AGREEMENT

between

CITY OF COCONUT CREEK

and

FLYNN ENGINEERING SERVICES

for

GENERAL PROFESSIONAL ENGINEERING SERVICES RFQ NO. 07-09-25-11

This Agreement is made and entered into this _____ day of _____, 2025, 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

FLYNN ENGINEERING SERVICES, 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 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.

1.2 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.

1.3 CONSULTANT

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

1.4 CITY

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

1.5 PROJECT

The nature of the **PROJECT** is to provide Professional Engineering Services pursuant to RFQ No. 07-09-25-11, General Professional Engineering Services, Statement of Qualifications and EXHIBIT "A" – Negotiated Fee Schedule.

1.6 NOTICE TO PROCEED

A written statement issued by the CONTRACT ADMINISTRATOR directing CONSULTANT to begin work.

1.7 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.

1.8 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" – NEGOTIATED FEE SCHEDULE**.

1.9 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 Forty-Nine Thousand Nine Hundred Ninety-Nine Dollars and 99/100 (\$49,999.99). 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 \$49,999.99.

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."

1.10 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 the date first written on page 1 of this Agreement, 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.

1.11 TERMINATION

a. Termination for Cause: Immediate

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

b. Termination for Cause: Time to Correct

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

c. Termination for Convenience of City

Upon thirty (30) calendar days written notice to the **CONSULTANT** as provided in the "Notice" provisions of this Agreement, the **CITY** may without cause and without prejudice to any other right or remedy, terminate the contract for the **CITY**'S convenience whenever the **CITY** determines that such termination is in the best interest of the **CITY**. Where the contract is terminated for the convenience of the **CITY** the notice of termination to the **CONSULTANT** must state that the contract is being terminated for the convenience of the **CITY** under the termination clause and the extent of termination. The **CONSULTANT** must discontinue all work on the appointed last day of service.

1.12 AGREEMENT SUBJECT TO FUNDING

This Agreement shall remain in full force and effect only as long as the expenditures provided for in the Agreement have been appropriated by the City Commission of the CITY of Coconut Creek in the annual budget for each fiscal year of this Agreement, and is subject to termination without any penalty due to lack of funding.

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, and has selected CONSULTANT to perform the work of the specified nature as outlined in this Agreement.
- 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 CONSULTANT'S services shall consist of the tasks set forth in EXHIBIT "A," attached hereto and made a part hereof, and shall include professional services, as applicable for the PROJECT. CONSULTANT shall provide all services as set forth in EXHIBIT "A" including all necessary, incidental and related activities and services required by the Scope of Services and contemplated in CONSULTANT'S level of effort.
- 3.2 The CITY reserves the right to add or delete tasks shown in EXHIBIT "A" as deemed necessary and based on fund availability. Added Tasks will be set forth in writing in a Work Authorization.
- 3.3 CONSULTANT and CITY acknowledge that the Scope of Services 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 the services included in this AGREEMENT, 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 Scope of Services. 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.

3.4 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 **CONSULTANT** or otherwise, an employee who shall be familiar with all work contemplated under this Agreement.

3.5 INDEPENDENT CONTRACTOR

CONSULTANT is an independent contractor under this Agreement. Personal services provided by the **CONSULTANT** shall be by employees of the **CONSULTANT** and subject to supervision by the **CONSULTANT**, and not as officers, employees, or agents of the **CITY**. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement shall be those of the **CONSULTANT**.

3.6 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.
- At all times during this Agreement, CONSULTANT shall perform its obligations in a prompt, professional and businesslike manner.

3.7 CONFLICT OF INTEREST

The award of any contract hereunder is subject to the provisions of Chapter 112, Florida Statutes. **CONSULTANTS** must disclose with their bid the name of any officer, director, partner, proprietor, associate or agent who is also an officer or employee of the **CITY** or any of its agencies. Further, all **CONSULTANTS** must disclose the name of any officer or employee of the **CITY** who owns, directly or indirectly, an interest of five percent (5%) or more in the **CONSULTANT'S** firm or any of its branches or affiliate companies.

ARTICLE 4

TIME OF PERFORMANCE

- **4.1 CONSULTANT** shall perform the services described in **EXHIBIT** "A" within the time periods specified in the **PROJECT SCHEDULE** included in **EXHIBIT** "A."
- 4.2 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 the PROJECT, 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.
- 4.3 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.
- 4.4 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 and as described in EXHIBIT "A." In the event the CITY exercises the terms and conditions of 3.2 of Article 3, the contracted fees shall be adjusted accordingly.
- 5.2 The total contract amount includes full payment, including all labor, overhead, and other costs. No travel and meal costs are reimbursable unless incurred outside of Miami-Dade, Broward and Palm Beach Counties, and approved in writing in advance by the CITY. Any such costs are payable at the CITY reimbursement rate.
- 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 bill identifiable subconsultant fees at the actual fees paid by **CONSULTANT**.
- **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.
- 5.6 Payment will be made to CONSULTANT at:

FLYNN ENGINEERING SERVICES
Contact Name, Title: Tori McGrath
Address: 241 (ammercial Bluc)
City, State, Zip Code: Lauderdale by the Sea . El 33308
Prione: 954-522-1004
Email: Toria flynnengineering.com

5.7 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.

5.8 TRUTH-IN-NEGOTIATION CERTIFICATE

Signature on this Agreement by **CONSULTANT** shall act as the execution of a truth-innegotiation 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.

5.9 ANTI-COLLUSION

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

ARTICLE 6

ADDITIONAL SERVICES AND CHANGES IN SCOPE OF WORK

- 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.
- 6.3 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 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 COMPLIANCE WITH THE DAVIS-BACON ACT

- a. All transactions regarding this Agreement shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29C.F.R. pt. 5 as may be applicable. The CONSULTANT shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- b. **CONSULTANTS** are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- Additionally, CONSULTANTS are required to pay wages not less than once a week.

8.2 COMPLIANCE WITH THE COPELAND "ANTI-KICKBACK" ACT

- a. Consultant. The CONSULTANT shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this Agreement.
- b. Subcontracts. The CONSULTANT shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime CONSULTANT shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- c. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12."

8.3 COMPLIANCE WITH THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

- a. Overtime requirements. No CONSULTANT or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- b. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the CONSULTANT and any subcontractors responsible therefor shall be liable for the unpaid wages. In addition, such CONSULTANT and subcontractors shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
- c. Withholding for unpaid wages and liquidated damages. The CITY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the CONSULTANT or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime CONSULTANT, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
- d. Subcontracts. The CONSULTANT or subcontractors shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring

the subcontractors to include these clauses in any lower tier subcontracts. The prime **CONSULTANT** shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

8.4 CLEAN AIR ACT

- a. The **CONSULTANT** agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- b. The CONSULTANT agrees to report each violation to the CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- c. The **CONSULTANT** agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

8.5 FEDERAL WATER POLLUTION CONTROL ACT

- The CONSULTANT agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seg.
- b. The CONSULTANT agrees to report each violation to the CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- c. The **CONSULTANT** agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

8.6 SUSPENSION AND DEBARMENT

- a. This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the CONSULTANT is required to verify that none of the CONSULTANT'S principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- b. The CONSULTANT must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- c. This certification is a material representation of fact relied upon by the CONSULTANT. If it is later determined that the CONSULTANT did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the CONSULTANT, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

d. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

8.7 BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. § 1352 (AS AMENDED)

CONSULTANTS who apply or bid for an award of one hundred thousand (\$100,000.00) dollars or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

8.8 PROCUREMENT OF RECOVERED MATERIALS

- a. In the performance of this Agreement, the CONSULTANT shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
 - Competitively within a timeframe providing for compliance with the contract performance schedule;
 - 2) Meeting contract performance requirements; or
 - 3) At a reasonable price.
- Information about this requirement, along with the list of EPA designated items, is available at EPA's Comprehensive Procurement Guidelines website, https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program.
- c. The CONSULTANT also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."

8.9 EQUAL EMPLOYMENT OPPORTUNITY (CONSTRUCTION WORK)

During the performance of this Agreement, the CONSULTANT agrees as follows:

a. The CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The CONSULTANT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The **CONSULTANT** agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- b. The CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c. The CONSULTANT will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- d. The CONSULTANT will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e. The **CONSULTANT** will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- f. The CONSULTANT will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- g. In the event of the CONSULTANT's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the CONSULTANT may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- h. The CONSULTANT will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The CONSULTANT will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

8.9 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.

8.10 PUBLIC RECORDS

consultants 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.

- a. 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 Statutes. In accordance with state law, CONSULTANT agrees to:
 - Keep and maintain all records that ordinarily and necessarily would be required by the CITY in order to perform the services.
 - 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 Statutes, or as otherwise provided by law.
 - 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.
 - 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.
 - 5) IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'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

8.11 TRADE SECRETS AND PROPRIETARY CONFIDENTIAL BUSINESS INFORMATION

Documents submitted by **CONSULTANT** which constitute trade secrets as defined in Section 812.081, Florida Statutes, as amended from time to time, or proprietary confidential business information when held by the **CITY** as defined in Section 119.0713(5), Florida Statutes, as amended from time to time, and which are clearly marked or stamped as confidential by the

CONSULTANT at the time of submission to the CITY, will not be subject to public access. However, should a requestor of public records challenge CONSULTANT'S interpretation of the term "trade secrets" or "proprietary confidential business information," within five (5) days of such challenge, CONSULTANT must provide a separate written affidavit that includes an indemnification and release guarantee, as approved by the CITY Attorney or designee, to the CITY to support its claim that the alleged trade secrets or proprietary confidential business information actually constitutes same as defined by law. CONSULTANT must demonstrate the need for confidentiality of the documentation by showing a business advantage or an opportunity to obtain an advantage if the documentation was released. Otherwise, CONSULTANT is required to timely seek a protective order in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County to prevent the CITY'S release of the requested records.

8.12 ANTI-DISCRIMINATION

That **CONSULTANT** shall for itself, its personal representatives, successors in interests, assigns, subcontractors, and sub-lessees, as a part of the consideration hereof, hereby covenant and agree that:

- a. No person on the ground of race, color, religion, sex, national origin, age, marital status, political affiliation, familial status, disability, sexual orientation, pregnancy, or gender identity or expression, veteran or service member status shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of or performance of services described herein; and
- b. CONSULTANT, its personal representatives, successors in interests, assigns, subcontractors, and sub-lessees shall not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement with respect to hiring, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment because of race, color, religion, sex, national origin, age, marital status, political affiliation, familial status, disability, sexual orientation, pregnancy, or gender identity or expression, veteran or service member status.

8.13 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.

8.14 ASSIGNMENT

This Agreement, or any interest herein, shall not be assigned, transferred to, or otherwise encumbered by CONSULTANT, under any circumstances, without the prior written consent of CITY'S CONTRACT ADMINISTRATOR.

8.15 INSURANCE REQUIREMENTS

a. The CONSULTANT shall assume full responsibility and expense to obtain all necessary insurance as required by the CITY of Coconut Creek. Neither CONSULTANT nor any subcontractor shall commence work under this contract until they have obtained all insurance required under this section and have supplied the CITY with evidence of such coverage in the form of an insurance certificate and endorsement. The certificate must name

as additional insured the CITY of Coconut Creek and its Officers, Agents, Employees and Commission Members; and 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 insurance policies herein required of the CONSULTANT shall be written by a company with a A.M. Best rating of A-VII or better that is duly authorized and licensed to do business in the State of Florida and shall be executed by agents, thereof that are duly licensed as agents in Florida. The CONSULTANT will ensure that all subcontractors will comply with the above guidelines and will maintain the necessary coverage throughout the term of this Agreement. Policies shall be "Occurrence" form, except for the professional liability policy which is claims made. Each carrier will give the CITY thirty (30) days' notice prior to cancellation. Throughout the term of this contract, CONSULTANT and/or any and all subcontractors or anyone directly or indirectly employed by either of them shall maintain in force, at all times, insurance as follows:

1) Workers' Compensation

If the CONSULTANT is required to go on to CITY of Coconut Creek property to perform work or services as a result of this contract, it must have the 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 one hundred thousand (\$100,000.00) each accident. The Contractor's Worker's Compensation carrier will provide a Waiver of Subrogation to the CITY. The CONSULTANT shall be responsible for the payment of all deductibles and self-insured retentions. The CITY requires that the CONSULTANT purchase a bond to cover the full amount of the deductible or self-insured retention.

2) General Liability

Commercial General Liability insurance with limits not less than one million dollars (\$1,000,000.00) each occurrence 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.

3) Automobile Liability

Comprehensive or Business Automobile Liability insurance with limits not less than one million dollars (\$1,000,000.00) combined single limit for Bodily Injury and Property Damage including coverage's for owned, hired, and non-owned vehicles and/or equipment as applicable. This policy of insurance shall be written in an "occurrence" based format.

4) Information Security/Cyber Liability Insurance

CONSULTANT must provide the CITY with evidence of Information Security/Cyber Liability Insurance with, at a minimum of one million dollars (\$1,000,000.00) per occurrence written on a "Claims-Made" basis covering CITY, its employees, subcontractors and agents for expenses, claims and losses resulting from wrongful acts committed in the performance of, or failure to perform, all services under this Agreement, including, without limitation, claims, and any other payments related to electronic or physical security, breaches of confidentiality and invasion of or breaches of privacy.

Information Security/Cyber Liability Insurance shall include Internet Media Liability including cloud computing and mobile devices for protection of private or confidential

information whether electronic or non-electronic, network security and privacy; privacy against liability for system attacks, digital asset loss, denial or loss of service, introduction, implantation or spread of malicious software code, security breach, unauthorized access and use; including regulatory action expenses and notification and credit monitoring expenses.

5) Professional Liability / Errors and Omissions Coverage (If Applicable)
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 one million dollars (\$1,000,000.00) per claim and in the aggregate. "Claims-Made" forms are acceptable for Professional Liability insurance. Coverage shall include all claims arising out of the CONSULTANT'S operations or premises, any person directly or indirectly employed by the CONSULTANT, and the CONSULTANT'S obligations under indemnification under this contract. CONSULTANT acknowledges that the CITY is relying on the competence of the CONSULTANT to design the project to meet its functional intent. If it is determined during construction of the project that changes must be made due to CONSULTANT'S negligent errors and omissions, CONSULTANT shall promptly rectify them 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.

6) Builder's Risk Insurance (If Applicable)

Builder's Risk insurance is required in an amount not less than the replacement cost for the construction of the work. Coverage shall be "ALL RISK' coverage for one hundred percent (100%) of the completed value. The **CITY** reserves the right to require higher limits depending upon the scope of work under this Agreement.

7) 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 Contract, effective as of the lapse date. If insurance is not reinstated, CITY may, at its sole option terminate this Agreement effective on the date of such lapse of insurance.

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

- 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 thirty (30) days prior written notice of cancellation, non-renewal or limits to:

City of Coconut Creek Procurement Division 4800 West Copans Road Coconut Creek, Florida 33063

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

If these requirements are provided as part of a formal procurement procedure, 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.

If **CONSULTANT** is self-insured, they shall provide the **CITY** with a recent audited financial statement and description of how the self-insurance program is funded, along with a liability coverage statement signed by an authorized corporate officer.

No contract shall be executed by the CITY, nor activities under this Agreement shall commence, until the required letter of self-insurance and/or certificates of insurance have been received and approved by the Risk Manager of each party.

8.16 INDEMNIFICATION & HOLD HARMLESS

The parties agree that one percent (1%) of the total compensation paid to CONSULTANT for the work or services under this Agreement shall constitute specific consideration to CONSULTANT for the indemnification to be provided under the Agreement. The CONSULTANT shall indemnify and hold harmless the CITY employees from third party claims, suits, actions, damages, liability, and expenses (including reasonable attorneys' fees) in connection with violations of copyrighted or trademarked materials used by CONSULTANT, loss of life, bodily or personal injury, or property damage, including loss of use thereof, directly or indirectly caused by, resulting from, arising out of or occurring in connection with the operations of the CONSULTANT or its officers, employees, agents, subconsultants, or independent CONSULTANTS, excepting only such loss of life, bodily or personal injury, or property damage solely attributable to the gross negligence or willful misconduct of the CITY or its elected or appointed officials and employees. In any and all claims against the CITY, or any of their agents or employees by any employee of the CONSULTANT, any subconsultant, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph shall not be limited in any way by any limitation on this amount or type of damages compensation or benefits payable by or for the CONSULTANT or any subconsultant under Workers' Compensation Acts, Disability Benefit Acts or other Employee Benefit Acts. Nothing contained herein is intended nor shall be construed to waive CITY'S rights and immunities under the common law or Section 768.28, Florida Statutes, as amended from time to time; nor shall anything included herein be construed as consent to be sued by any third parties in any matter arising out of this Agreement. To the extent considered necessary by the Contract Administrator and the City Attorney, any sums due CONSULTANT under this Agreement may be retained by the CITY until all of the 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 the CITY. The above provisions shall survive the termination or expiration of this Agreement and shall pertain to any occurrence

during the term of this Agreement, even though the claim may be made after the termination or expiration hereof.

8.17 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.

8.18 ALL PRIOR AGREEMENTS SUPERSEDED

This document and the RFQ No. 07-09-25-11 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.

8.19 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.

8.20 DISENTANGLEMENT

CONSULTANT will complete the transition of any terminated work from **CONSULTANT** and it's subcontractors to **CITY** and/or any replacement providers **CITY** designates (collectively, the "Replacement Provider"), without causing any interruption of or adverse impact on the work, any other services and/or services provided by third parties (the "Disentanglement"). Without limiting the aforementioned obligations, **CONSULTANT** will:

- a. Cooperate by promptly taking all steps required to assist CITY in completing the Disentanglement related to the work it had previously performed.
- b. Provide all information regarding the work that these parties will need to perform the Disentanglement.
- c. Promptly and orderly conclude all work as directed. This may include the documentation of work in progress and other measures to provide an orderly transition as set forth in Labor Harmony.

8.21 LABOR HARMONY

CONSULTANT agrees that all labor employed by CONSULTANT, its agents or subcontractors for work on CITY property shall be in harmony with all other labor being used by CITY or other contractors working on CITY'S property. CONSULTANT agrees to give CITY immediate notice of any threatened or actual dispute and will provide assistance as determined necessary by CITY to resolve any such dispute. CONSULTANT, its agents or subcontractors, shall remove from CITY'S property any person objected to by CITY in association with the work.

8.22 NOTICE

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. Notice will be deemed received by the party for whom it is intended after the USPS certified mail process is complete. For the present, the parties designate the following as the respective places for giving notice, to wit:

CITY

City Manager
City of Coconut Creek
4800 West Copans Road
Coconut Creek, Florida 33063
With a copy to the City Attorney at
the same address

CONSULTANT

Jay Flynn, P.E., CFM, President Flynn Engineering Services 241 Commercial Boulevard Lauderdale-By-The-Sea, FL 33308

Phone: 954-730-0707

Email: jflynn@flynnengineering.com

8.23 THIRD PARTY BENEFICIARIES

Neither **CONSULTANT** nor **CITY** 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.

8.24 GOVERNING LAW

This Agreement shall be construed in accordance with the laws of the State of Florida. Venue for any action shall be located exclusively in the Seventeenth Judicial Circuit in and for Broward County, Florida and that all litigation between them in the federal courts shall take place exclusively in the United States District Court for the Southern District of Florida.

8.25 WAIVER OF JURY TRIAL

CONSULTANT AND THE CITY EACH HEREBY EXPRESSLY KNOWINGLY, VOLUNTARITY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY CIVIL LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND/OR THE PRODUCTS OR SERVICES PROVIDED HEREUNDER, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL 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 REASOANBLE 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.

8.26 UNCONTROLLABLE CIRCUMSTANCES ("FORCE MAJEURE")

As used herein, "Force Majeure" means the occurrence of any event that prevents or delays the performance by either party of its obligations hereunder which are beyond the reasonable control of the non-performing party. Examples of "Force Majeure" include, but are not limited to, acts of God, natural disasters or emergency governmental action. To invoke this Paragraph, immediate written notice, consistent with the "Notice" provisions of this Agreement, must be sent by the non-performing party describing the circumstances constituting force majeure and proof that the non-performance or delay of performance is a direct and reasonable result of such event(s). The CITY reserves its right to challenge the invocation by the CONSULTANT within five (5) calendar days of receipt of said notice, in such case uninterrupted performance in

required. However, in the event the invocation is accepted by the CITY, the CONSULTANT must take all reasonable measures to mitigate any and all resulting damages, costs, delays, or disruptions to the CONSULTANT'S performance requirements under this Agreement. All obligations must resume when the circumstances of such event(s) have subsided, or other arrangements are made pursuant to a written amendment to this Agreement.

8.27 CONDITIONS FOR EMERGENCY/HURRICANE OR DISASTER

It is hereby made a part of this Agreement that before, during and after a public emergency, disaster, hurricane, flood, pandemic or other substantial loss that the CITY will require a "first priority" basis for goods and services. It is vital and imperative that the majority of citizens are protected from any emergency situation which threatens public safety and health, as determined by the City Manager or his/her designee. CONSULTANT agrees to rent/sell/lease all goods and services to the CITY or other governmental entities, as opposed to a private citizen or corporation, on a first priority basis. The CITY expects to pay a fair and reasonable price for all products/services in the event of a disaster, pandemic, emergency or hurricane. Awarded CONSULTANT must furnish a twenty-four (24) hour telephone number in the event of such an emergency.

8.28 DRUG-FREE WORKPLACE PROGRAMS

Preference shall be given to businesses with Drug-Free Workplace Programs. Whenever two (2) or more bids which are equal with respect to price, quality and service are received by the CITY for the procurement of commodities or contractual services, a bid received from a business that completes the attached Drug-Free Workplace form certifying that it is a Drug-Free Workplace shall be given preference in the award process.

8.29 PUBLIC ENTITY CRIMES STATEMENT

Pursuant to Section 287.133(2)(a), Florida Statutes, as amended from time to time, CONSULTANT by submitting its Response, hereby certifies that neither it nor its affiliate(s) have been placed on the convicted vendor list following a conviction for a public entity crime. If placed on that list after submitting its Response, CONSULTANT must notify the CITY immediately and is prohibited from pursuing the submitted Bid; and must not contract with any public entity to provide any goods or services; must not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; must not submit bids on leases of real property to a public entity; must not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and, must not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, as amended from time to time, for Category TWO (\$35,000) for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

8.30 SCRUTINIZED COMPANIES PURSUANT TO SECTIONS 287.135, 215.473, AND 287.138 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 a list created pursuant to Section 215.473, Florida Statutes, as amended, 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, Fla. Stat., 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, Fla. Stat., as amended. Beginning January 1, 2024, the City must not enter in to or renew any contract that grants access to an individual's personal identifying information to

any Foreign Country of Concern such as: People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic, unless the CONSULTANT provides the City with an affidavit signed by an authorized representative of the CONSULTANT, under penalty of perjury, attesting that the CONSULTANT does not meet any of the criteria in subparagraphs (2)(a)-(c) of Section 287.138, Florida Statutes, as may be amended. Beginning January 1, 2025, the City must not extend or renew any contract that grants access to an individual's personal identifying information unless the CONSULTANT provides the City with an affidavit signed by an authorized representative of the CONSULTANT, under penalty of perjury, attesting that the CONSULTANT does not meet any of the criteria in subparagraphs (2)(a)-(c) of Section 287.138, Florida Statutes, as may be amended. Violations of this Section will result in termination of this Agreement and may result in administrative sanctions and penalties by the Office of the Attorney General of the State of Florida.

Flynn Engineering Services not owned	by the government of a Foreign Country of Concern,
is not organized under the laws of nor ha	s its Principal Place of Business in a Foreign Country reign Country of Concern does not have a Controlling
Under penalties of perjury, I declare that stated in it are true.	have read the foregoing statement and that the facts
Jay Flynn Printed Name:	Title: President
Signature: Jay m Flum	Date: 9/30/25

8.31 E-VERIFY

Effective January 1, 2021, public and private employers, contractors and subcontractors must require 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:

- All persons employed by CONSULTANT to perform employment duties within Florida during the term of the contract; and
- b. All persons (including subvendors/subconsultants/subcontractors) assigned by CONSULTANT to perform work pursuant to the contract with the CITY. 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.

By entering into this Agreement, 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 subconsultant to provide an affidavit to **CONSULTANT** attesting that the subconsultant does not employ, contract with, or subcontract with, an unauthorized alien. **CONSULTANT** agrees to maintain a copy of such affidavit for the duration of this Agreement. Failure to comply with this paragraph will result in the termination of this Agreement as provided in Section 448.095, Florida Statutes, as amended, and **CONSULTANT** may not be awarded a public contract for at least one (1) year after the date on which the Agreement was terminated. **CONSULTANT** will also be liable for any additional

costs to **CITY** incurred as a result of the termination of this Agreement in accordance with this Paragraph.

8.32 ANTITRUST VIOLATIONS; DENIAL OR REVOCATION UNDER SECTION 287.137, FLORIDA STATUTES

Pursuant to Section 287.137, Florida Statutes, as may be amended, a person or an affiliate who has been placed on the antitrust violator vendor list (electronically published and updated quarterly by the State of Florida) following a conviction or being held civilly liable for an antitrust violation may not submit a bid, proposal, or reply for any new contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply for a new contract with a public entity for the construction or repair of a public building or public work; may not submit a bid, proposal, or reply on new leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a new contract with a public entity; and may not transact new business with a public entity. By entering into this Agreement, CONSULTANT certifies that neither it nor its affiliate(s) are on the antitrust violator vendor list at the time of entering this Agreement. False certification under this paragraph or being subsequently added to that list will result in termination of this Agreement, at the option of the CITY consistent with Section 287.137, Florida Statutes, as amended.

8.33 PROHIBITED TELECOMMUNICATIONS EQUIPMENT

CONSULTANT represents and certifies that it and its applicable subconsultant do not and will not use any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, as such terms are used in 48 CFR §§ 52.204-24 through 52.204-26. By executing this Agreement, CONSULTANT represents and certifies that CONSULTANT and its applicable subconsultant(s) shall not provide or use such covered telecommunications equipment, system, or services for any scope of work performed for the CITY for the entire duration of this Agreement. If CONSULTANT is notified of any use or provisions of such covered telecommunications equipment, system, or services by a subconsultant at any tier or by any other source, CONSULTANT must promptly report the information in 40 CFR § 52.204-25(d)(2) to City.

8.34 JOINT PREPARATION

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 will be interpreted strictly against the party preparing same does not apply herein due to the joint contributions of both Parties.

8.35 INTERPRETATION

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

8.36 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached to, referenced by, or incorporated in this Agreement and any provision of Articles 1 through 8 of this Agreement, the provisions contained in Articles 1 through 8 shall prevail and be given effect.

8.37 SEVERABILITY; WAIVER OF PROVISIONS

Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

8.38 REMEDIES

a. Damages

The CITY reserves the right to recover any ascertainable actual damages incurred as a result of the failure of the CONSULTANT to perform in accordance with the requirements of this Agreement, or for losses sustained by the CITY resultant from the CONSULTANT'S failure to perform in accordance with the requirements of this Agreement.

b. Correction of Work

If, in the judgment of the CITY, work provided by the CONSULTANT does not conform to the requirements of this Agreement, or if the work exhibits poor workmanship, the CITY reserves the right to require that the CONSULTANT correct all deficiencies in the work to bring the work into conformance without additional cost to the CITY, and / or replace any personnel who fail to perform in accordance with the requirements of this Agreement. The CITY is the sole judge of non-conformance and the quality of workmanship.

8.39 SIGNATORY AUTHORITY

The **CONSULTANT** shall provide the **CITY** with copies of requisite documentation evidencing that the signatory for **CONSULTANT** has the authority to enter into this Agreement.

8.40 GRATUITIES AND KICKBACKS

a. Gratuities

It is unethical for any person to offer, give, or agree to give any employee or for any employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, audit, or in any other advisory capacity in any proceeding or application, request for ruling, determination claim or controversy, or other particular matter, pertaining to any program requirement or an Agreement or subcontract, or to any solicitation or proposal therefore.

b. Kickbacks

It is unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a sub-contractor under a Contract to **CONSULTANT** or higher tier sub-contractor any person associated therewith, as an inducement of the award of a subcontract or order.

c. Contract Clause

The prohibition against gratuities and kickbacks prescribed in this section must be conspicuously set forth in every contract and subcontract and solicitation therefore.

8.41 AUDIT RIGHTS

The CITY reserves the right to audit the records of the CONSULTANT for the commodities and/or services provided under the Agreement at any time during the performance and term of the Agreement and for a period of five (5) years after completion and acceptance by the CITY. If required by the CITY, the CONSULTANT agrees to submit to an audit by an independent certified public accountant selected by the CITY. The CONSULTANT must allow the CITY to inspect, examine and review the records of the CONSULTANT in relation to this Agreement at any and all times during normal business hours during the term of the Agreement.

8.42 FOREIGN GIFTS AND CONTRACTS

The **CONSULTANT** must comply with any applicable disclosure requirements in Section 286.101, Florida Statutes. Pursuant to Section 268.101(7)(b), Florida Statutes, determining a third or subsequent violation by an entity other than a state agency or political subdivision must automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission Governor and Cabinet per §14.202, Florida Statutes, for "good cause."

8.43 ENVIRONMENTAL/SOCIAL ACTIVISM UNDER SECTION 287.05701, FLORIDA STATUTES Pursuant to Section 287.05701, Florida Statutes, as may be amended, the CITY cannot give preference to a consultant based on social, political or ideological interests as defined in the statute. CONSULTANT is also prohibited from giving preference to any of its subconsultants based on the above referenced factors. Violations of this Paragraph will result in termination of this Agreement and may result in administrative sanctions and penalties by the Office of the Attorney General of the State of Florida.

8.44 HUMAN TRAFFICKING

When an agreement is executed, renewed, or extended between a nongovernmental entity and a governmental entity, the nongovernmental entity must provide the governmental entity with an affidavit signed by an officer or a representative of the nongovernmental entity under penalty or perjury attesting that the nongovernmental entity does not use coercion for labor or services as defined in Section 787.06, Florida Statutes.

Flynn Engineering Services	does not use coercion for labor or services as defined
in Section 787.06, Florida Statutes	s, entitled "Human Trafficking". Under penalties of perjury, I
declare that I have read the forego	ing statement and that the facts stated in it are true.
a lay Elypp	Procident
Printed Name: Jay Flynn	Title: President
Signature:	Date: 9/30/25

8.45 TAXES

CONSULTANT shall be responsible for all taxes of any kind. An IRS W-2 form will not be provided. The **CITY** will provide an IRS Form 1099 required by law. **CONSULTANT** recognizes that no Federal Income Tax or Social Security will be withheld. However, if **CONSULTANT** requests in writing that Federal Income tax be withheld, the **CITY** will deduct the Federal Income tax withheld and remit to the IRS.

8.46 OWNERSHIP & USE OF DOCUMENTS

Notwithstanding the completion, suspension, termination, or expiration of this Agreement, the following provisions in this section shall apply with respect to ownership of documents:

- a. Instruments of Service. CONSULTANT use during the course of a project of certain proprietary documentation, including drawings, diagrams, maps, perspective renderings, other artworks, graphic aids, and various written materials. Subject to CITY'S rights hereunder, CONSULTANT and CITY are deemed the joint owners of this documentation and reserve all rights of ownership and legal protections, including copyright, which may be available under common law and statutory law.
- b. Final Work Products. Final work products produced during the course of a project under this Agreement shall be delivered to and become property of the CITY. CITY shall have a right to retain, use, and reproduce final work products. The provisions of this paragraph shall survive the expiration or termination of this Agreement.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties respective dates under each signature. CITY designee and FLYNN ENGINEERING (President, C	OF COCONUT CREEK, through	its City Manager or and through its
CITY OF COCONUT CREEK		
ATTEST:	Sheila N. Rose City Manager	Date
Joseph J. Kavanagh Date City Clerk		
	Approved as to form and lega	I sufficiency:
	Terrill C. Pyburn City Attorney	Date
[Consultant's	Signature to Follow]	

CONSULTANT		
ATTEST:	Flynn Engineering Services Company Name	
Kinlerly Hun / (Corporate Secretary)	Signature of President/Owner	Date
yeorporate ecorotally)	Cignatare of Production	Date
Kimberly L. Flynn Type/Print Name of Corporate Secretary	Jay M Flynn, President Name, Title	
(CORPORATE SEAL)		
CORPORATE ACKNOWLEDGEMENT		
COUNTY OF Broward:		
The foregoing instrument was acknowledged notarization, this3re_ day of octobe	before me by means of physical presence of the	or □ online
	(type of authority, e.g. officer, trustee	e, etc.) for
Flynn Engineering Services pd (co.	mpany name). Signature of Notary P State of Florida at L	
VICTORIA MCGRATH MY COMMISSION # HH 489599 EXPIRES: February 6, 2028	Print, Type or St Name of Notary P	ublic e or

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)	\$310.00 / per hour
Senior Engineer (PE registered)	\$245.00 / per hour
Land Surveyor (PLS registered)	\$200.00 / per hour
Landscape Architect (State Registered)	\$220.00 / per hour
Project Manager	\$250.00 / per hour
Engineer	\$170.00 / per hour
Environmental Scientist	\$180.00 / per hour
Planner	\$150.00 / per hour
Senior Planner	\$215.00 / per hour
Technician	\$125.00 / per hour
Drafter/GIS	\$130.00 / per hour
Field Inspector	\$130.00 / per hour
Staff Assistant	\$105.00 / per hour
Construction Manager	\$195.00 / per hour
Engineer Analyst (EIT)	\$140.00 / per hour