

AGREEMENT
between
THE CITY OF COCONUT CREEK
and
NAYSAC CORP
for
SAMPLE ROAD SHARED USE PATH IMPROVEMENTS – SURTAX (COCO-016)
IFB NO. 04-06-26-10

CONTRACT

This is a construction contract (“Contract”) made and entered by and between the CITY OF COCONUT CREEK, a municipality of the State of Florida (“Municipality”), and NAYSAC CORP, a Corporation Company (“Contractor”) (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; and
- 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; and
- C. This Construction Contract for - Surtax Project is a restoration and maintenance project being funded by County Surtax dollars.

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

ARTICLE 1 DEFINITIONS

Whenever the following terms appear in the Contract Documents, the intent and meaning shall be interpreted as follows:

- 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, including as may be amended from time to time.
- 1.2. **Bidder** means an entity or individual submitting a bid for this Project, acting directly or through a duly authorized representative.
- 1.3. **Board** means the governing body of Municipality, its successors and assigns.
- 1.4. **Change Order** means a written document ordering a change in the Contract Price or

Contract Time or a material change in the Work.

- 1.5. **Consultant** means the architect or engineer who has contracted with Municipality or who is an employee of Municipality, and provides professional services for this Project.
- 1.6. **Contract Administrator** means Mohammed Albassam, Utilities Engineer, or such other person designated by the City Manager in writing.
- 1.7. **Contract Documents** means the official documents setting forth bidding information, requirements, and contractual obligations for the Project and includes Articles 1 through 8 of this Contract, the Contract Supplement, the General Conditions, the Supplemental General Conditions, the Scope of Work, Invitation to Bid, Addenda, Standard Instructions for Vendors, Special Instructions for Vendors, Plans, Drawings, Exhibits, General Requirements, Technical Specifications, Bid Forms, Record of Award by Board, Bonds, Notice of Award, Notice(s) to Proceed, Supplements, Representations and Certifications, Certificates, Project Forms, Closeout Forms, Purchase Order(s), Change Order(s), Field Order(s), Special Provisions, BIM and Electronic Media Submittal Requirements, and any additional documents the submission of which is required by this Project.
- 1.8. **Contract Price** means the amount established in the bid submittal and award by the Board, as may be amended by Change Order.
- 1.9. **Contract Time** means the time between commencement and completion of the Work, including any milestone dates thereof, established in Article 3 of this Contract, as may be amended by Change Order.
- 1.10. **Contractor** means the person, firm, or corporation with whom Municipality has contracted and who is responsible for the acceptable performance of the Work and for the payment of all legal debts or other obligations pertaining to the Work. All references in the Contract Documents to third parties under contract or control of Contractor shall be deemed to be a reference to Contractor.
- 1.11. **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.
- 1.12. **County Business Enterprise** or **CBE** means a small business certified as meeting the applicable requirements of the Broward County Business Opportunity Act of 2012, Section 1-81, Broward County Code of Ordinances.
- 1.13. **Field Order** means a written order that orders minor changes in the Work but which does not involve a change in the Contract Price or Contract Time.
- 1.14. **Final Completion** means the date certified by Consultant in the Final Certificate of Payment upon which all conditions and requirements of any permits and regulatory agencies have been satisfied; any documents required by the Contract Documents have been received by Consultant; any other documents required to be provided by Contractor have been received by Consultant; and to the best of Consultant's knowledge, information and belief, the Work defined herein has been fully completed in accordance with the terms and conditions of the Contract Documents.

- 1.15. **Materials** means materials incorporated in this Project or used or consumed in the performance of the Work.
- 1.16. **Municipality Manager** means the official appointed by the Municipality who directs the administration of the Municipality.
- 1.17. **Notice(s) to Proceed** means a written notice to Contractor authorizing the commencement of the activities identified in the notice or as described in the Contract Documents.
- 1.18. **OESBD** means Broward County's Office of Economic and Small Business Development.
- 1.19. **Plans** or **Drawings** means the official graphic representations of this Project that are a part of the Contract Documents.
- 1.20. **Purchasing Director** means Municipality's Procurement Official or designee authorized to execute Work Authorizations.
- 1.21. **Project** means the construction project described in the Contract Documents, including the Work described therein.
- 1.22. **Project Initiation Date** means the date upon which the Contract Time commences.
- 1.23. **Small Business Enterprise** or **SBE** means an entity certified as meeting the applicable requirements of the Broward County Business Opportunity Act of 2012, Section 1-81, Broward County Code of Ordinances.
- 1.24. **Subcontractor** means a person, firm or corporation having a direct contract with Contractor, including one who furnishes material worked to a special design according to the Contract Documents, but does not include one who merely furnishes Materials not so worked.
- 1.25. **Substantial Completion** means that date, as certified in writing by Consultant and as finally determined by Contract Administrator in its sole discretion, on which the Work, or a portion thereof, is at a level of completion in substantial compliance with the Contract Documents such that all conditions of permits and regulatory agencies have been satisfied and Municipality or its designee can enjoy use or occupancy and can use or operate it in all respects for its intended purpose. A Certificate of Occupancy (or a Temporary Certificate of Occupancy (TCO) or other alternate municipal/county authorization for limited or conditional occupancy acceptable to the Contract Administrator) must be issued for Substantial Completion to be achieved; however, the issuance of a Certificate of Occupancy will not, by itself, constitute the achievement or date of Substantial Completion.
- 1.26. **Surety** means the surety company or individual that is bound by the performance bond and payment bond with and for Contractor who is primarily liable for satisfactory performance of the Work, and which surety company or individual is responsible for Contractor's satisfactory performance of the Work under this Contract and for the payment of all debts and other obligations pertaining thereto in accordance with Section 255.05, Florida Statutes.
- 1.27. **Work** means the construction and services required by the Contract Documents, whether

completed or partially completed, and includes all labor, materials, equipment, and services provided or to be provided by Contractor to fulfill Contractor's obligations. The Work may constitute the whole or a part of the Project.

ARTICLE 2 SCOPE OF WORK

Contractor hereby agrees to furnish all of the labor, materials, equipment, services, and incidentals necessary to perform all of the Work described in the Contract Documents for the Project.

ARTICLE 3 CONTRACT TIME

- 3.1 Contractor shall be instructed to commence the Work by written instruction in the form of a Purchase Order issued by Municipality's Purchasing Director and two or more Notices to Proceed issued by the Contract Administrator. The first Notice to Proceed and Purchase Order will not be issued until Contractor's submission to Municipality of all required documents and after execution of this Contract by both Parties. Preliminary Work, including submission of a project schedule, schedule of values, submittals, submittal schedule, and other documents required for permitting, and performance of Work that does not require permits, shall commence within ten (10) days after the date of the first Notice to Proceed. Contractor shall have ten (10) days after receipt of signed and sealed contract Drawings from Consultant to apply for construction permits to the applicable permitting authority. Issuance of all permits by the permitting authority shall be a condition precedent to the issuance of a second Notice to Proceed for all additional Work. Except for the reimbursement of permit application fees, impact fees, and performance and payment bond premiums as may be provided in the Contract Documents, Contractor shall not be entitled to compensation of any kind during the permitting process. The Work to be performed pursuant to the second Notice to Proceed shall commence within ten (10) days after the Project Initiation Date specified in the second Notice to Proceed.
- 3.2 Time is of the essence throughout this Contract. Contractor must obtain Substantial Completion of the Work within one hundred and fifty (150) days after the Project Initiation Date specified in the Second Notice to Proceed, and Final Completion within sixty (60) days after the date of Substantial Completion.
- 3.3 Upon failure of Contractor to obtain Substantial Completion within the deadline stated in Section 3.2, as extended by any approved time extensions, Contractor shall pay to Municipality the sum Five Hundred Dollars (\$500.00) for each day after the deadline for Substantial Completion, as extended by any approved time extensions, until Substantial Completion is obtained. After Substantial Completion, should Contractor fail to complete the remaining Work within the deadline stated in Section 3.2, as extended by approved time extensions thereof, Contractor shall pay to Municipality the sum of Five Hundred Dollars (\$500.00) for each day after the deadline for Final Completion, as extended by any approved extensions, until Final Completion is obtained. These amounts are not penalties but are liquidated damages to Municipality for its inability to obtain full beneficial occupancy and/or use of the Project. Liquidated damages are hereby fixed and agreed upon between the Parties based on (1) a mutual recognition of the impossibility of precisely ascertaining the amount of damages that will be sustained by Municipality as a consequence of Contractor's failure to timely obtain Substantial Completion; and (2) both

Parties' desire to obviate any question of dispute concerning the amount of said damages and the cost and effect of the failure of Contractor to complete this Contract on time. These liquidated damages shall apply separately to each portion of the Project for which a deadline for completion is given.

- 3.4. Municipality may deduct liquidated damages from monies due to Contractor for the Work under this Contract or as much thereof as Municipality may, in its sole discretion, deem just and reasonable.
- 3.5. Contractor shall reimburse Municipality, in addition to liquidated damages, for all costs incurred by Consultant in administering the construction of the Project beyond the completion dates specified above, as extended by any approved time extensions. Consultant construction administration costs shall be in the amounts set forth in the contract between Municipality and Consultant, a copy of which is available upon request of the Contract Administrator. All such costs shall be deducted from the monies due Contractor for performance of Work under this Contract by means of unilateral credit Change Orders issued by Municipality as costs are incurred by Consultant and agreed to by Municipality.

ARTICLE 4 CONTRACT SUM

4.1. This is a Unit Price Contract:*

4.1.1. Municipality shall pay to Contractor the amounts determined for the total number of each of the units of Work completed at the unit price stated in the Contract Price. The number of units contained in this schedule is an estimate only, and final payment shall be made for the actual number of units incorporated in or made necessary by the Work covered by the Contract Documents.

4.1.2. Payment shall be made at the unit prices applicable to each integral part of the Work. These prices shall be full compensation for all costs, including overhead and profit, associated with completion of all the Work in full conformity with the requirements as stated or shown, or both, in the Contract Documents. The cost of any item of Work not covered by a specific Contract unit price shall be included in the Contract unit price or lump sum price to which the item is most applicable.

4.2. This is a Lump Sum Contract:*

4.2.1. Municipality shall pay Contractor the Contract Price for the performance of the Work described in the Contract Documents.

4.2.2. Payment shall be at the lump sum price stated in this Contract. This price shall be full compensation for all costs, including overhead and profit, associated with completion of all the Work in full conformity with the requirements as stated or shown, or both, in the Contract Documents. The cost of any item of Work not covered by a specific Contract lump sum should be included in the lump sum price to which the item is most applicable.

***Note:** Only the subsections corresponding to any checked box in this Article 4 will apply to this Contract. Some Projects include both unit prices and lump sums, in which case both subsections shall apply as appropriate depending upon the type of Work being performed by Contractor and approved by Municipality.

ARTICLE 5 PROGRESS PAYMENTS

- 5.1. Contractor may make an application for payment (“Application for Payment”), at intervals of not more than once a month, for Work completed during the Project. Contractor shall, where the Project involves CBE or SBE Subcontractors, make Application for Payment, at monthly intervals, for Work completed by such Subcontractors during the Project. Contractor’s applications shall show a complete breakdown of the Project components, the quantities completed, and the amount of payment sought, together with such supporting evidence as may be required by Consultant or Contract Administrator. Contractor shall submit with each Application for Payment: an updated progress schedule acceptable to Consultant as required by the Contract Documents; a Certification of Payments to Subcontractors Form (Form 9); a statement indicating the cumulative amount of CBE or SBE participation to date; and a release of claims relative to the Work that was the subject of previous applications or consent of surety relative to the Work that is the subject of the Application for Payment. If Contractor has not made payment to a Subcontractor, the Certification of Payments to Subcontractors Form shall be accompanied by a copy of the notification sent to each Subcontractor (listed in Item 2 of the Form) to whom payment has not been made, explaining the good cause why payment was not made. When applicable, an Application for Payment shall be accompanied by a completed Statement of Wage Compliance Form (Form 8A or 8B). Each Application for Payment shall be submitted in triplicate to Consultant for approval as follows:

Mohammed Albassam, Utilities Engineer,
5295 Johnson Road
Coconut Creek, Florida 33073
Email: malbassam@coconutcreek.gov |

All Applications for Payment shall be stamped as received on the date on which they are delivered in the manner specified above. Payments of Applications for Payment shall be subject to approval as specified hereinbefore, and if approved shall be due twenty-five (25) business days after the date on which the Application for Payment is stamped received. At the end of the twenty-five (25) business days, Contractor may send the Contract Administrator an overdue notice. If the Application for Payment is not rejected within four (4) business days after delivery of the overdue notice, the Application for Payment shall be deemed accepted, except for any portion of the Application for Payment that Municipality determines to be fraudulent or misleading. If the Application for Payment does not meet the requirements of this Contract, Municipality shall reject the Application for Payment within twenty (20) business days after the date stamped received and said rejection shall specify the deficiency and the action necessary to cure that deficiency. If Contractor submits a request that corrects the deficiency, the corrected Application for Payment must be paid or rejected within ten (10) business days after the corrected Application for Payment is stamped as received. Any dispute between Municipality and Contractor shall be resolved pursuant to the dispute resolution procedure set forth in Article 12 of the General Conditions.

- 5.2. Municipality may withhold retainage on each progress payment as set forth in Section 255.078, Florida Statutes, as may be amended during this Contract. Any reduction in retainage below the maximum amount set forth in Section 255.078, Florida Statutes, shall be at the sole discretion of the Contract Administrator, as may be recommended by Consultant. Any interest earned on retainage shall accrue to the benefit of Municipality.

As payment for Materials and equipment stored at the Project site, Contractor shall receive payment equal to ninety percent (90%) of the invoiced amount of the Materials and equipment in

the manner set forth in this paragraph. The invoiced amount shall be based on the value of all acceptable Materials and equipment not yet incorporated in the Work but delivered and suitably stored at the Project site and scheduled for installation on-site within thirty (30) days after the date of the Application for Payment. Copies of the supplier's invoices for the Materials and equipment shall be included with the Application for Payment.

5.3. Notwithstanding any provision of this Contract to the contrary, Municipality may withhold payment, in whole or in part, in accordance with Applicable Law, or to such extent as may be necessary to protect itself from loss on account of:

5.3.1 Inadequate or defective Work not remedied.

5.3.2 Claims filed or reasonable evidence indicating probable filing of claims by other parties against Contractor or Municipality relating to Contractor's performance.

5.3.3 Failure of Contractor to make payments properly to Subcontractors or for material or labor.

5.3.4 Damage to another contractor not remedied.

5.3.5 Liquidated damages and costs incurred by Consultant for extended construction administration.

5.3.6 Failure of Contractor to provide documents required by the Contract Documents.

When the above grounds are removed or resolved to the satisfaction of the Contract Administrator, any withheld payment shall be made to the extent otherwise due.

ARTICLE 6 ACCEPTANCE AND FINAL PAYMENT

6.1. Upon receipt of written notice from Contractor that the Work is ready for final inspection and acceptance, Consultant shall conduct an inspection within ten (10) business days. If Consultant and Contract Administrator find that the Work is acceptable; that the requisite documents have been submitted; that the requirements of the Contract Documents are fully satisfied; and that all conditions of the permits and regulatory agencies have been met, a Final Certificate of Payment (Form 11) shall be issued by Consultant, under its signature, stating that the requirements of the Contract Documents have been performed and that the Work is ready for acceptance under the terms and conditions of the Contract Documents.

6.2. Before issuance of the Final Certificate for Payment, Contractor shall deliver to Consultant the following Final Payment Package: a complete release of all claims arising out of this Contract, or receipts in full in lieu thereof; an affidavit certifying that all suppliers and Subcontractors have been paid in full and that all other indebtedness and financial obligations connected with the Work have been paid, or, in the alternative, a consent of the Surety to final payment on Contractor's behalf; the final corrected as-built Drawings; and the final bill of Materials, if required, and the final Application for Payment. This Final payment package must include the certification document titled Final List of Non-Certified Subcontractors and Suppliers (Form 13), which must be signed and notarized by Contractor. A list of all noncertified Subcontractors and suppliers used must be attached

to this certified document.

- 6.3. If, after Substantial Completion, Final Completion is materially delayed through no fault of Contractor, and Consultant so certifies, Municipality shall, upon certification of Consultant, and without terminating this Contract, make payment of the balance due for any portion of the Work fully completed and accepted. Such payment shall be made under the terms and conditions governing final payment, but it shall not constitute a waiver of claims.
- 6.4. Final payment shall be made only after the Board or Municipality's Purchasing Director, as applicable, has reviewed a written evaluation of the performance of Contractor prepared by the Contract Administrator and has approved the final payment. The acceptance of final payment shall constitute a waiver of all claims by Contractor, except those previously made in strict accordance with the provisions of the General Conditions and identified by Contractor as unsettled at the time of the application for final payment.

ARTICLE 7 REPRESENTATIONS AND WARRANTIES

- 7.1. Representation of Authority. Contractor represents and warrants that this Contract constitutes the legal, valid, binding, and enforceable obligation of Contractor, and that neither the execution nor performance of this Contract constitutes a breach of any agreement that Contractor has with any third party or violates Applicable Law. Contractor further represents and warrants that execution of this Contract is within Contractor's legal powers, and each individual executing this Contract on behalf of Contractor is duly authorized by all necessary and appropriate action to do so on behalf of Contractor and does so with full legal authority.
- 7.2. Solicitation Representations. Contractor represents and warrants that all statements and representations made in Contractor's proposal, bid, or other supporting documents submitted to Municipality in connection with the solicitation, negotiation, or award of this Contract, including during the procurement or evaluation process, were true and correct when made and are true and correct as of the date Contractor executes this Contract, unless otherwise expressly disclosed in writing by Contractor.
- 7.3. Contingency Fee. Contractor represents that it has not paid or agreed to pay any person or entity, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Contract.
- 7.4. Public Entity Crimes. Contractor represents that it is familiar with the requirements and prohibitions of the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that its entry into this Contract will not violate that Act. In addition to the foregoing, Contractor 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 Contractor has been placed on the convicted vendor list.
- 7.5. Discriminatory Vendor and Scrutinized Companies List; Countries of Concern. Contractor 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. Contractor further represents that it is

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

- 7.6. Claims Against Contractor. Contractor 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 Contractor, threatened against or affecting Contractor, the outcome of which may (a) affect the validity or enforceability of this Contract, (b) materially and adversely affect the authority or ability of Contractor to perform its obligations under this Contract, or (c) have a material and adverse effect on the consolidated financial condition or results of operations of Contractor or on the ability of Contractor to conduct its business as presently conducted or as proposed or contemplated to be conducted.
- 7.7. Verification of Employment Eligibility. Contractor represents that Contractor and each Subcontractor 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 Contract will not violate that statute. If Contractor violates this section, Municipality may immediately terminate this Contract for cause and Contractor shall be liable for all costs incurred by Municipality due to the termination.
- 7.8. Warranty of Performance. Contractor represents and warrants that it possesses the knowledge, skill, experience, and financial capability required to perform and provide all Work and that each person and entity that will perform or provide Work is duly qualified to perform such Work 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 Work. Contractor represents and warrants that the Work shall be performed in a skillful and respectful manner, and that the quality of all such Work shall equal or exceed prevailing industry standards for such Work.
- 7.9. Truth-In-Negotiation Representation. Contractor's compensation under this Contract is based upon its representations to Municipality, and Contractor certifies that the wage rates, factual unit costs, and other information supplied to substantiate Contractor's compensation, including without limitation those made by Contractor during the negotiation of this Contract, are accurate, complete, and current as of the date Contractor executes this Contract. Contractor'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.
- 7.10. Prohibited Telecommunications Equipment. Contractor represents and certifies that it and its Subcontractors 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. Contractor represents and certifies that Contractor and its Subcontractors shall not provide or use such covered telecommunications equipment, system, or services at any time during the term of this Contract.
- 7.11. Breach of Representations. Contractor acknowledges that Municipality is materially relying on the representations, warranties, and certifications of Contractor stated in this

article. 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 Contract without any further liability to Contractor; (c) set off from any amounts due Contractor the full amount of any damage incurred; and (d) debarment of Contractor.

ARTICLE 8 MISCELLANEOUS

- 8.1. Contract Documents and Priority of Provisions. In the event of any conflict between the terms contained in this Contract and those contained in a Contract Supplement, the terms of such Contract Supplement shall prevail. Furthermore, in the event of any conflict between the terms of the General Conditions included in this Contract and those contained in any General Supplemental Provisions, the terms of such General Supplemental Provisions shall prevail. In addition, anything shown on the drawings and not mentioned in the specifications or mentioned in the specifications and not shown on the drawings, shall have the same effect as if shown or mentioned respectively in both. In the event of a conflict among the Contract Documents, Contractor shall provide the latest, most stringent, and more technical requirement(s), including, but not limited to, the requirements setting forth the better quality or greater quantity.
- 8.2. Independent Contractor. Contractor is an independent contractor under this Contract. Work provided by Contractor pursuant to this Contract shall be subject to the supervision of Contractor. In providing such services, neither Contractor nor its agents shall act as officers, employees, or agents of Municipality. This Contract shall not constitute or make the Parties a partnership or joint venture.
- 8.3. Third-Party Beneficiaries. Except for Broward County to the extent expressly identified herein, neither Contractor nor Municipality intends to directly or substantially benefit a third party by entering into this Contract. Therefore, the Parties agree that, other than Broward County, there are no third-party beneficiaries to this Contract (other than Consultant to the extent this Contract expressly provides Consultant with specific rights or remedies).
- 8.4. Notices. In order for a notice to a Party to be effective under this Contract, 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). Addresses may be changed by the applicable Party giving notice of such change in accordance with this section.

For Municipality:
Mohammed Albassam,
Utilities and Engineering
City of Coconut Creek
5295 Johnson Road
Coconut Creek, FL 33073
E-mail: malbssam@coconutcreek.gov

For Contractor:
Marcelino A. Gomez, President, Secretary
Naysac Corp
782 NW 42nd Ave, Unit 635

Miami, FL 33126
E-mail: mgomez@naysac.com

- 8.5. Assignment and Performance. Neither this Contract nor any interest herein or proceeds hereof shall be assigned, transferred, or encumbered without the written consent of the other party, and Contractor shall not subcontract any portion of the Work required by this Contract except as authorized by Article 28 of the General Conditions. Any attempted assignment, transfer, encumbrance, or subcontract in violation of this section shall be void and ineffective, and shall constitute a breach of this Contract. 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.
- 8.6. Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth in this Contract was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Contract and is, therefore, a material term.
- 8.7. No Waiver. Municipality's failure to enforce any provision of this Contract shall not be deemed a waiver of its right or power to enforce such provision or a modification of this Contract. The failure to assert a breach of a provision of this Contract shall not be deemed a waiver of such breach or of any subsequent breach, nor shall it be construed to be a modification of the terms of this Contract.
- 8.8. Severability. If any part of this Contract is found to be unenforceable by a court of competent jurisdiction, that part shall be deemed severed from this Contract and the balance of this Contract shall remain in full force and effect.
- 8.9. Law, Jurisdiction, Venue, Waiver of Jury Trial. This Contract shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Jurisdiction of any controversies or legal problems arising out of this Contract, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Contract shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. **EACH PARTY HEREBY EACH EXPRESSLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS CONTRACT. 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. CONTRACTOR, PURSUANT TO ARTICLE 28 OF THE GENERAL CONDITIONS, SHALL SPECIFICALLY BIND ALL SUBCONTRACTORS TO THE PROVISIONS OF THIS SECTION.**
- 8.10. Amendments. Unless otherwise expressly authorized herein, no modification, amendment, or alteration of any portion of this Contract shall be effective unless contained in a written document executed with the same or similar formality as this Contract by duly authorized representatives of Municipality and Contractor.

- 8.11. Prior Agreements. The Contract is the final and complete understanding of the Parties regarding the subject matter of this Contract 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 Contract or the Contract Documents are contained herein.
- 8.12. Compliance with Laws. Contractor and the Work must comply with all Applicable Law, including, but not limited to, the Americans with Disabilities Act, 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and the requirements of any applicable grant agreements.
- 8.13. 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, 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.
- 8.14. Workforce Investment Program. This Contract constitutes a “Covered Contract” under the Broward Workforce Investment Program, Broward County Administrative Code Section 19.211 (“Workforce Investment Program”). Contractor affirms it is aware of the requirements of the Workforce Investment Program and agrees to use good faith efforts to meet the First Source Referral Goal and the Qualifying New Hires Goal as set forth therein, including by (a) publicly advertising any vacancies that are the direct result of this Contract (whether those vacancies are with Contractor or its Subcontractors) exclusively with CareerSource Broward for at least five (5) business days 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 Contract. Until at least one year after the conclusion of this Contract, Contractor shall maintain and make available to Municipality upon request all records documenting Contractor’s compliance with the requirements of the Workforce Investment Program, and shall submit the required Workforce Investment Reports to the Contract Administrator annually by January 31 and within thirty (30) days after the expiration or termination of this Contract. Failure to demonstrate good faith efforts to meet the First Source Referral Goal and the Qualifying New Hires Goal shall constitute a material breach of this Contract.
- 8.15. Interpretation. The titles and headings in the Contract Documents are for reference purposes only and shall not in any way affect the meaning or interpretation of this Contract. All personal pronouns 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 the Contract 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, such reference is to the section or article as a whole, including the 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.
- 8.16. Sovereign Immunity. Except to the extent sovereign immunity may be deemed to be

waived by entering into this Contract, 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 Contract. 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.

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IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: MUNICIPALITY, [CITYOF 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 _____, 2026, and NAYSAC CORP, CONTRACTOR, signing by and through its President/Secretary, duly authorized to execute same.

MUNICIPALITY

ATTEST:

Joseph J. Kavanagh, City Clerk

By: _____
Sheila N. Rose, City Manager

Print Name

_____ day of _____, 2026

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

Terrill C. Pyburn, City Attorney

**CONTRACT BETWEEN THE CITY OF COCONUT CREEK AND
SAMPLE ROAD SHARED USE PATH IMPROVEMENTS - SURTAX PROJECT (COCO-016)
BID/CONTRACT NO.: 04-06-26-10**

FOR INDIVIDUAL:

CONTRACTOR WITNESSES:

Signature

By _____

Print/Type Name

(Please Type Name)

Signature

____ day of _____, 2026.

Print/Type Name

FOR CORPORATION:

CONTRACTOR

ATTEST:

Naysac Corp
(Typed Name of Contractor/Firm)

M. Gomez
Secretary

By M. Gomez
President/Vice President

Marcelino A. gomez
(Typed Name of Secretary)

Marcelino A. gomez / President
(Typed Name and Title)

CORPORATE SEAL 7 day of May, 2026.

