

**AMENDMENT NO. 1  
TO THE AGREEMENT BETWEEN THE CITY OF COCONUT CREEK AND  
CARNAHAN, PROCTOR & CROSS, INC.  
for  
GENERAL PROFESSIONAL ENGINEERING SERVICES  
RFQ NO.03-25-20-02**

This Amendment No. 1 to the Agreement between the City of Coconut Creek and Carnahan, Proctor and Cross, Inc., dated September 30, 2020 is made this 3<sup>rd</sup> day of ~~March~~, August 2023 by and between the City of Coconut Creek, Florida, (the "CITY"), and Carnahan, Proctor and Cross, Inc., (the "CONSULTANT") both of whom agree as follows:

**WITNESSETH:**

**WHEREAS**, the parties desire to amend the Agreement between the City of Coconut Carnahan, Proctor and Cross, Inc., for General Engineering Professional Consultant Services dated September 30, 2020 in order to provide for additional language to meet the County's Surtax Program requirements.

**NOW, THEREFORE**, based on the promises and covenants herein contained, the parties agree as follows:

1. The parties desire to amend Articles 4, "Time of Performance," 5, "Compensation and Payment," and 8, "Miscellaneous" to incorporate the additional contract provisions required by Broward County for Surtax funding:

**ARTICLE 4  
TIME OF FOR PERFORMANCE; DAMAGES**

**4.1 TERM OF AGREEMENT:** This AGREEMENT shall be a continuing contract as defined by the Consultant's Competitive Negotiation Act (CCNA), as set forth in Section 287.055, Florida Statutes as amended from time to time and shall have an initial term of three (3) years beginning on October 01, 2020, with the right to extend the contract for two (2) additional one (1) year periods.

Costs for all services purchased under this Contract shall remain firm for the initial contract period. Costs for subsequent years and any extension term years shall be subject to an

adjustment only if increases occur in the industry. However, unless very unusual and significant changes have occurred in the industry, such increases shall not exceed five percent (5%) per year or the latest yearly percentage increase in the Employment Cost Index (ECI), Total Compensation, Private Industry, Professional, Scientific, and Technical Services, Not Seasonally Adjusted as published by the Bureau of Labor Statistics, U.S. Department of Labor, whichever is less. The yearly increase or decrease in the ECI shall be the latest index published and available ninety (90) days prior to the end of the contract year then in effect compared to the index for the same quarter one (1) year prior. Any requested price increase shall be fully documented and submitted to the CITY at least ninety (90) days prior to the contract anniversary date. Any approved cost adjustments shall become effective upon the anniversary date of the contract. In the event the ECI or industry costs decline, the CITY shall have the right to receive from the CONSULTANT a reasonable reduction in costs that reflect such cost changes in the industry.

The CITY may, after examination, refuse to accept the adjusted costs if they are not properly documented, increases are considered to be excessive, or any decreases are considered to be insufficient. In the event the CITY does not wish to accept the adjusted prices and the matter cannot be resolved to the satisfaction of the CITY, the contract can be cancelled by the CITY upon giving thirty (30) days written notice to the CONSULTANT. CONSULTANT shall perform the Services within the time periods specified in the Work Authorization. Time periods shall commence from the date of the applicable Notice to Proceed in the Work Authorization.

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 B 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 CITY or other governmental agencies having jurisdiction over the Project and such delays are not the fault of Consultant, or because of delays caused by factors outside the control of CONSULTANT, CITY shall grant a reasonable extension of time for completion of the Services and shall provide reasonable compensation, if appropriate. It shall be the responsibility of CONSULTANT to notify the Contract Administrator in writing whenever a delay in approval by a governmental agency is anticipated or experienced, and whenever a delay has been caused by factors outside of CONSULTANT'S control, and to inform the Contract Administrator of all facts and details related to the delay. CONSULTANT must provide such written notice to the Contract Administrator within three (3) business days after the occurrence of the event causing the delay.

4.4 If (a) Contractor fails to substantially complete the Project on or before the substantial completion date specified in its agreement with CITY, 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 **CITY**, and the failure to substantially complete is caused in whole or in part by **CONSULTANT**, then **CONSULTANT** shall pay to **CITY** its proportional share of any claim for damages to 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 **CITY** 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 **CITY**. To exercise an extension authorized by this section, the Purchasing Director shall notify Consultant in writing prior to the end of the term of this Agreement.

~~4.1~~ In the event **CONSULTANT** is unable to complete performance of services because of delays resulting from untimely review and approval by governmental authorities having jurisdiction over a **PROJECT**, or by **CONSTRUCTION CONTRACTOR** and such delays are not the fault of **CONSULTANT**, **CITY** shall grant a reasonable extension of time for completing the work. It shall be the responsibility of **CONSULTANT** to notify the **CONTRACT ADMINISTRATOR** promptly in writing whenever a delay is anticipated or experienced, and to inform the **CONTRACT ADMINISTRATOR** of all facts and details related to the delay.

4.27 In the event **CITY** declares an emergency, the **CONSULTANT** shall make every reasonable effort to respond within two (2) hours, but under no circumstances, shall response time exceed four (4) hours.

4.38 **CONSULTANT** shall provide **CITY** with a current up-to-date list of emergency personnel at all times.

## **ARTICLE 5 COMPENSATION AND PAYMENT**

5.1 **CITY** agrees to pay **CONSULTANT** as compensation for performance of all approved **PROFESSIONAL SERVICES** required under the terms of this Agreement at those **BILLING RATES** described in Article 1.8 and to reimburse **CONSULTANT** for **REIMBURSABLES** as described in Article 1.8, plus subconsultant fees pursuant to paragraph 5.6 for approved **PROFESSIONAL SERVICES**. The **BILLING RATES** payable by **CITY** for each **CONSULTANT'S** employee categories is shown on **EXHIBIT "A"**. Total compensation for a specific work task under **PROFESSIONAL SERVICES** shall not exceed Fifty Thousand Dollars (\$50,000.00). The Aggregate of Professional Service tasks may exceed \$50,000.00.

5.2 **CITY** agrees to pay **CONSULTANT** as compensation for performance of all services as related to a **WORK AUTHORIZATION** required under the terms of this Agreement at those **BILLING RATES** described in Article 1.8 plus subconsultant fees pursuant to paragraph

5.6, up to the fee to be negotiated and stated in the **WORK AUTHORIZATION** and to reimburse **CONSULTANT** for **REIMBURSABLES** as described in Article 1.7 in accordance with the fee to be negotiated in the **WORK AUTHORIZATION**. The **BILLING RATES** payable by **CITY** for each **CONSULTANT'S** employee categories is shown on **EXHIBIT "A"**.

5.3 ~~**CONSULTANT** shall submit billings, which are identified by the specific task, authorized under **PROFESSIONAL SERVICES** on a monthly basis in a timely manner for all **LABOR** and **REIMBURSABLES** attributable to the task. 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 **REIMBURSABLES** by category and identify same as to the work personnel incurring the expense and the nature of the work with which such expense was associated. Where prior written approval by **CONTRACTOR ADMINISTRATOR** is required for **REIMBURSABLES**, a copy of said approval shall accompany the billing for such **REIMBURSABLES**. External **REIMBURSABLES** and subconsultant fees must be documented by copies of invoices or receipts which describe the nature of the expenses and contain a project number or other identifier which clearly indicates the expense is identifiable to a task. Internal expenses must be documented by appropriate **CONSULTANT'S** cost accounting forms with a summary of charges by Category. **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. **CITY** shall not be liable for any such expenses that have not been approved in writing in advance by the Contract Administrator. Reimbursable subconsultant expenses must also comply with the requirements of this section.~~

5.4 ~~**CONSULTANT** shall submit billings which are identified by the specific **PROJECT** and **WORK AUTHORIZATION** number on a monthly basis in a timely manner for all **LABOR** and **REIMBURSABLES** attributable to a **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 **REIMBURSABLES** by category and identify same as to the work personnel incurring the expense and the nature of the work with which such expense was associated. Where prior written approval by **CONTRACT ADMINISTRATOR** is required for **REIMBURSABLES**, a copy of said approval shall accompany the billing for such **REIMBURSABLES**. The statement shall show a summary of **LABOR COSTS** and **REIMBURSABLES** with accrual of the total and credits for portions paid previously. External **REIMBURSABLES** and subconsultant fees must be documented by copies of invoices or receipts, which describe the nature of the expenses and contain a project number or other identifier which clearly indicates the expense is identifiable to a **PROJECT**. 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 categories, **REIMBURSABLES** by category and subconsultant fees on a task basis, so that total hours and cost by task may be determined. 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 Notwithstanding anything in paragraphs 5.1, 5.2, 5.3 and 5.4, at the **CONTRACT ADMINISTRATOR'S** option, the contract method of payment may be a lump sum amount for a specific, detailed scope of services. For lump sum contracts, **CONSULTANT** shall invoice based upon percentage of work complete. Supporting information shall be provided to document the estimate of completion percentage.~~

**5.65 CONSULTANT** shall bill identifiable subconsultant fees at the actual fees paid by **CONSULTANT**.

**5.76 CITY** agrees that it will use its best efforts to pay **CONSULTANT** within thirty (30) calendar days of receipt of **CONSULTANT'S** proper statement as provided above. The parties shall

comply with Section 218.70, Florida Statutes as amended from time to time, et seq. The Prompt Payment Act.

## ARTICLE 8 MISCELLANEOUS

8.1 ~~**TERM OF AGREEMENT:** This **AGREEMENT** shall be a continuing contract as defined by the Consultant's Competitive Negotiation Act (CCNA), as set forth in Section 287.055, Florida Statutes as amended from time to time and shall have an initial term of three (3) years beginning on October 01, 2020, with the right to extend the contract for two (2) additional one (1) year periods.~~

~~Costs for all services purchased under this Contract shall remain firm for the initial contract period. Costs for subsequent years and any extension term years shall be subject to an adjustment only if increases occur in the industry. However, unless very unusual and significant changes have occurred in the industry, such increases shall not exceed five percent (5%) per year or the latest yearly percentage increase in the Employment Cost Index (ECI), Total Compensation, Private Industry, Professional, Scientific, and Technical Services, Not Seasonally Adjusted as published by the Bureau of Labor Statistics, U.S. Department of Labor, whichever is less. The yearly increase or decrease in the ECI shall be the latest index published and available ninety (90) days prior to the end of the contract year then in effect compared to the index for the same quarter one (1) year prior. Any requested price increase shall be fully documented and submitted to the CITY at least ninety (90) days prior to the contract anniversary date. Any approved cost adjustments shall become effective upon the anniversary date of the contract. In the event the ECI or industry costs decline, the CITY shall have the right to receive from the CONSULTANT a reasonable reduction in costs that reflect such cost changes in the industry.~~

~~The CITY may, after examination, refuse to accept the adjusted costs if they are not properly documented, increases are considered to be excessive, or any decreases are considered to be insufficient. In the event the CITY does not wish to accept the adjusted prices and the matter cannot be resolved to the satisfaction of the CITY, the contract can be cancelled by the CITY upon giving thirty (30) days written notice to the CONSULTANT.~~

8.21 **OWNERSHIP OF DOCUMENTS:** All sketches, tracings, drawings, specifications, designs, design calculations, details, models, photographs, reports, surveys and other documents, plans and data that result from **CONSULTANT'S** services under this Agreement or that is provided in connection with this Agreement shall become and shall remain the property of the **CITY**. Copies of all AutoCAD and other similar software files shall be provided to **CITY**. No changes or revisions to the documents or data furnished by **CONSULTANT** shall be made by **CITY** unless **CONSULTANT'S** name and professional seal are removed from such changed or revised materials. All data required to be sealed and signed by a registered Professional Architect in the State of Florida shall not be modified, changed or altered or used for other purposes than those intended without the express written permission of **CONSULTANT**. **CITY** shall hold **CONSULTANT** harmless for any loss or expense for any damages arising out of the modification or use for other projects of

**CONSULTANT'S** data and plans, without the specific adaptation by and consent of **CONSULTANT**.

8.32 **TERMINATION:** This Agreement may be terminated by **CONSULTANT** for cause, or by **CITY** for any reason with or without cause, upon thirty (30) days written notice from the terminating party to the other party. In the event of such termination, **CONSULTANT** shall be paid its compensation for services performed to termination date, including all **REIMBURSABLES** then due incurred to termination date. All finished or unfinished sketches, tracings, drawings, specifications, design, design calculations, details models, photographs, reports, surveys and other documents, plans and data that result from **CONSULTANT'S** services under this Agreement shall become and shall remain the property of **CITY** and shall be delivered by **CONSULTANT** to **CITY**.

8.3 **TRUTH-IN-NEGOTIATION REPRESENTATION. CONSULTANT'S** compensation under this Agreement is based upon its representations to **CITY**, and **CONSULTANT** certifies that the wage rates, factual unit costs, and other information supplied to substantiate **CONSULTANT'S** compensation, including, without limitation, in the negotiation of this Agreement, are accurate, complete, and current as of the date **CONSULTANT** executes this Agreement. **CONSULTANT'S** compensation will be reduced to exclude any significant sums by which the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs.

8.4 **DOMESTIC PARTNERSHIP REQUIREMENT.** Unless this Agreement is exempt from the provisions of the Broward County Domestic Partnership Act, Section 16 $\frac{1}{2}$ -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.

8.45 **PUBLIC RECORDS:** ~~CONSULTANT shall keep such records and accounts and require any and all CONSULTANTS and subconsultants to keep records and accounts as may be necessary in order to record complete and correct entries as to personnel hours charged to the project and any expenses for which CONSULTANT expects to be reimbursed. Such books and records will be available at all reasonable times for examination and audit by CITY and shall be kept for a period of five (5) years after the completion of all work to be performed pursuant to this Agreement or termination of the Agreement, whichever is later. Incomplete or incorrect entries in such books and records will be grounds for CITY'S disallowance of any fees or expenses based upon such entries.~~

~~CITY is a public agency subject to Chapter 119, Florida Statutes, as amended from time to time. To the extent CONSULTANT is a CONSULTANT acting on behalf of the CITY pursuant to Section 119.0701, Florida Statutes, as amended from time to time, CONSULTANT shall comply with all public records laws in accordance with Chapter 119, Florida Statute. In accordance with state law, CONSULTANT agrees to:~~

~~A8.5.1. Keep and maintain all records that ordinarily and necessarily would be required by the CITY in order to perform the services;~~

- B.8.5.2. Upon request from the **CITY'S** custodian of public records, provide the **CITY** with a copy of the requested records or allow the records to be inspected or copies within a reasonable time at a cost that does not exceed the costs provided in Chapter 119, Florida Statute, or as otherwise provided by law.;
- C.8.5.3. Ensure that public records that are exempt, or confidential and exempt, from public records disclosure are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the **CONSULTANT** does not transfer the records to the **CITY**.; and
- D.8.5.4 Upon completion of the services within this Agreement, at no cost, either transfer to the **CITY** all public records in possession of the **CONSULTANT** or keep and maintain public records required by the **CITY** to perform the services. If the **CONSULTANT** transfers all public records to the **CITY** upon completion of the services, the **CONSULTANT** shall destroy any duplicate public records that are exempt, or confidential and exempt, from public records disclosure requirements. If the **CONSULTANT** keeps and maintains public records upon completion of the services, the **CONSULTANT** shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the **CITY**, upon request from the **CITY'S** custodian of public records, in a format that is compatible with the information technology systems of the **CITY**.
- 8.5.5 A request for public records regarding this Agreement must be made directly to **CITY**, who will be responsible for responding to any such public records requests. Consultant will provide any requested records to **CITY** to enable **CITY** to respond to the public records request.
- 8.5.6 Any material submitted to **CITY** that **CONSULTANT** contends constitutes or contains trade secrets or is otherwise exempt from production under Florida public records laws (including Chapter 119, Florida Statutes) ("Trade Secret Materials") must be separately submitted and conspicuously labeled "EXEMPT FROM PUBLIC RECORD PRODUCTION – TRADE SECRET." In addition, **CONSULTANT** must, simultaneous with the submission of any Trade Secret Materials, provide a sworn affidavit from a person with personal knowledge attesting that the Trade Secret Materials constitute trade secrets under Section 688.002, Florida Statutes, and stating the factual basis for same. If that a third party submits a request to **CITY** for records designated by **CONSULTANT** as Trade Secret Materials, **CITY** shall refrain from disclosing the Trade Secret Materials, unless otherwise ordered by a court of competent jurisdiction or authorized in writing by **CONSULTANT**. **CONSULTANT** shall indemnify and defend **CITY** and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments, and liabilities of any kind, including attorneys' fees, litigation expenses, and court costs, relating to the nondisclosure of any Trade Secret Materials in response to a records request by a third party.
- E. IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLA. STAT., TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CITY'S CUSTODIAN OF PUBLIC RECORDS AT 954-973-6774,**



**PublicRecords@coconutcreek.net, 4800 West Copans Road, Coconut Creek, FL 33063.**

8.5.7 If **CONSULTANT** does not comply with this section, the **CITY** shall enforce the Agreement provisions in accordance herewith and may unilaterally cancel this Agreement in accordance with state law.

**8.6** **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 CITY and/or COUNTY (including any outside representative engaged by either entity). CITY 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, CITY, 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.

8.6.1 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.

8.6.2 CITY and BROWARD COUNTY shall have the right to audit, review, examine, inspect, analyze, and make copies of all Contract Records at a location within Broward County, Florida. CONSULTANT hereby grants CITY and COUNTY the right to conduct such audit or review at Consultant's place of business, if deemed appropriate by CITY or BROWARD COUNTY, with seventy-two (72) hours' advance notice. CONSULTANT agrees to provide adequate and appropriate workspace for such review. CONSULTANT shall provide CITY and COUNTY with reasonable access to CONSULTANT'S facilities, and CITY and COUNTY shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Agreement.

8.6.3 Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for CITY'S disallowance and recovery of any payment upon such entry.

8.6.4 If an audit or inspection in accordance with this section discloses overpricing or overcharges to CITY of any nature by CONSULTANT or its Subconsultants in excess of five percent (5%) of the total contract billings reviewed, 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**.

8.6.5 **CONSULTANT** shall, by written contract, require its Subconsultants to agree to the requirements and obligations as stated in Sections 8.5 (PUBLIC RECORDS) and 8.6 (AUDIT RIGHTS).

8.57 **EQUAL OPPORTUNITY AND CBE COMPLIANCE:** ~~CONSULTANT agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age, national origin or disability and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, disability or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONSULTANT agrees to furnish CITY with a copy of its Affirmative Action Policy, if requested.~~

8.7.1 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.

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

8.7.3 **CONSULTANT** must meet or exceed the required CBE goal by utilizing the CBE firms listed in **Exhibit C** (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 **CITY**, **CONSULTANT** shall enter into formal contracts with the CBE firms listed in **Exhibit C** and, upon request, shall provide copies of the contracts to the Contract Administrator and OESBD.

8.7.4 Each CBE firm utilized by **CONSULTANT** to meet the CBE goal must be certified by OESBD. **CONSULTANT** shall inform **CITY** immediately when a CBE firm is not able to perform or if **CONSULTANT** believes the CBE firm should be replaced for any other reason, so that OESBD may review and verify the good faith efforts of **CONSULTANT** to substitute the CBE firm with another CBE firm, 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.

8.7.5 The Parties stipulate that if **CONSULTANT** fails to meet the Commitment, the damages to **CITY** arising from such failure are not readily ascertainable at the time of contracting. If Consultant fails to meet the Commitment and **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 **CITY** liquidated damages in an amount equal to fifty percent (50%) of the actual dollar amount by which **CONSULTANT** failed to achieve the Commitment, up to a maximum amount of ten percent (10%) of the total contract amount, excluding costs and reimbursable expenses. An example of this calculation is stated in Section 1-81.7, Broward County Code of Ordinances. As elected by **CITY**, such liquidated damages amount shall be either credited against any amounts due from **CITY**, or must be paid to **CITY** within thirty (30) days after written demand. These liquidated damages shall be **CITY'S** sole contractual remedy for **CONSULTANT'S** breach of the Commitment, but shall not affect the availability of administrative remedies under Section 1-81. **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 **CITY**, or inability to substitute a CBE subconsultant where the OESBD Program Director has determined that such inability is due to no fault of **CONSULTANT**, shall not be deemed a failure by **CONSULTANT** to meet the Commitment.

8.7.6 **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 **CITY** in writing if **CONSULTANT** concludes that the modification exceeds the authority under this section. Failure of **CONSULTANT** to timely notify **CITY** of its conclusion that the modification exceeds such authority shall be deemed acceptance of the modification by **CONSULTANT**.

8.7.7 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.

8.7.8 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 **CITY** 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.

8.7.9 The presence of a "pay when paid" provision in a **CONSULTANT'S** contract with a CBE firm shall not preclude **CITY** or its representatives from inquiring into claims of nonpayment.

8.68 **NO CONTINGENT FEES:** **CONSULTANT** warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for **CONSULTANT**, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, 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. For the breach or violation of this provision, **CITY** shall have the right to terminate the Agreement without liability, and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

8.79 **SUBCONSULTANTS:** In the event **CONSULTANT**, during the term of this Agreement, requires the services of any subconsultants, or other professional associates in connection with services covered by this Agreement, **CONSULTANT** must secure the prior written approval of the CONTRACT ADMINISTRATOR. As part of the approval process, **CITY** shall require subconsultant to comply with the terms of this Agreement, specifically but without limitations, the requirements of this Article 8. **CONSULTANT** shall be responsible for obtaining releases from subconsultants at the time the subconsultants are paid.

8.810 **ASSIGNMENT:** This Agreement, or any interest herein, shall not be assigned, transferred to otherwise encumbered by **CONSULTANT**, under any circumstances, without the prior written consent of **CITY**. Said consent shall be at **CITY'S** reasonable discretion and may not be unreasonably withheld. Notwithstanding the preceding, **CONSULTANT** may assign this contract to the acquiring party in connection with the sale of all or substantially all of its assets or of its equity or membership interests provided that notice is given to **CITY** within thirty (30) days of same.

8.911 **INDEMNIFICATION OF CITY:** ~~The **CONSULTANT** shall at all times hereafter, indemnify and hold harmless the **CITY**, the **CITY'S** agents, officers, employees, and the City Commission from and against all liabilities, claims, 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** and any other persons employed or utilized by the **CONSULTANT** in the performance of services under this~~

~~Agreement. It is the specific intent of the parties hereto that the foregoing indemnification complies with Section 725.08, Florida Statutes as amended from time to time.~~

~~The parties agree that one percent (1%) of the total compensation paid to **CONSULTANT** for the performance of this Agreement shall represent the specific consideration for the **CONSULTANT'S** indemnification of the **CITY**. This Agreement shall survive the term of this Agreement. Nothing in this section shall be construed to affect in any way the **CITY'S** rights, privileges, and immunities as set forth in Section 768.28, Florida Statutes as amended from time to time, or as otherwise provided by applicable law or judicial decisions. **CONSULTANT** shall indemnify and hold harmless **CITY** and its current, past, and future officers and employees from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness or intentionally wrongful conduct of **CONSULTANT** or other persons employed or utilized by **CONSULTANT** in the performance of this Agreement. The provisions of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by Contract Administrator and **CITY** Attorney, any sums due **CONSULTANT** under this Agreement may be retained by **CITY** until all of **CITY'S** claims subject to this indemnification obligation have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by **CITY**.~~

8.4012 **INSURANCE:** **CONSULTANT** shall provide, pay for, and maintain in force at all times during the services to be performed, such insurance, including Worker's Compensation Insurance, Employer's Liability Insurance, Comprehensive General Liability Insurance, Business Automobile Liability Insurance and Professional Liability Insurance as follows:

#### **Workers' Compensation**

Statutory Limits of coverage to apply for all employees in compliance with all applicable State of Florida and federal laws. The policy must include Employers Liability with a limit of \$100,000 each accident.

#### **General Liability**

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

#### **Automobile Liability**

Comprehensive or Business Automobile Liability insurance with limits not less than \$500,000 each occurrence combined single limit for Bodily Injury and Property Damage including coverages for owned, hired, and non-owned vehicles and/or equipment as applicable. This policy of insurance shall be written in an "occurrence" based format.

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

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

**CONSULTANT** acknowledges that the **CITY** is relying on the competence of the **CONSULTANT** to design the project to meet its functional intent. If it is determined during construction of the project that changes must be made due to **CONSULTANT'S** negligent errors and omissions, **CONSULTANT** shall promptly rectify them at no cost to **CITY** and shall be responsible for additional costs, if any, of the project to the proportional extent caused by such negligent errors or omissions.

**General**

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

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

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

A-8.12.1 Name as additional insured the City of Coconut Creek and its Officers, Agents, Employees and Commission Members.

B-8.12.2 That such insurance is primary to any other insurance available to the additional insured with respect to claims covered under the policy and that insurance applies separately to each insured against whom claims are made or suit is brought, but the inclusion of more than one insured shall not operate to increase the insurer's limit of liability.

All policies shall be endorsed to provide sixty (60) days prior written notice of cancellation, non-renewal or reduction in coverage or limits to:

City of Coconut Creek - Purchasing Division  
Attn: Risk Manager

4800 West Copans Road  
Coconut Creek, Florida 33063

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

Certificates of Insurance, in form and evidencing all required insurance and endorsements, shall be submitted with the respondent's bid. If **CONSULTANT** is Successful **CONSULTANT**, then prior to commencement of Contract, **CONSULTANT** must submit revised Certificate of Insurance naming the City of Coconut Creek as additional insured for all liability policies.

### **Insurance Company and Agent**

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

**8.13 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.

**8.4414 REPRESENTATIVE OF CITY AND CONSULTANT:** It is recognized that questions in the day-to-day conduct of a PROJECT will arise. The CONTRACT ADMINISTRATOR, upon request by **CONSULTANT** shall designate in writing and shall advise **CONSULTANT** in writing of one or more **CITY** employees to whom all communications pertaining to the day-to-day conduct of PROJECT shall be addressed. **CONSULTANT** shall inform CONTRACT ADMINISTRATOR in writing of the representative of **CONSULTANT** to whom matters involving the conduct of PROJECT shall be addressed. **CONSULTANT** shall, at all times during this Agreement, have available for consultation or otherwise, an employee who shall be familiar with all work contemplated under this Agreement. In performing services under this Agreement, **CONSULTANT** is acting as an agent of **CITY** and it is the intention of the parties that Consultant shall have the benefit of any immunity from suit available to **CITY**.

**8.4215 ATTORNEY'S FEES:** If a party institutes any legal action to enforce any provision of this Agreement, they shall be entitled to reimbursement from the other party for all costs and expenses, including reasonable attorney's fees incurred by them, provided they are the prevailing party in such legal action, and provided further that they shall make application to the court or other tribunal, for an award of such costs and expenses.

**8.4316 ALL PRIOR AGREEMENTS SUPERSEDED:** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and the parties agree that there

are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

8.4417 **NOTICES:** Whenever either party desires to give notice unto the other, it must be given by written notice, sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified, and the place for giving notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving notice, to wit:

**CITY**

Karen M. Brooks, City Manager  
City of Coconut Creek  
4800 West Copans Road  
Coconut Creek, Florida 33063  
Phone: 954-973-6720  
Fax: 954-973-6777  
Email: kbrooks@coconutcreek.net

**CONSULTANT**

Gregory Proctor, P.E.  
Carnahan, Proctor and Cross, Inc.  
814 S. Military Trail  
Deerfield Beach, FL 33442  
Phone: 954-972-3959  
Fax: 954-972-4178  
Email: GProctor@cpc-eng.com

8.4518 **TRUTH-IN-NEGOTIATION CERTIFICATE:** Signature on this Agreement by **CONSULTANT** shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting. The original contract price any additions thereto shall be adjusted to exclude any significant sums by which **CITY** determines the contract price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such contract adjustments shall be made within one year following the end of this Agreement.

8.4619 **NON-EXCLUSIVE AGREEMENT:** The services to be provided by **CONSULTANT** pursuant to this Agreement shall be non-exclusive and nothing herein shall preclude **CITY** from engaging other firms to perform the same or similar services for the benefit of **CITY** within **CITY'S** sole and reasonable discretion.

8.4720 **WARRANTIES OF CONSULTANT:** **CONSULTANT** hereby warrants and represents as follows:

A-8.20.1 At all times during the term of this Agreement, **CONSULTANT** shall maintain in good standing all required licenses, certifications and permits required under federal, state and local laws necessary for the performance under this Agreement.



B-8.20.2 At all times during this Agreement, **CONSULTANT** shall perform its obligations in a prompt, professional and businesslike manner.

8.4821 **GOVERNING LAW:** This Agreement shall be construed in accordance with the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement, shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, CONSULTANT AND CITY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

8.4922 It is acknowledged that each party to this Agreement had the opportunity to be represented by counsel in the preparation of this Agreement and accordingly the rule that a contract shall be interpreted strictly against the party preparing same shall not apply herein due to the joint contributions of both parties.

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

8.23.1 All persons employed by CONSULTANT to perform employment duties within Florida during the term of the contract; and

8.23.2 All persons (including subvendors/subconsultants/subcontractors) assigned by CONSULTANT to perform work pursuant to the contract with the Department. The CONSULTANT acknowledges and agrees that use of the U.S. Department of Homeland Security's E-Verify System during the term of the contract is a condition of the contract with the CITY OF COCONUT CREEK; and

By entering into this Contract, the CONSULTANT becomes obligated to comply with the provisions of Section 448.095, Florida Statutes, "Employment Eligibility," as amended from time to time. This includes but is not limited to utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The CONSULTANT shall maintain a copy of such affidavit for the duration of the contract. Failure to comply will lead to termination of this

Contract, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination. If this contract is terminated for a violation of the statute by the CONSULTANT, the CONSULTANT may not be awarded a public contract for a period of 1 year after the date of termination.

**8.24 SCRUTINIZED COMPANIES PURSUANT TO SECTIONS 287.135 AND 215.473, FLORIDA STATUTES: CONSULTANT** hereby certifies that it: a) has not been placed on the Scrutinized Companies that Boycott Israel List, nor is engaged in a boycott of Israel; b) has not been placed on the Scrutinized Companies with Activities in Sudan List nor the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; and c) has not been engaged in business operations in Cuba or Syria. If **CITY** determines that **CONSULTANT** has falsely certified facts under this paragraph or if **CONSULTANT** is found to have been placed on the Scrutinized Companies Lists or is engaged in a boycott of Israel after the execution of this Agreement, **CITY** shall have all rights and remedies to terminate this Agreement consistent with Section 287.135, Florida Statutes, as amended. The **CITY** reserves all rights to waive the certifications required by this paragraph on a case-by-case exception basis pursuant to Section 287.135, Florida Statutes, as amended.

2. The parties desire to add Exhibits B, "Scope of Services," and C, "CBE Firms List" to the Agreement.

3. All other terms and conditions of the Agreement not in conflict with this Amendment No. 1 shall remain in full force and effect and are incorporated herein.

**IN WITNESS WHEREOF**, the parties hereto have executed this Amendment No. 1 the day and year first above written.

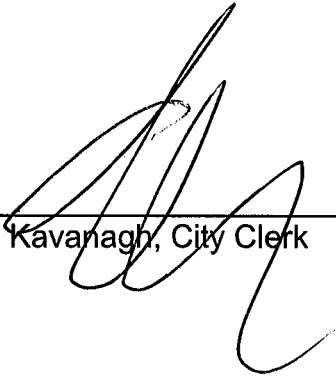
**CITY OF COCONUT CREEK, FLORIDA**

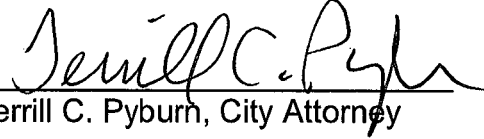
By: Kenneth M Brooks

Karen M. Brooks, City Manager

ATTEST:

Approved as to Legal Sufficiency  
and Form:

By:   
\_\_\_\_\_  
Joseph J. Kavanagh, City Clerk

By:   
\_\_\_\_\_  
Terrill C. Pyburn, City Attorney

WITNESSES:

[NAME OF VENDOR/CONTRACTOR]

[Signature]

By: [Signature]  
(Signature of President/Owner)

Print Name: Day A. Trotter

[Signature]

Print Name: GREG PROCTOR

Print Name: Maria Scudella

STATE OF FLORIDA )  
  :  
COUNTY OF BROWARD )

I HEREBY CERTIFY that on this day, before me, an Officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared by means of  physical presence or  online notarization Gres Proctor, of Carnahan Proctor & Cross a FLORIDA Corporation, to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged before me that he/she executed the same.

WITNESS my hand and official seal this 21<sup>st</sup> day of March, 2023.

[Signature]  
Notary Public, State of Florida (Signature of Notary Taking Acknowledgment)

(NOTARY SEAL)



Mariela Vasquez  
Name of Notary Typed, Printed or Stamped  
 personally known to me or  
 has produced identification:  
Identification \_\_\_\_\_