the full extent permissible under Applicable Law, one quarter of one percent (0.25%) simple interest (uncompounded).

11.28 Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated in this Agreement by reference. The attached Exhibits are incorporated into and made a part of this Agreement.

11.29 Counterparts and Multiple Originals. This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: Municipality, CITY OF COCONUT CREEK through its Board, signing by and through its Mayor or Vice-Mayor authorized to execute same by Board action on the \_\_\_\_\_ day of \_\_\_\_\_, 2022, and CONSULTANT, signing by and through its \_\_\_\_\_, duly authorized to execute same.

MUNICIPALITY

WITNESS:

\_\_\_\_\_  
Signature of Witness

By: \_\_\_\_\_  
Rebecca A. Tooley , Mayor

\_\_\_\_\_  
Print or Type Name of Witness

\_\_\_\_\_ day of \_\_\_\_\_, 2022

\_\_\_\_\_  
Signature of Witness

By: \_\_\_\_\_  
Karen M. Brooks, City Manager

\_\_\_\_\_  
Print or Type Name of Witness

\_\_\_\_\_ day of \_\_\_\_\_, 2022

ATTEST:

\_\_\_\_\_  
Marianne Bowers, Interim City Clerk

Approved as to legal form by:

\_\_\_\_\_  
Terrill C. Pyburn, City Attorney

**AGREEMENT BETWEEN CITY OF COCONUT CREEK AND  
[REDACTED] FOR DESIGN CONSULTANT SERVICES  
FOR ADA ACCESSIBLE BUS PADS – SURTAX PROJECT  
(RFQ # 05-05-22-11)**

FOR INDIVIDUAL:

Consultant

WITNESSES:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print/Type Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print/Type Name

By \_\_\_\_\_

\_\_\_\_\_  
(Please Type Name)

\_\_\_ day of \_\_\_\_\_, 20\_\_.

FOR CORPORATION:

Consultant

ATTEST:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
(Typed Name of Secretary)

CORPORATE SEAL

\_\_\_\_\_  
(Typed Name of Consultant/Firm)

By \_\_\_\_\_  
President/Vice President

\_\_\_\_\_  
(Typed Name and Title)

\_\_\_ day of \_\_\_\_\_, 20\_\_.



**EXHIBIT A-1  
SCOPE OF SERVICES**

**Consulting Services for Bus Stop Accessibility Improvement, Various Locations  
City of Coconut Creek  
Project No. COCO-024 ADA Accessible Bus Pads- Surtax Project**

**1. PROJECT DESCRIPTION**

The project consists of upgrading approximately sixty-five (65) bus stop locations along city owned and maintained streets within the City of Coconut Creek (Locations shown in Attachment “A”) to the latest ADA and Broward County Transit standards. The proposed ADA design work only pertains to stops that are utilized by the City’s Community Shuttle. A flyer showing the City’s Community Bus Routes is also attached as Attachment “B” for reference purposes. Each bus stop location will be assessed and construction ready plans will be created to bring the existing bus stop into compliance with current ADA standards. The overall design effort will include creating ADA improvements such as pads, sidewalks, curbing, drainage conveyance systems, permitting through multiple agencies, utility coordination, topographic survey, and optional post design services. The purpose of this scope is to provide final engineering design and construction plans services.

This project is funded by Broward County’s transportation surtax pursuant to Section 31½- 71 et seq., of the Broward County Code of Ordinances (Transportation Surtax) and in accordance with Section 212.055(1), Florida Statutes.

The following items are ineligible for Transportation Surtax:

Improvements to bus stop locations that are not utilized by the City’s Community Shuttle service.  
Utility system adjustments.

The following drainage improvements: (i) increases to the stormwater system to accommodate a drainage area greater than the eligible size; and (ii) improvements to address runoff from private roads and/or developments.

A drainage analysis is required for the proposed drainage system design services.

All costs associated with work ineligible for surtax funding must be adequately and separately itemized and paid by City with funds other than Transportation Surtax funds.

**2. BASIC SERVICES**

Basic Services will include complete sets of signed and sealed plans, specifications, permits, and other documentation required for construction. This effort will include (at a minimum): Keysheet, Summary of Quantities, Bus Stop Details, General Notes, Plan and Profile Sheets, Cross Sections, Erosion Control, Maintenance of Traffic, Cost Estimates, and other detail sheets as necessary to produce final construction bid plans. All design, plans, and contract documents will be prepared in accordance with the latest editions of the Broward County Standards, the latest edition of the Manual on Uniform Traffic Control Devices (MUTCD), FDOT Standard Plans, FDOT Standard

Specifications for Road and Bridge Construction, FDOT Design Manual (FDM), and any other applicable FDOT manual/guideline/standard.

## **2.1 Bus Pad Design**

### **A. Horizontal Alignment Analysis**

- 1) Provide standard Broward County Transit Bus Pad at each existing bus stop location listed.
- 2) Provide sidewalks for pedestrian access to all Bus Pads where there is currently no accessible route to the bus stops.
- 3) All proposed facilities should be designed to be within the existing right of way.

### **B. Vertical Alignment**

- 1) Design vertical alignment to assess impacts on existing conditions. Provide profiles for proposed sidewalks and any required curb and gutter.

### **C. Temporary Traffic Control Plan**

- 1) Coordinate with the City, Broward County Traffic Division, and the FDOT as required to develop a traffic control plan. Traffic control shall be with phasing notes. Provide details as required for any areas that require a more detailed traffic control.

### **D. Drainage Design**

- 1) Provide drainage analysis to determine impacts to the existing drainage patterns and drainage systems in the areas of the improved bus stops and routes.
- 2) Adjust existing drainage system that is impacted by proposed improvements to maintain positive drainage and required water quality.
- 3) Conceptual drainage design for review and approval by County submitted with Basis of Design Report.
- 4) Complete Drainage Analysis submitted with 60% Design submittal.

### **E. Permitting**

- 1) Secure all permits required to complete the proposed improvements.

### **F. Utility Coordination**

- 1) Coordinate to provide initial plan sheets to utility agency owners (UAO's) to identify their existing and proposed facilities. Show existing utilities in the plans based on UAO's marked plan.
- 2) Prepare potential conflict matrix and provide to UAO's with progress plans.
- 3) Coordinate resolution of utility conflicts and request utility relocation schedules from UAO's.
- 4) Lighting justification report if lighting is proposed.

### **G. Horizontal Control Reference Sheets**

- 1) Incorporate horizontal control and benchmark information. Consultant surveyor shall provide sign and sealed survey control sheets for the incorporation in the final plans.

#### **H. Erosion Control Sheets**

1) Prepare any erosion control and storm water pollution prevention plans as required for permitting.

#### **I. Traffic Control Sheets**

1) Prepare a traffic control plan with all applicable FDOT MOT Design Standards that addresses traffic issues to include any required sidewalk closures and associated required detours.

#### **J. Opinion of Probable Cost**

1) Prepare and submit an opinion of probable construction cost with the submittal of 90% plans and adjust costs based upon plan review comments with a final revised cost opinion submitted with the 100% construction ready plans. It is acknowledged that opinions of probable costs are based on the information known to the Consultant at the time and represent only the Consultant's judgment as a design professional familiar with the construction industry.

#### **K. Survey Services**

1) In general, topographic design and right of way survey will be obtained within the area of anticipated work at each bus stop location, plus 25' in each direction. The designer will provide anticipated survey areas to the City for approval prior to commencement. The survey will depict:

Benchmark Information

Reference points

Ties to section corners

Each change in direction of the right-of-way

Underground utilities and above ground features within proposed construction areas

The right-of-way will be calculated based on the title search performed by the design surveyor.

### **3. OPTIONAL SERVICES**

#### **A. Post Design Services**

1) Provide services during the construction phase of the project including but not limited to bidding assistance, attending progress meetings, shop drawing review, and responses to requests for information (RFI's).

### **4. GENERAL REQUIREMENT FOR WORK**

All plans will be submitted on 11x17 size sheets and in digital format unless otherwise indicated.

#### **4.1 Deliverables**

A. Basis of Design Report, 30%, 60%, and 90% plans submittals – required components as defined in the FDM. Submittals will include at a minimum:

5 sets of plans

Response to comments for previous reviews

3 copies of reports

PDF copy of all deliverables

## B. Final Plans Submittal

5 sets of plans

Up to three (3) sets of sign and sealed plans as required for permitting

1 copy of all required permits

Response to comments

Computation Book

Modifications to Specifications

CADD files

PDF copy of all deliverables

### **4.2 Schedule**

A. Consultant will submit a mutually agreed upon schedule of project milestones. The Design Team shall allow a minimum of 3-week review time for each submittal.

B. The Basic Services will be completed within eighteen (18) months from the date of the Notice to Proceed.

## **5. CITY RESPONSIBILITIES**

The City shall provide the Design Team with adequate information regarding the City's requirements for the project including any desired or required design or construction schedule, any budgetary requirements, and any existing files, plans or other engineering information deemed appropriate.

The City shall review any documents submitted by the Design Team requiring the City's decision and shall render any required decision pertaining thereto. If the City becomes aware of any fault or defect in the project or of any errors, omissions or inconsistencies in the design documents or specifications, the City shall give prompt notice to the Design Team.

The City's review of any documents prepared by the Design Team or its sub-consultants shall be solely for the purpose of determining whether such documents are generally consistent with the City's standards and intent of the project. No review of such documents shall relieve the Design Team of its responsibility for the accuracy, adequacy, or suitability and coordination of its work product.

The City shall designate a representative or representatives to represent the City in all technical matters pertaining to and arising from the work and performance of this Scope of Services.

**Exhibit B-1  
Maximum Billing Rates**

Project No: COCO-024  
 Project Title: DESIGN SERVICES FOR ADA ACCESSIBLE BUS PADS – SURTAX PROJECT  
 Consultant/ [Name]  
 Subconsultant Name:

TITLE	MAXIMUM HOURLY RATE (\$/HR)	X	MULTIPLIER	=	MAXIMUM BILLING RATE (\$/HR)
[Insert staff titles]	\$0.00				\$0.00
	\$0.00				\$0.00
	\$0.00				\$0.00
	\$0.00				\$0.00
	\$0.00				\$0.00
	\$0.00				\$0.00
	\$0.00				\$0.00

Multiplier of X.XX is calculated as follows:

OVERHEAD = X.XX%

FRINGE = X.XX%

OPERATING MARGIN = X.XX%

MULTIPLIER = (1 + OVERHEAD + FRINGE + ((1 + OVERHEAD + FRINGE) X OPERATING MARGIN)) / 1

**Notes:**

Consultant has elected to use “Safe Harbor” combined fringe benefit and overhead rate of 110% in accordance with Section 5.2.5.

**Consultant**

**Municipality**

\_\_\_\_\_  
Name/Title

\_\_\_\_\_  
Brian Rosen, Contract Administrator

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibit B-2**  
**Reimbursables for Direct Non-Salary Expenses**

<b>Reimbursable</b>	<b>Maximum Reimbursable</b>
<b>Total Maximum Reimbursables:</b>	

**Exhibit C-1**  
**Minimum Insurance Requirements**  
**[MUNICIPALITY INSURANCE/RISK FORM]**

**Exhibit D-1  
Work Authorization**

Agreement Title: DESIGN SERVICES FOR ADA ACCESSIBLE BUS PADS – SURTAX PROJECT

Agreement Date: \_\_\_\_\_

Contract Number: RFQ #05-05-22-11

Work Authorization No. \_\_\_\_\_

Consultant: \_\_\_\_\_

---

This Work Authorization is between City of Coconut Creek and Consultant pursuant to the Agreement. Consultant affirms that the representations and warranties in the Agreement are true and correct as of the date this Work Authorization is executed by Consultant. In the event of any inconsistency between this Work Authorization and the Agreement, the provisions of the Agreement shall govern and control.

The time period for this Work Authorization will be from the date of Municipality’s Notice to Proceed until [\_\_\_\_ (\_\_\_\_)] days after the Notice to Proceed, unless otherwise extended or terminated by the Contract Administrator.

**Services to be provided:**

**[COMPOSE SIMPLE SUMMARY]**

See Exhibit A for additional detail.

The applicable not-to-exceed amount stated in the Agreement for the work at issue is: \$[\_\_\_\_\_].

The total fee for goods and services under this Work Authorization is: \$[\_\_\_\_\_]  
 (“Total Fee”).

The Total Fee shall be invoiced by Consultant upon written acceptance by Municipality of all goods and services provided under this Work Authorization.

*(Signatures appear on the following page.)*

IN WITNESS WHEREOF, the Parties hereto have made and executed this Work Authorization, effective as of the date the last party signs this Work Authorization.



\_\_\_\_\_  
Brian Rosen, Contract Administrator Date  
\_\_\_\_\_

Approved as to form by Municipality's Attorney:

Terrill C. Pyburn, City Attorney  
\_\_\_\_\_  
[Insert Name and Title] Date

**Consultant**

WITNESSES

[Name of Consultant]

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signed Date

\_\_\_\_\_  
Print/Type Name

\_\_\_\_\_  
Print/Type Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Print/Type Name

ATTEST

\_\_\_\_\_  
Signed Date

\_\_\_\_\_  
(Print/Type Name of Secretary)

CORPORATE SEAL

**Exhibit E-1**  
**Schedule of Subconsultants**

Project No: [COCO-024]  
Project Title: [DESIGN SERVICES FOR ADA ACCESSIBLE BUS PADS – SURTAX PROJECT]  
Facility Name: [ ]

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<b>No.</b>	<b>Firm Name</b>	<b>Discipline</b>
1.		
2.		
3.		
4.		
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12.		