

RESOLUTION NO. 2023-136

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF COCONUT CREEK, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE THE INTERLOCAL AGREEMENT BETWEEN BROWARD COUNTY AND THE CITY OF COCONUT CREEK FOR THE SURTAX-FUNDED MUNICIPAL TRANSPORTATION PROJECT: SAMPLE ROAD IMPROVEMENTS (COCO-016); PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the provision of adequate and efficient transportation infrastructure and equipment upon which the public depends on a day-to-day basis is a matter of great public concern to the residents of Broward County and the City of Coconut Creek; and

WHEREAS, Broward County residents approved by referendum the Transportation Surtax ("Penny for Transportation" Program) on November 6, 2018; and

WHEREAS, Broward County, the municipalities within Broward County, and the Broward Metropolitan Planning Organization (MPO) entered into the Transportation System Surtax Interlocal Agreement (ILA), which provided for a cooperative and organized process for the municipalities to submit projects for evaluation and funding with Surtax proceeds; and

WHEREAS, the City submitted a surtax application for grant funding for a shared-use pathway along a segment of Sample Road between Lyons Road and Tradewinds Park (Florida's Turnpike); and

WHEREAS, the City of Coconut Creek commits to administer and deliver the project under the terms of the Transportation System Surtax Project Funding Agreement and Broward County's Code of Ordinances; and

WHEREAS, the Sample Road shared-use pathway will be constructed within the Florida Department of Transportation's (FDOT) right-of-way; and

WHEREAS, the FDOT is supportive of the proposed improvements within their right-of-way; and

WHEREAS, the City of Coconut Creek commits to funding upfront costs for design; Construction, Engineering, and Inspection (CEI) services; and construction compliance with the LAP requirements, if needed, which would then be eligible for reimbursement in accordance with the FDOT LAP agreement; and

WHEREAS, the City of Coconut Creek commits to program funding for construction contingency pursuant to the requirements of LAP; and

WHEREAS, the City of Coconut Creek has been authorized by Broward County to use the professional services of Carnahan, Proctor and Cross, Inc. to design the Sample Road shared-use pathway project within the previously-approved Surtax budget and required contingency pursuant to the requirements of LAP; and

WHEREAS, it will be the responsibility of the City of Coconut Creek to maintain or coordinate the maintenance of the project after its completion with FDOT.

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

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

Section 2: That the City Commission has accepted the future budgeting and funding of resources projected to be necessary for construction contingency and supports the Transportation Surtax Interlocal Agreement (ILA) as it relates to the Sample Road Improvements surtax-funded project (COCO-016).

Section 3: That the City Commission has reviewed and hereby approves the attached Interlocal Agreement between Broward County and the City of Coconut Creek for the Sample Road Improvements surtax-funded project (COCO-016).

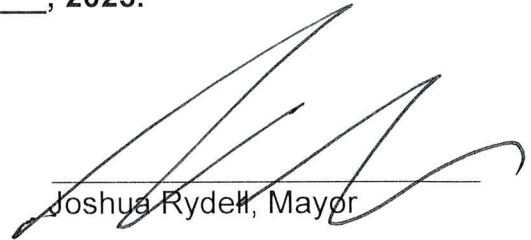
Section 4: That the City Commission hereby authorizes the Mayor, or designee, to execute the attached Interlocal Agreement between Broward County and the City of Coconut Creek for the Sample Road Improvements surtax-funded project (COCO-016).

Section 5: That the City Clerk, or designee, is hereby directed to return the executed Interlocal Agreement to the MAP (Mobility Advancement Program) Broward staff.

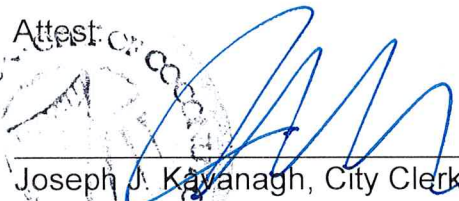
Section 6: That if any clause, section, other part or application of this resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or in application, it shall not affect the validity of the remaining portion or applications of this resolution.

Section 7: That this resolution shall be in full force and effect immediately upon its adoption.

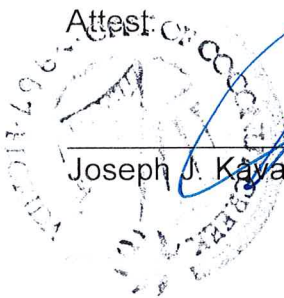
Adopted this 24th day of August, 2023.



Joshua Rydell, Mayor

Attest:


Joseph J. Kavanagh, City Clerk



Rydell	<u>Aye</u>
Welch	<u>Aye</u>
Railey	<u>Absent</u>
Brodie	<u>Aye</u>
Wasserman	<u>Aye</u>

Exhibit 1



**INTERLOCAL AGREEMENT BETWEEN BROWARD COUNTY AND THE CITY OF COCONUT CREEK
FOR SURTAX-FUNDED MUNICIPAL TRANSPORTATION PROJECT:
SAMPLE ROAD IMPROVEMENTS (COCO-016)**

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

RECITALS

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

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

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

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

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

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

ARTICLE 1. DEFINITIONS

- 1.1. **Board** means the Board of County Commissioners of Broward County, Florida.
- 1.2. **Contract Administrator** means the County Administrator or such other person designated by the County Administrator in writing.

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

ARTICLE 2. EXHIBITS

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

ARTICLE 3. PROJECT DESCRIPTION; COMPETITIVE PROCUREMENT; PERMITTING

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

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

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

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

3.4. Modifications to Project or Phases.

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

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

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

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

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

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

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

3.5. Contractor and Consultant Contracts.

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

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

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

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

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

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

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

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

ARTICLE 4. TERM AND TIME OF PERFORMANCE

- 4.1. Term. The term of this Agreement shall begin on the date it is fully executed by the Parties ("Effective Date") and shall end on August 31, 2026 ("Initial Term"), unless extended pursuant to Section 4.2.
- 4.2. Extensions. The Parties may renew this Agreement for up to two (2) additional one (1) year terms (each an "Extension Term") by written approval of the Project Manager and the County Administrator at least thirty (30) days prior to the expiration of the then-current term. Any further extension shall require approval by the Board and the governing body of Municipality.
- 4.3. Fiscal Year. The continuation of this Agreement beyond the end of any County fiscal year (October 1 through September 30) is subject to both the appropriation and the availability of transportation surtax funds in accordance with Chapter 129, Florida Statutes.
- 4.4. Time of the Essence. Unless expressly waived by the Contract Administrator in writing, time is of the essence in Municipality's performance of its duties, obligations, and responsibilities under this Agreement.

ARTICLE 5. FUNDING AND SURETY

- 5.1. Surtax Funding. County shall provide funding to Municipality for the Project in accordance with the Funding Schedule (**Exhibit B**). Any amounts, costs, or expenses indicated as ineligible for funding in Exhibit B shall not be funded by County but must instead be funded by Municipality from non-surtax funds. The Parties agree and acknowledge that all funding provided by County to Municipality under this Agreement shall be paid exclusively from and subject to the availability of proceeds from the transportation surtax levied pursuant to Section 212.055(1), Florida Statutes, and County shall not have any obligation to provide, nor shall County provide, any funding from County's general revenue or any other County source. Municipality agrees and stipulates that the funding provided by County to Municipality under this Agreement will be utilized by Municipality only for the purposes permitted under Section 212.055(1), Florida Statutes.
- 5.2. Method of Billing and Payment. Municipality shall invoice County only in accordance with the Funding Schedule. Any credit due to County under Section 5.6 must be reflected on the next applicable invoice. To be proper, each invoice must comply with the requirements of Exhibit B and be accompanied by a certification by the chief administrative officer and the chief financial

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

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

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

Phase 1: Design	\$300,803.18
MAXIMUM FUNDING AMOUNT:	\$300,803.18

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

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

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

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

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

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

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

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

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

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

ARTICLE 6. TRANSPORTATION SURTAX PROJECT COORDINATION AND PARTICIPATION

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

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

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

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

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

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

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

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

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

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

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

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

6.7. Conflict of Interest.

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

- 6.7.1.1. Any design, construction, oversight, or management services relating to any Surtax-Funded Project or any proposed project for which transportation surtax funding is being or will be sought;
 - 6.7.1.2. Any planning, oversight, or reporting services relating to any receipt by Municipality of community shuttle surtax funding; or
 - 6.7.1.3. Any grant writing or grant consultation services in connection with any Surtax-Funded Project (or proposed Surtax-Funded Project).
- 6.7.2. The foregoing Contracting Prohibitions:
- 6.7.2.1. Shall not apply to any state- or federally-mandated services provided by the MPO for which services the MPO does not receive any compensation from Municipality beyond Municipality's annual contribution to the MPO;
 - 6.7.2.2. May be waived by the County Administrator in connection with any Surtax-Funded Project for which the County Administrator determines, in his or her sole discretion, that such waiver is in the best interest of Broward County for reasons including, but not limited to, that such waiver would permit the performance of services reasonably necessary to obtain significant state or federal matching funds in connection with any project or proposed project. No such waiver shall be effective unless approved by the County Administrator in writing; and
 - 6.7.2.3. Do not prohibit or in any way impede the ability of Municipality to contract with any entity other than the MPO for transportation planning services whether or not such services are in connection with any Surtax-Funded Project.

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

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

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

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

ARTICLE 7. INDEMNIFICATION

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

ARTICLE 8. AUDITING

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

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

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

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

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

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

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

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

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

ARTICLE 9. TERMINATION

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 10. EQUAL EMPLOYMENT OPPORTUNITY AND CBE COMPLIANCE

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

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

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

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

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

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

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

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

ARTICLE 11. MISCELLANEOUS

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

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

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

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

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

11.5. Third-Party Beneficiaries. Neither Municipality nor County intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

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

FOR COUNTY:

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

With a copy to:

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

FOR MUNICIPALITY:

Michael Righetti, Senior Project Manager
City of Coconut Creek
4800 W. Copans Road
Coconut Creek, FL 33063
Email address: mrighetti@coconutcreek.net

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

11.8. Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth in this Agreement was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth in this Agreement is substantial and important to the formation of this Agreement, and each is, therefore, a material term of this Agreement. County's or Municipality's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed

to be a modification of the terms of this Agreement. To be effective, any waiver must be in writing signed by an authorized signatory of the Party granting the waiver.

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

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

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

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

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

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

11.15. Law, Jurisdiction, Venue, Waiver of Jury Trial. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal

court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, EACH OF MUNICIPALITY AND COUNTY HEREBY EXPRESSLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

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

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

11.18. Payable Interest

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

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

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

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

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

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

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

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

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

(The remainder of this page is intentionally blank.)

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

COUNTY

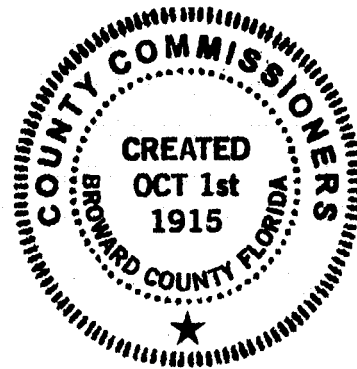
BROWARD COUNTY, by and through
its County Administrator

By [Signature]

County Administrator

15th day of September, 2023

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



William Bucciero

Digitally signed by William
Bucciero
Date: 2023.09.13 16:59:36 -04'00'

By _____

William J. Bucciero

(Date)

Assistant County Attorney
Angela J.

Digitally signed by Angela J.
Wallace
Date: 2023.09.14 14:49:38
-04'00'

By _____

Wallace

Angela J. Wallace

(Date)

Transportation Surtax General Counsel

Exhibit 1

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

MUNICIPALITY

ATTEST:



Joseph J. Kavanagh, City Clerk

City of Coconut Creek

By: _____

Joshua Rydell, Mayor

24th day of August, 2023

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

Terrill C. Pyburn, City Attorney

EXHIBIT A
Project Description and Project Schedule

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

The implementation of road improvements to the south side of Sample Road between Lyons Road and the Tradewinds Park Entrance, including, a 10' concrete shared-use path, approximately 4,000 feet long and enhancements to the existing Broward County Transit (BCT) Bus Stops. The project will include crosswalks at the signalized intersection of Sample Road and Tradewinds Park entrance, and ADA compliant pedestrian ramps at the intersections. Areas impacted by the road improvements and shared-use path installation will be addressed and will include drainage, minor landscaping (primarily sod replacement), utility relocation, and light pole relocation.

Improvements to bus stop locations that are not utilized by the City's Community Shuttle service require written approval from BCT.

The following items described in the Scope of Services are ineligible for transportation surtax funding and all costs associated with such services must be adequately and separately itemized and paid by Municipality with non-transportation surtax funds: (A) Utility system adjustments; (B) 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 Municipality with non-transportation surtax funds.

2. Deliverables:

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

Municipality shall provide a certification from a professional engineer which states all documents submitted meet a level of completeness in accordance with local engineering standards; this applies to all Deliverables listed in this Agreement.

DELIVERABLES: Design Phase

No.	Description	Duration/Deadline	Acceptance Criteria
0	Executed ILA	8/24/2023	ILA executed by City
1	Award	9/18/2023	Fully executed Consultant Agreement with County terms and conditions.
2	Notice to Proceed and Commencement of Work	9/25/2023	NTP Issued by City
3	Basis of Design Report	11/30/2023	The basis of design report shall establish the design criteria and standards to be used and describe the conceptual design plan and scope of the project, including preliminary plan sheets.
4	60% Design Submittal	4/17/2024	Complete Drainage Analysis must be included in 60% Design Submittal as well as typical and standard sections. Subject to review and approval by County
5	90% Design Submittal	5/27/2024	Subject to review and approval by County.
6	Final Plans, Specification Package, and Final Cost Estimate Submittal Permitting completed.	6/30/2024	Signed, sealed, and complete construction plans, specifications, and cost estimate, prepared in accordance with applicable State, County, and local standards. All required permits issued. Subject to review and approval by County.

3. Project Schedule:

Phase: 1	
ILA fully executed by County and City	9/8/2023
Project Award; Consultant Agreement Execution	9/18/2023
Notice to Proceed Issued	9/25/2023
Basis of Design Report	11/30/2023
60% Design Submittal	4/17/2024
90% Design Submittal	5/27/2024
Final Design Completion	6/30/2024
Design Services During Construction and CEI Services	TBD

EXHIBIT B
Funding Schedule

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

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

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

☒ All costs invoiced shall be supported by properly certified payrolls, time records, invoices, contracts, or vouchers evidencing appropriate detail the amounts invoiced/expended and the nature and purpose of such amounts.

☐ Pay Application documents consistent with AIA Document G702 and G703

☐ _____

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

☒ Costs incurred by Municipality prior to the execution of this Agreement

☒ Costs incurred after the expiration of this Agreement

☒ Costs that are not expressly permitted in Exhibit A or B

☒ Amounts that Contractor, Consultant, or Subcontractors are contractually responsible to pay, credit, or reimburse to Municipality or County (e.g., liquidated damages for not meeting the Project Schedule, audit costs, etc.)

☒ Amounts attributable to good or services received under a contract or other arrangement that was not approved by County

☒ Audit costs incurred by Municipality

☒ Legal and accounting fees and expenses

☒ Costs for operation, support, or maintenance of the Project

☒ Interest expenses incurred by Municipality

☒ Municipality's staff or other personnel costs in directly performing the Project

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

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

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

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

Deliverable/Phase Description	Maximum Not-To-Exceed Amount
Deliverables 0-3: Executed ILA, Award, Notice to Proceed Issued and Commencement of Work; Basis of Design Report	\$75,200.80
Deliverable 4: 60% Design Submittal	\$75,200.80
Deliverable 5: 90% Design Submittal which includes Complete Drainage Analysis	\$75,200.80
Deliverable 6: Final Plans, Specification Package, and Final Cost Estimate Submittal Permitting Completed.	\$75,200.78
TOTAL MAXIMUM NOT-TO-EXCEED AMOUNT:	\$300,803.18

EXHIBIT C

Reporting Requirements

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

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

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

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

Sample Financial Report

Project Name:	
Quarterly Period:	

Section A: Total/Maximum Project Funding

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

Section B: Funding Received to Date

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

Section C: Expenditures to Date

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

Section D: Available Funding to Date

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

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

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

Retainage Released this Quarter	\$
Amount Paid this Quarter	\$

Section F: Quarterly Detailed Expenditures (for Quarter Reported)

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

Section G: Project Schedule & Status

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

Section H: Performance Metrics

- A.** [To be provided by the PMO as applicable]
- B.** Pavement Serviceability Rating (PSR): Report PSR prior to commencement of Project, current PSR, and projected PSR upon completion of Project.

MAP PMO Project Status Report *Template*

<Agency> Project: <i><fill in project name or id></i>		Owner: <i><fill in></i>	July 15, 2019
Progress update = Key activities since the last status report = ?		Overall Progress   Red = Execution critical delay  Amber = Delay; but recoverable  Green = On track	
Key activities to be completed in the next <2-4> weeks: = ? = ?		Summary: {may include} • Key take-aways for BoCC, OB and SurTax Admin • Project run rate; actual vs. planned • % Milestones met • Days over budget • Leverage ratio • Key reminders of critical decisions/milestones/etc.	
Issues/Challenges:		Proposed solutions:	

Exhibit D Form Contracts

Surtax-Funded Projects Form Construction Contract:

Surtax-Funded Projects Form Consultant Contract:

Exhibit E Municipal Resolution Authorizing Execution of Agreement

Exhibit E

RESOLUTION NO. 2023-136

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF COCONUT CREEK, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE THE INTERLOCAL AGREEMENT BETWEEN BROWARD COUNTY AND THE CITY OF COCONUT CREEK FOR THE SURTAX-FUNDED MUNICIPAL TRANSPORTATION PROJECT: SAMPLE ROAD IMPROVEMENTS (COCO-016); PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

State of Florida
County of Broward
City of Coconut Creek
I HEREBY CERTIFY that this is a true and correct copy of Resolution No. 2023-136
Witness my hand and the Official Seal of The City of Coconut Creek this 28th day of March 2023
Joseph J. Kavanagh, City Clerk

WHEREAS, the provision of adequate and efficient transportation infrastructure and equipment upon which the public depends on a day-to-day basis is a matter of great public concern to the residents of Broward County and the City of Coconut Creek; and

WHEREAS, Broward County residents approved by referendum the Transportation Surtax ("Penny for Transportation" Program) on November 6, 2018; and

WHEREAS, Broward County, the municipalities within Broward County, and the Broward Metropolitan Planning Organization (MPO) entered into the Transportation System Surtax Interlocal Agreement (ILA), which provided for a cooperative and organized process for the municipalities to submit projects for evaluation and funding with Surtax proceeds; and

WHEREAS, the City submitted a surtax application for grant funding for a shared-use pathway along a segment of Sample Road between Lyons Road and Tradewinds Park (Florida's Turnpike); and

WHEREAS, the City of Coconut Creek commits to administer and deliver the project under the terms of the Transportation System Surtax Project Funding Agreement and Broward County's Code of Ordinances; and

WHEREAS, the Sample Road shared-use pathway will be constructed within the Florida Department of Transportation's (FDOT) right-of-way; and

WHEREAS, the FDOT is supportive of the proposed improvements within their right-of-way; and

WHEREAS, the City of Coconut Creek commits to funding upfront costs for design; Construction, Engineering, and Inspection (CEI) services; and construction compliance with the LAP requirements, if needed, which would then be eligible for reimbursement in accordance with the FDOT LAP agreement; and

WHEREAS, the City of Coconut Creek commits to program funding for construction contingency pursuant to the requirements of LAP; and

WHEREAS, the City of Coconut Creek has been authorized by Broward County to use the professional services of Carnahan, Proctor and Cross, Inc. to design the Sample Road shared-use pathway project within the previously-approved Surtax budget and required contingency pursuant to the requirements of LAP; and

WHEREAS, it will be the responsibility of the City of Coconut Creek to maintain or coordinate the maintenance of the project after its completion with FDOT.

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

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

Section 2: That the City Commission has accepted the future budgeting and funding of resources projected to be necessary for construction contingency and supports the Transportation Surtax Interlocal Agreement (ILA) as it relates to the Sample Road Improvements surtax-funded project (COCO-016).

Section 3: That the City Commission has reviewed and hereby approves the attached Interlocal Agreement between Broward County and the City of Coconut Creek for the Sample Road Improvements surtax-funded project (COCO-016).

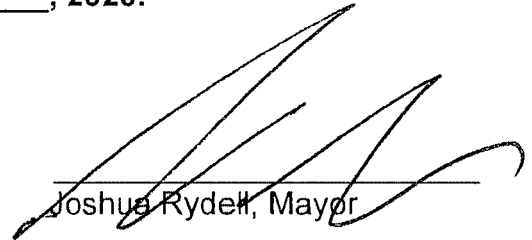
Section 4: That the City Commission hereby authorizes the Mayor, or designee, to execute the attached Interlocal Agreement between Broward County and the City of Coconut Creek for the Sample Road Improvements surtax-funded project (COCO-016).

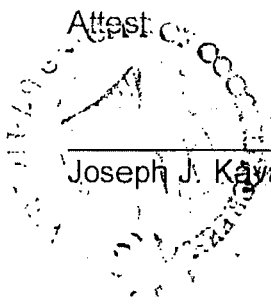
Section 5: That the City Clerk, or designee, is hereby directed to return the executed Interlocal Agreement to the MAP (Mobility Advancement Program) Broward staff.

Section 6: That if any clause, section, other part or application of this resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or in application, it shall not affect the validity of the remaining portion or applications of this resolution.

Section 7: That this resolution shall be in full force and effect immediately upon its adoption.

Adopted this 24th day of August, 2023.


Joshua Rydell, Mayor

Attest

Joseph J. Kavanagh, City Clerk

Rydell	<u>Aye</u>
Welch	<u>Aye</u>
Railey	<u>Absent</u>
Brodie	<u>Aye</u>
Wasserman	<u>Aye</u>

AGREEMENT
between
CITY OF COCONUT CREEK
and
CARNAHAN, PROCTOR & CROSS, INC.
for
GENERAL PROFESSIONAL ENGINEERING SERVICES
RFQ NO. 03-25-20-02

This Agreement is made and entered into this 30th day of September, 2020 by and between CITY OF COCONUT CREEK, a political subdivision of the State of Florida, its successors and assigns, hereinafter referred to as "**CITY**,"

AND

Carnahan, Proctor and Cross, Inc., a Florida Corporation, its successors and assigns, hereinafter referred to as "**CONSULTANT**".

WITNESSETH, in consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, **CITY** and **CONSULTANT** agree as follows:

ARTICLE I

DEFINITIONS AND IDENTIFICATIONS

For the purposes of this Agreement and the various covenants, conditions, terms and provisions which follow, the definitions and identifications set forth below are assumed to be true and correct and are therefore agreed upon by the parties.

- 1.1 **THE CONTRACT DOCUMENTS:** The contract documents consist of this Agreement, conditions of the contract of RFQ No.03-25-20-02, all addenda issued prior to, all modifications issued after execution of this Agreement and Exhibit "A" Fee Schedule. These contract documents form the Agreement, and all are as fully a part of the Agreement if attached to this Agreement or repeated therein.
- 1.2 **CONTRACT ADMINISTRATOR:** Whenever the term "**CONTRACT ADMINISTRATOR**" is used herein, it is intended to mean the City Manager or designee. In the administration of this Agreement, all parties may rely upon instructions or determinations made by the **CONTRACT ADMINISTRATOR**.
- 1.3 **CONSTRUCTION CONTRACTOR:** The person(s), firm(s), corporation(s) or other entity who enters into an agreement with **CITY** to perform the construction work desired by **CITY** relating to **PROJECTS**.

- 1.4 **CONSULTANT:** **CONSULTANT**, which is the professional organization with whom **CITY** has contracted for the performance of services pursuant to this Agreement.

1.5 CITY: City of Coconut Creek, Florida, a body corporate and politic and a political subdivision of the State of Florida.

- 1.6 **NOTICE TO PROCEED:** A written statement issued by the **CONTRACT ADMINISTRATOR** directing **CONSULTANT** to begin work.

- 1.7 **PROJECTS:** The scope of services of the **PROJECTS** shall include, but are not necessarily limited to the following disciplines:

- | | |
|---|--|
| ▪ Building Design | ▪ Mechanical / Electrical / Plumbing (MEP) Engineering |
| ▪ Civil Engineering | ▪ New Construction and Renovations |
| ▪ Codes | ▪ Planning Services |
| ▪ Construction Management/Administration/Engineering Inspection (CEI) | ▪ Process evaluation |
| ▪ Cost Benefit Analysis | ▪ Reclaimed water |
| ▪ Cost Estimates | ▪ Retrofits |
| ▪ Electrical/Instrumentation | ▪ Standards and ordinances |
| ▪ Environmental Engineering | ▪ Storm Water |
| ▪ General Engineering | ▪ Streets/Roads |
| ▪ Geotechnical Engineering | ▪ Structural |
| ▪ Landscape Architecture and Irrigation Design | ▪ Traffic/Transportation Engineering and Studies |
| ▪ Land Surveying and Mapping | ▪ Utilities |
| | ▪ Wastewater |
| | ▪ Water |

CONSULTANT may be required to investigate, analyze, evaluate, report, coordinate, prepare plans, specifications and contract documents, bid/award evaluation and services during construction, perform construction engineering services, etcetera for any of the aforementioned disciplines, related matters, as well as any other engineering assignments upon the request of the **CITY**. The **CITY** may require based upon the firm's evaluation to identify needs, develop and improve programs, establish cost effective priorities for making improvements and develop a short-term or a long-range program for implementation on request. **CONSULTANT** shall provide certified testing lab services as necessary to fulfill the requirements of certain regulatory agencies and related soil analysis.

CONSULTANT may be required to represent the City of Coconut Creek in matters involving or relating to other governmental entities at the local, regional, state or national level, pertaining to the County/State/Federal for any improvement programs, permits or grants in which the City is or may be an eligible participant or has an interest.

Some of the projects requiring professional engineering services will be funded through the Department of Housing and Urban Development (HUD), Community Development Block Grant (CDBG), or other federal, state, and county granting authorities. All federal and state regulations pertaining to any grant related project shall apply. **CONSULTANT** acknowledges that if **CONSULTANT** is asked to work on a project that is funded with County Surtax funds, then

CONSULTANT may have to enter into a separate, project-specific agreement for such project utilizing County Surtax funds as required by the County.

Professional engineering services could include, but not be limited to, approved capital improvement projects as outlined in the City's budget.

1.8 **REIMBURSABLES:** Whenever the term **REIMBURSABLES** is used herein, it is intended to mean actual expenses directly related to the performance of the services as set forth in this Agreement. **REIMBURSABLES** are limited to:

- A) Identifiable expenses of transportation in connection with the **PROJECT** subject to the provisions and limitations for public agencies established in Chapter 112, Florida Statutes as amended from time to time. Automobile travel inside Broward, Dade and Palm Beach Counties will be considered reimbursable expenses. Surface travel outside Florida and all air travel will be reimbursed only when prior written approval for such expense has been given by **CONTRACT ADMINISTRATOR**. Rental cars shall be mid-sized or smaller.
- B) Identifiable per diem, meals and lodgings, taxi fares and miscellaneous travel connected expenses for **CONSULTANT'S** personnel subject to the limitations of Chapter 112, Florida Statutes as amended from time to time.
- C) Identifiable communication expenses for express mail charges.
- D) Identifiable cost of printing reproduction and aerial photography.
- E) Identifiable testing costs.
- F) Permit application fees. All fees paid to regulatory agencies for approvals directly attributable to the **PROJECT**. These permit fees do not include those permits required for the **CONSTRUCTION CONTRACTOR**.

1.9 **BILLING RATE:** Whenever the term **BILLING RATE** is used herein, it is intended to mean average base salaries and wages paid to personnel by employee category engaged directly on the **PROJECT**, including all fringe benefits, overhead and profit. **BILLING RATES** by the employee category are shown on **EXHIBIT "A" FEE SCHEDULE**.

1.10 **PROFESSIONAL SERVICES:** Whenever the term **PROFESSIONAL SERVICES** is used herein, it is intended to mean those professional services provided to **CITY** on a day-to-day basis for specific tasks provided the estimated engineering costs for the specific tasks do not exceed Fifty Thousand Dollars (\$50,000.00). Typical tasks include response to field or engineering problems, attendance at meetings, review of bids and providing day-to-day assistance as required to respond to engineering issues, utility operations or field problems. The Aggregate of **PROFESSIONAL SERVICES** tasks may exceed \$50,000.00.

- A. **CITY** shall describe the task to be undertaken by **CONSULTANT**.
- B. **CONSULTANT** shall agree upon a level of effort and position category to be assigned to the specific task, and provide **CITY** with a proposal for the work.
- C. **CITY** shall authorize **CONSULTANT**, in writing, to provide professional services requested for the specific task.
- D. **CONSULTANT** shall be reimbursed by **CITY** at the **BILLING RATE** payable for each **CONSULTANT'S** employee category shown on **EXHIBIT "A"**.

- 1.11 **WORK AUTHORIZATION:** Whenever the term **WORK AUTHORIZATION** is used herein, it is intended to mean professional services related to specific projects identified by **CITY** for which the estimated architectural cost exceeds Fifty Thousand Dollars (\$50,000.00).

The **CONSULTANT** shall submit a proposal to the **CITY** and the **CITY** will authorize said proposal. The authorization issued by **CITY** shall contain the following information and requirements:

- A. A description of the work to be undertaken and method of compensation with reference to the appropriate paragraphs of this Agreement.
- B. A budget establishing the amount of compensation to be paid, which amount shall constitute hourly billing, or a lump sum at the **CONTRACT ADMINISTRATOR'S** discretion, and shall not be exceeded unless prior written approval of **CITY** is obtained. The information contained in the budget shall be in sufficient detail so as to identify the various elements of costs, and the adequacy of such budget information shall be subject to the approval of **CITY**.
- C. A time established for completion of the work or services undertaken by **CONSULTANT** or for the submission to **CITY** of documents, reports and other information pursuant to this Agreement. The time established for performance shall be subject to the approval of **CITY**; however, the time may, in the sole discretion of **CITY**, be extended upon justification of **CONSULTANT** that additional time is necessary for performance. Failure on the part of **CONSULTANT** to comply with the time established for performance may result in the termination of this Agreement.
- D. **CONSULTANT** shall be reimbursed by **CITY** at the **BILLING RATE** payable for each **CONSULTANT'S** employee category shown on **EXHIBIT "A"**.
- E. **WORK AUTHORIZATIONS** shall be dated and serially numbered.

ARTICLE 2

PREAMBLE

In order to establish the background, context and frame of reference for this Agreement and to generally express the objectives and intentions of the respective parties herein, the following statements, representations and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions which follow and may be relied upon by the parties as essential elements of the mutual considerations upon which this Agreement is based.

- 2.1 **CITY** has met the requirements of the Consultants' Competitive Negotiation Act, as set forth in Section 287.055, Florida Statutes as amended from time to time, and has selected **CONSULTANT** to perform the work of the specified nature as outlined in this Agreement. Accordingly, this Agreement qualifies as a "continuing contract" under Section 287.055 (2) (g), Florida Statutes as amended from time to time.
- 2.2 Negotiations pertaining to the services to be performed by **CONSULTANT** were undertaken between **CONSULTANT** and **CITY**, and this Agreement incorporates the results of such negotiations.

ARTICLE 3

SCOPE OF SERVICES

- 3.1 The Scope of Services required to be performed by **CONSULTANT** shall be identified under one of the following procedures:

PROFESSIONAL SERVICES for specific "day-to-day" work tasks as requested by **CITY** and agreed to by **CONSULTANT**.

Professional Services for a **PROJECT** as set forth in a **WORK AUTHORIZATION**. **CONSULTANT** shall provide all services as set forth in the **WORK AUTHORIZATION** including, without limitations, all necessary, incidental and related activities and services required.

- 3.2 **CONSULTANT** and **CITY** acknowledge that a **WORK AUTHORIZATION** does not delineate every detail and minor work task required to be performed by **CONSULTANT** to complete a **PROJECT**. If, during the course of the performance of a **WORK AUTHORIZATION**, **CONSULTANT** determines that it should perform work to complete a **PROJECT** which is outside the level of effort originally anticipated, **CONSULTANT** will notify **CONTRACT ADMINISTRATOR** in writing in a timely manner before proceeding with the work. If **CONSULTANT** proceeds with said work without notifying **CONTRACT ADMINISTRATOR** as provided in Article 6, said work shall be deemed to be within the original level of effort, whether or not specifically addressed in the **WORK AUTHORIZATION**. Notice to **CONTRACT ADMINISTRATOR** does not constitute authorization or approval by **CITY**. Performance of work by **CONSULTANT** outside the originally anticipated level of effort without prior written **CITY** approval is at **CONSULTANT'S** sole risk.

ARTICLE 4

TIME OF PERFORMANCE

- 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.
- 4.2 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.
- 4.3 **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 1.9 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 1.9 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.
- 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.

- 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.
- 5.6 **CONSULTANT** shall bill identifiable subconsultant fees at the actual fees paid by **CONSULTANT**.
- 5.7 **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.

Payment will be made to **CONSULTANT** at: Carnahan, Proctor and Cross, Inc.
814 S. Military Trail
Deerfield Beach, FL 33442

ARTICLE 6

ADDITIONAL SERVICES AND CHANGES IN SCOPE OF SERVICES

- 6.1 Services related to a **PROFESSIONAL SERVICES** task, which would increase, decrease or which are outside the level of effort agreed upon by **CITY** and **CONSULTANT** shall be services for which **CONSULTANT** must obtain prior written approval of **CITY** before compensation can be paid.
- 6.2 Services related to a **WORK AUTHORIZATION**, which would increase, decrease or which are otherwise outside the Scope of Services or level of effort contemplated by a **WORK AUTHORIZATION** shall be services for which **CONSULTANT** must obtain the prior written approval from **CITY** before compensation can be paid. All terms for the performance of such services must be agreed upon in writing in a document of equal dignity herewith prior to any deviation from the terms of a **WORK AUTHORIZATION** and when properly executed shall become an Amendment to the **WORK AUTHORIZATION**.

ARTICLE 7

CITY'S RESPONSIBILITIES

- 7.1 **CITY** shall assist **CONSULTANT** by placing at **CONSULTANT'S** disposal all information it has available pertinent to the **PROJECT** including previous reports and any other data relative to a **PROJECT**.
- 7.2 **CITY** shall arrange for access to make all provisions for **CONSULTANT** to enter upon public and private property as reasonably required for **CONSULTANT** to perform its services under this Agreement.

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**.

- 8.2 **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**.

- 8.3 **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**.

- 8.4 **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:

- A. Keep and maintain all records that ordinarily and necessarily would be required by the **CITY** in order to perform the services.
- B. 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. 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**.
- D. 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**.
- 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.**

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.

- 8.5 **EQUAL OPPORTUNITY:** **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.

- 8.6 **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.
- 8.7 **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.
- 8.8 **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.
- 8.9 **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.
- 8.10 **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. Name as additional insured the City of Coconut Creek and its Officers, Agents, Employees and Commission Members.
- B. That such insurance is primary to any other insurance available to the additional insured with respect to claims covered under the policy and that insurance applies separately to each insured against whom claims are made or suit is brought, but the inclusion of more than one insured shall not operate to increase the insurer's limit of liability.

All policies shall be endorsed to provide 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.

- 8.11 **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.
- 8.12 **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.
- 8.13 **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.
- 8.14 **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

- 8.15 **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.
- 8.16 **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.
- 8.17 **WARRANTIES OF CONSULTANT:** **CONSULTANT** hereby warrants and represents as follows:
- A. 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. At all times during this Agreement, **CONSULTANT** shall perform its obligations in a prompt, professional and businesslike manner.
- 8.18 **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 LAWSIT 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.**

- 8.19 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.

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature. CITY OF COCONUT CREEK, through its City Manager or designee and Carnahan, Proctor and Cross, Inc., signing by and through its President, Gregory Proctor, P.E., duly authorized to execute same.

CITY OF COCONUT CREEK

ATTEST:

Leslie Wallace May 9/30/2020
Leslie Wallace May
City Clerk Date

Karen M. Brooks 9/30/2020
Karen M. Brooks, City Manager Date

Approved as to form and legal sufficiency:

Terrill C. Pyburn 09/30/20
Terrill C. Pyburn, City Attorney Date

[Vendor's Signature to Follow]

CARNAHAN, PROCTOR & CROSS, INC.

ATTEST:

(Corporate Secretary)

Gregory Proctor, President

9.25.2020

Date

Gregory Proctor

Type/Print Name of Corporate Secy.

Gregory Proctor

Type/Print Name of President

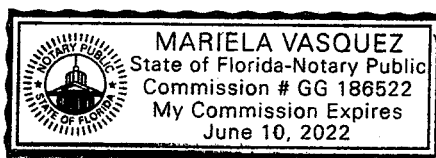
(CORPORATE SEAL)

**CORPORATE ACKNOWLEDGEMENT**

STATE OF FLORIDA: :SS

COUNTY OF Broward:

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 25th day of September, 2020, by Gregory Proctor (name of person) as President (type of authority, e.g. officer, trustee, attorney in fact) for CPC (name of party on behalf of whom instrument was executed).

Signature of Notary Public
State of Florida at LargePrint, Type or Stamp
Name of Notary Public
☒ Personally known to me or
☐ Produced Identification

Type of I.D. Produced

☐ DID take an oath, or
☐ DID NOT take an oath.

EXHIBIT "A"
NEGOTIATED FEE SCHEDULE

These positions / titles are common throughout the profession. Firms using a different nomenclature for the listed positions, but similar in responsibility, shall use those listed below for the purposes of providing hourly rates.

Position / Title	Hourly Rate
Principal (PE registered)	\$215.00 / per hour
Senior Engineer (PE registered)	\$180.00 / per hour
Land Surveyor (PLS registered)	\$160.00 / per hour
Landscape Architect (State Registered)	\$160.00 / per hour
Project Manager	\$160.00 / per hour
Engineer	\$135.00 / per hour
Environmental Scientist	\$140.00 / per hour
Planner	\$135.00 / per hour
Senior Planner	\$180.00 / per hour
Technician	\$ 95.00 / per hour
Drafter/GIS	\$115.00 / per hour
Field Inspector	\$100.00 / per hour
Staff Assistant	\$ 75.00 / per hour

**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 3rd 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 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.

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;

- B8.5.2.** 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;
- C8.5.3.** 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

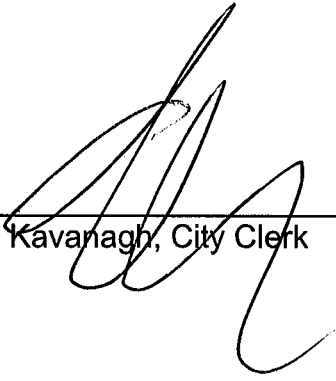
By: Kathryn M Brooks

Karen M. Brooks, City Manager

ATTEST:

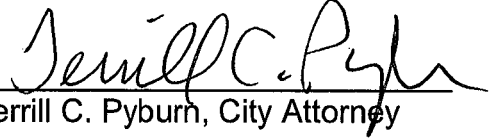
Approved as to Legal Sufficiency
and Form:

By:



Joseph J. Kavanagh, City Clerk

By:



Terrill C. Pyburn, City Attorney

WITNESSES:

[Signature]

Print Name: Day A. Trotter

[Signature]

Print Name: Maria Scudella

[NAME OF VENDOR/CONTRACTOR]

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

Print Name: GREG PROCTOR

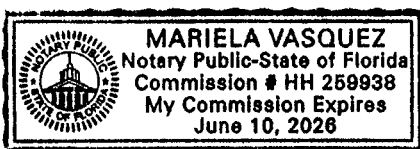
STATE OF FLORIDA)
:
COUNTY OF BROWARD)

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 21st 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 _____

Exhibit 4

CONSULTING SERVICES WORK AUTHORIZATION

DATE: August 24, 2023

CONSULTANT: CARNAHAN, PROCTOR AND CROSS, INC.

WORK AUTHORIZATION NO. 4 FOR CONSULTING SERVICES

This Work Authorization, when executed, shall be incorporated in and become an integral part of the "Agreement between City of Coconut Creek and Carnahan, Proctor and Cross, Inc. for General Professional Engineering Services" dated September 30, 2020.

I. PROJECT DESCRIPTION

The CITY desires to have Carnahan, Proctor and Cross, Inc. ("CONSULTANT"), design in accordance with Florida Department of Transportation (FDOT) standards, the shared use pathway segment along Sample Road between Lyons Road and the entrance driveway into Tradewinds Park.

II. SCOPE OF SERVICES AND COSTS

See Proposal from Carnahan, Proctor and Cross, Inc. attached hereto as Exhibit "A".

III. COMPLETION DATE

This Work Authorization is approved contingent upon the CITY'S acceptance of and satisfaction with the completion of the services rendered with a projected completion date of October 31, 2024 from the date of receipt of authorization from CITY. If the CITY in its sole discretion is unsatisfied with the services provided in the Work Authorization, the CITY may terminate the Agreement without incurring any further liability. The CONSULTANT shall commence work after issuance of the notice to proceed.

IV. NOT A DESIGN-BUILD AGREEMENT

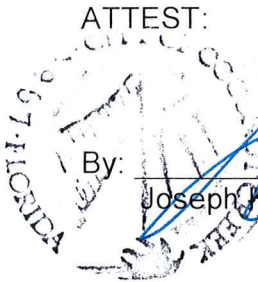
CONSULTANT shall not bid for any construction components associated with this Project.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

CITY OF COCONUT CREEK, FLORIDA

By: Sheila Rose
Karen M. Brooks, City Manager
Sheila Rose, Acting

ATTEST:
By: Joseph Kavanagh
Joseph Kavanagh, City Clerk

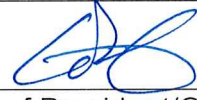


Approved as to Legal Sufficiency
and Form:

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

CONSULTANT:

CANNAN PROCTOR & CROSS, Inc.

By: 
Signature of President/Owner

ATTEST:


(Corporate Secretary)

Greg Proctor
Type/Print Name of President/Owner

GREG PROCTOR
Type/Print Name of Corporate Secretary

(CORPORATE SEAL)

EXHIBIT "A"



Carnahan, Proctor, and Cross, Inc.

814 S. Military Trail

Deerfield Beach, Florida 33442

Phone: 954.972.3959

Fax: 954.972.4178

www.carnahan-proctor.com

☐ Amendment No. NA

Proposal No:

Project Name: Sample Road Shared-Use Path Improvements

**To: Michael Righetti
Senior Project Manager
4800 West Copans Road
Coconut Creek, FL 33063
Mrighetti@coconutcreek.net**

☒ Fixed Fee

☐ Time & Expenses

☐ Maximum Upset Fee

☐ Other

Estimated Date of Completion: TBD

Scope of Services:

See attached.

Prepared By: Mohan Gopalakrishna, P.E., PTOE, Senior Traffic/Transportation Manager

Please execute this Client Authorization for Carnahan Proctor and Cross, Inc. to proceed with the above scope of services at the stated estimated costs. No services will be provided until it is signed and returned to CPC.

☒ Subject to Master Agreement with City

RFQ No. 11-19-14-10

Contract Extension No 1 – December 2017

Carnahan Proctor and Cross, Inc. Authorization

By Mohan Gopalakrishna, P.E., PTOE

Mohan Gopalakrishna Digitally signed by Mohan Gopalakrishna
Date: 2023.05.26 16:00:12 -04'00'

Title: Sr. Traffic /Transportation Manager

Date: 5/26/2023

☐ Subject to terms & conditions in our Master

Agreement with City dated

Client Authorization (Please sign original and return)

By:

Title:

Date:

Two originals of this Authorization need to be executed. One original needs to be forwarded to Accounting Contract Files.



Exhibit-1

Proposal for the City of Coconut Creek **Sample Road Shared-Use Path Improvements**

1.0 PROJECT DESCRIPTION

The City of Coconut Creek received approval from Broward County Surtax Funds for the implementation of a 10' concrete shared-use path, approximately 4,000 feet, along the north side of Sample Road from East of Lyons Road to the Tradewinds Park Entrance (end at the driveway to the park). This mobility project will include enhancements to the existing Broward County Transit (BCT) Bus Stops (concrete pads only). The inclusion of shelters to be coordinated with BCT, 10' wide shared-use path (for pedestrians/bicycles) special emphasis crosswalks at the signalized intersection of Sample Road and Tradewinds Park entrance, and ADA compliant pedestrian ramps at the intersections. Areas impacted by the shared-use path installation will be addressed and will include drainage, minor landscaping (primarily sod replacement), utility relocation, light pole relocation, etc.



2.0 BASIS OF SCOPE

- This scope and fee are based upon coordination between Carnahan, Proctor, and Cross, Inc. (CPC) and Mike Righetti from the City of Coconut Creek (City).
- The reviewing agencies are the City, Broward County MPO, Broward County Parks Division, Broward County Traffic Engineering Division (BCTED), and the Florida Department of Transportation (FDOT).

3.0 DESIGN SCOPE AND FEE

- The scope of services will include the following due diligence efforts and will be performed as a part of Tasks 1, 2, and 3.
 - Meet with FDOT (Sample Road is a State Road) and City staff to identify the Project details and required compliance with Broward County MPO Surtax projects criteria. CPC will commit 30% of the design fee to Broward County County Business Enterprise (CBE) sub-consultant/s to meet the CBE goal established for this contract. For this purpose CPC has included the following CBE firms:

Two originals of this Authorization need to be executed. One original needs to be forwarded to Accounting Contract Files.



- *BMA Consulting Engineering, Inc.* located at 16928 SW 35th St., Miramar, Florida 33027. BMA is qualified to provide design support on sidewalk, drainage, structures, environmental permitting, landscaping, etc.
- *Federal Engineering & Testing, Inc. (FET)*, 3370 NE 5th Avenue, Oakland Park, FL 33334. FET is qualified to provide Geotechnical investigation services for this project.
- Coordination with FDOT for pre-application meetings and Broward County permitting efforts.
- Coordination with Mike Righetti to get input received regarding BCT-requested improvements and if they are to be covered by BCT or Surtax funds.
- Review the project's existing conditions, and identify potential impacts on the existing drainage system, utilities (overhead, underground), landscape, lighting, bus stops, intersections, etc. The field review will be documented with notes and site photos.
- Drainage calculations and design, where existing swales are impacted.
- Utility coordination and Utility adjustment to avoid impacts.
- Landscaping is not included, only sod restoration where they are impacted by the shared-use pathway installation.
- One retaining/gravity wall with a handrail design is anticipated near the canal just west of Tradewinds Park and will require design coordination.
- The Geotechnical investigation will include hand auger borings where the shared-use path is proposed.
- The Shared Use Path will be installed within the FDOT Right-of-Way (ROW) along Sample Road. Any needed easements will be coordinated with the property owners via the City staff.

Task 1 – Meetings

- Meetings: In addition to the initial kick-off meeting, CPC will be available to meet with the City's staff as required. Meetings will be held with Broward County, FDOT, and other permitting agencies as a part of the permitting efforts.
- Technical meetings, field meetings.
- CPC will provide meeting minutes and project documentation.

Two originals of this Authorization need to be executed. One original needs to be forwarded to Accounting Contract Files.



- Attending City's commission meetings as required.
- Support for City's staff for public involvement activities.

Task 2 - Specific Purpose Survey

- Horizontal information will be based on the North American Datum of 1983(NAD83/90), state plane coordinates, and Florida East Zone. Vertical information will be based on the North American Vertical Datum of 1988 (NAVD88).
- CPC will prepare a Specific Purpose Survey for the shared-use path:
- Topographic survey of approximately 4,000' +/-, feet long. Elevations will be taken in a 100' foot wide swath and grade breaks, from the edge of pavement to ROW lines on north and south. Elevations will be taken and shown along the inside and outside of the existing sidewalks.
- Above Ground topographic features will be taken and shown on maps; which will include existing signs, poles, structures, etc. (Quality Level C).
- A baseline (or two if needed) will be set up for the full length of the project and shown on maps
- Control points and benchmarks will be set for future construction
- ROW will be determined from FDOT maps and if needed property corners or land boundary corners will be located
- .SID aerials will be used for that layer
- Drawings will be in AutoCAD format, at a scale engineering can use for design
- Tree inventory for location. Efforts will not include tree identification with botanical names, size, height, etc.

Efforts do not include the following tasks. Such tasks can be included as additional services when requested.

- Title Search
- Descriptions and Sketches for easements, etc.
- Subsurface Utility Engineering (SUE) – Quality levels A, B, and D.
- Arborist Tree identification services

Two originals of this Authorization need to be executed. One original needs to be forwarded to Accounting Contract Files.



- Wetland Environmental services
- Platting and Lot Split services

Task 3 – Shared-use Path Design

CPC will prepare construction drawings for the shared-use path construction and related improvements. The plans/drawings and or documents will include:

- Typical section – existing and proposed
- Existing R/W (as provided by the City and FDOT)
- Existing and proposed topographic elevations
- Plan View Drawings
- Alignment
- Signing & Pavement Markings
- Crosswalks
- ADA compliant Ramp details
- Project impact related to:
 - Landscaping (minor relocations and sod only)
 - Drainage (address only if impacted by shared-use path improvements)
 - Bus Stops (concrete pads, shelters to be coordinated). Improvements to be coordinated with BCT
- Above-ground utilities impacted by the project design
- Drainage preliminary evaluation (if needed)
- Determine participating and non-participating items (if any) based on the Surtax program.

The deliverables (electronic) will include the following items.

1. Concept Layout – for review and approval of the City
2. Shared-use path report and construction plans at 60%, 90%, 100%, and Final Submittals, along with construction cost estimates.
 1. Key Sheet (1 sheet)

Two originals of this Authorization need to be executed. One original needs to be forwarded to Accounting Contract Files.



2. Summary of quantities (1 sheet)
3. Specific Purpose Survey/Project Network Control Sheets
4. Typical Sections (2)
5. Shared-use Path Improvements General Notes (1 sheet)
6. Shared-use Path Improvements Plan Sheets
7. Cross Sections
8. Gravity/Retaining Wall Detail and calculations
9. Drainage Map
10. Drainage Cross Sections
11. Drainage Calculations.
12. Drainage Permit (SFWMD, Cocomar Water Control District)
13. FDOT permit
14. Maintenance Memorandum of Agreement (MMOA)
15. Broward County Permit
16. Utility Adjustment Sheets
17. Bus Pad Details (inclusion of shelter to be coordinated with BCT)
18. Stormwater Pollution Prevention Plan
19. Erosion Control Plan
20. Signing & Pavement Marking General Notes
21. Signing & Pavement Marking Plan
22. Construction Cost Estimates

End of Scope of Services

(See the Staff-hours and Fee Estimate below and attached giving the break-down)

Total Fee: \$300,803.18 (Lump Sum) (detailed fee estimate on the next page)
(includes Geotechnical Allowance: **\$4,127.18**)
(total fee includes CBE commitment of 30%, **\$90,240.95**)

4.0 SCHEDULE

CPC, in coordination with the City, will develop a project completion schedule using Microsoft Project.

Two originals of this Authorization need to be executed. One original needs to be forwarded to Accounting Contract Files.

 		Sample Road Shared-Use Path Improvements								LABOR		OTHER EXPENSES			
CPC 814 S Military Trail Deerfield Beach, FL 33442		Contract Rates								LABOR COST PER TASK	Quantity	Unit Price	COST PER TASK	TASK COSTS	
		\$200.00	\$160.00	\$140.00	\$116.00	\$76.00	\$66.00	\$126.00	\$136.00						
		Number of Staff-hours													
ACTMITY DESCRIPTION	Project Principal	Project Manager	Senior Engineer	Engineer	Staff Assistant	Surveying Drafter	Field Crew Two Person	Land Surveyor							
Task 1: Meetings															
Kick Off Meeting	8	8	8	8	16				40	\$8,040			\$6,040		
Project Management Miscellaneous	4	16	0	0	16				36	\$4,400			\$4,400		
Meetings (other) and Permitting Coordination Efforts	4	16	0	8	16				44	\$5,320			\$5,320		
Coordination with City, MPO, FPL, Broward County Parks, and FOOT	4	16	16	16	16				68	\$8,480			\$8,480		
Task Totals	20	56	24	32	64	0	0	0	188	\$	24,240.00	Task Sub total	\$24,240		
Task 2: Specific Purpose Survey															
Surveying management	8								8	\$1,200			\$1,200		
Topographic survey	8					24	32	32	90	\$11,560			\$11,560		
Baseline setup	4					16	32	16	68	\$8,120			\$8,120		
Control points and bench marks								16	32	\$6,320			\$6,320		
Cross sections every 100'	2					24	24	32	82	\$9,600			\$9,600		
Draft Submittal	4				32				36	\$3,000			\$3,000		
Final Submittal	4				24				28	\$2,400			\$2,400		
Task Totals	0	30	0	0	68	64	104	112	366	\$	42,660.00	Task Sub total	\$42,660		
Task 3: Shared-Use Path Design															
Concept Layout (Draft)	16	32	24						72	\$9,040			\$9,040		
Concept Layout (Final)	4	32	24						60	\$7,240			\$7,240		
Shared Use Path (Reports, Evaluation) - 60%	8	60	72						140	\$17,880			\$17,880		
Shared Use Path - 60% Construction Plans	4	60	72						136	\$17,280			\$17,280		
60% Construction Plans Submittal	4	16	24						44	\$5,600			\$5,600		
Cost estimates - 60% Construction Plans	2	16	24						42	\$5,300			\$5,300		
Response to comments, Comment Resolution	8	16	24						46	\$6,200			\$6,200		
Shared Use Path (Reports, Evaluation) - 90%	8	60	96						160	\$20,870			\$20,870		
Shared Use Path - 90% Construction Plans	4	60	96						162	\$20,270			\$20,270		
90% Construction Plans Submittal	4	16	24						44	\$5,600			\$5,600		
Cost estimates - 90% Construction Plans	2	16	16						34	\$4,380			\$4,380		
Submit to permitting agencies	8	16	10						40	\$5,280			\$5,280		
Response to comments, Comment Resolution	8	16	16						40	\$5,280			\$5,280		
Shared Use Path (Reports, Evaluation) - 100%	8	40	56						104	\$13,240			\$13,240		
Shared Use Path - 100% Construction Plans	8	40	56						104	\$13,240			\$13,240		
100% Construction Plans Submittal	8	16	10						40	\$5,280			\$5,280		
Cost estimates - 100% Construction Plans	8	16	16						40	\$5,280			\$5,280		
Re-submit to permitting agencies	8	16	16						40	\$5,280			\$5,280		
Response to comments, Comment Resolution	8	16	16						40	\$5,280			\$5,280		
Shared Use Path (Reports, Evaluation) - Final Submittal	8	40	40						96	\$11,400			\$11,400		
Shared Use Path - Final Submittal	8	40	40						96	\$11,400			\$11,400		
Final Plans Submittal	8	16	16						40	\$5,280			\$5,280		
Cost estimates - Final Construction Plans	8	16	16						40	\$5,280			\$5,280		
Re-submit to permitting agencies	8	16	16						40	\$5,280			\$5,280		
Project Closeout - provide relevant CADD and PDFs	8	16	16						40	\$5,280			\$5,280		
Task Totals	0	176	704	864	0	0	0	0	1732	\$	222,840.00	Task Sub total	\$222,840		
TOTAL LABOR	20	262	728	884	120	64	104	112	2204	\$	289,440.00	Task Sub total	\$ 289,440.00		
											Expenses	3%		\$ 7,236.00	
											Geotechnical Allowance		\$ 4,127.18	\$ 4,127.18	
TOTAL											Total Design Fee			\$300,803.18	

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