

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

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

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.

Project Phase	Fee %	Phase Amount
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
Total Basic Services Fee		100%
		\$432,000.00

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, 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

Reimbursable	Maximum Reimbursable
Total Maximum Reimbursables:	

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: []

No.	Firm Name	Discipline
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		