

AGREEMENT

Between

City of Fort Lauderdale

and

EDSA, INC.

for

CONSULTANT SERVICES

for Project

LAS OLAS BOULEVARD CORRIDOR IMPROVEMENT PROJECT

## **AGREEMENT**

THIS IS AN AGREEMENT made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between:

CITY OF FORT LAUDERDALE, a municipal  
Corporation of the State of Florida, (hereinafter  
referred to as "CITY")

and

EDSA, INC., a Florida Corporation (hereinafter  
referred to as "CONSULTANT").

WHEREAS, the City Commission of the City of Fort Lauderdale, Florida at its meeting of \_\_\_\_\_, 20\_\_\_\_ authorized by motion the execution this Agreement between CONSULTANT and CITY authorizing the performance of services in connection with an Agreement for Design and Implementation of Las Olas Boulevard Corridor Improvements Consultant Services - P11900, RFQ No. 636-11178 (the "Agreement"); and

WHEREAS, the CONSULTANT is willing and able to render professional services for such project for the compensation and on the terms hereinafter set forth; and

NOW, THEREFORE, in consideration of the mutual covenants, agreements, terms, and conditions contained herein, the parties hereto, do agree as follows:

### ARTICLE 1 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 AGREEMENT: Means this document between the CITY and CONSULTANT dated \_\_\_\_\_, 20\_\_\_\_ and any duly authorized and executed Amendments to Agreement.
- 1.2 CERTIFICATE FOR PAYMENT: A statement by CONSULTANT based on observations at the site and on review of documentation submitted by the Contractor that by its issuance recommends that CITY pay identified amounts to the Contractor for services performed by the Contractor at the Project.
- 1.3 CHANGE ORDER: A written order to the Contractor, addressing modifications to the Contract Documents, and establishing the basis of payment and contract time adjustment, if any, for the work affected by such modifications. The CONSULTANT may review and make recommendations to the CITY on any proposed Change Orders, for approval or other appropriate action by the CITY.

- 1.4 CITY: The City of Fort Lauderdale, a municipal corporation of the State of Florida.
- 1.5 CITY MANAGER: The City Manager of the City of Fort Lauderdale, Florida.
- 1.6 COMMISSION: The City Commission of the City of Fort Lauderdale, Florida, which is the governing body of the CITY government.
- 1.7 CONSTRUCTION COST: The total construction cost to CITY of all elements of the Project designed or specified by the CONSULTANT.
- 1.8 CONSTRUCTION COST LIMIT: A maximum construction cost limit established by the CITY defining the maximum budget amount to which the final construction documents should be designed so as not to exceed.
- 1.9 CONSTRUCTION DOCUMENTS: Those working drawings and specifications and other writings setting forth in detail and prescribing the work to be done, the materials, workmanship and other requirements for construction of the entire Project, including any bidding information.
- 1.10 CONSULTANT: EDSA, INC, the CONSULTANT selected to perform professional services pursuant to this Agreement.
- 1.11 CONTRACT ADMINISTRATOR: The Public Works Director of the City of Fort Lauderdale, or his designee. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the Contract Administrator.
- 1.12 CONTRACTOR: One or more individuals, firms, corporations or other entities identified as such by a written agreement with CITY ("Contract for Construction") to perform the construction services required to complete the Project.
- 1.13 ERROR: A mistake in design, plans and/or specifications that incorporates into those documents an element that is incorrect and is deficient from the standard of care that a professional engineer in similar circumstances, working on a similar project and location would have exercised. Also includes mistakes in design, plans, specifications and/or shop drawings review that lead to materials and/or equipment being ordered and/or delivered where additional costs are incurred.
- 1.14 FINAL STATEMENT OF PROBABLE CONSTRUCTION COSTS: A final cost estimate prepared by CONSULTANT during the Final Design Phase of the Project, based upon the final detailed Construction Documents of the Project.
- 1.15 NOTICE TO PROCEED: A written Notice to Proceed with the Project issued by the Contract Administrator.

- 1.16 OMISSION: A scope of work missed by the CONSULTANT that is necessary for the Project, including a quantity miscalculation, which was later discovered and added by Change Order and which is deficient from the standard of care that a professional engineer in similar circumstances, working on a similar project and location would have exercised. Also includes design that was wrong, but was corrected after award to the Contractor, but before the construction process was materially affected.
- 1.17 ORIGINAL CONTRACT PRICE: The original bid and/or contract price as awarded to a Contractor based upon the CONSULTANT'S final detailed Construction Documents of the Project.
- 1.18 PLANS AND SPECIFICATIONS: The documents setting forth the final design plans and specifications of the Project, including architectural, civil, structural, mechanical, electrical, communications and security systems, materials, lighting equipment, site and landscape design, and other essentials as may be appropriate, all as approved by CITY as provided in this Agreement.
- 1.19 PRELIMINARY PLANS: The documents prepared by the CONSULTANT consisting of preliminary design drawings, renderings and other documents to fix and describe the size and character of the entire Project, and the relationship of Project components to one another and existing features.
- 1.20 PROJECT: An agreed scope of work for accomplishing a specific plan or development. This may include, but is not limited to, planning, architectural, engineering, and construction support services. The services to be provided by the CONSULTANT shall be as defined in this Agreement and further detailed in Task Orders for individual projects or combinations of projects. The Project planning, design and construction may occur in separate phases and Task Orders at the CITY's discretion.
- 1.21 RESIDENT PROJECT REPRESENTATIVE: Individuals or entities selected, employed, compensated by and directed to perform services on behalf of CITY, in monitoring the Construction Phase of the Project to completion.
- 1.22 TASK ORDER: A document setting forth a detailed scope of services to be performed by CONSULTANT upon authorization of the CITY.
- 1.23 TIME OF COMPLETION: Time in which the entire work shall be completed for each Task Order.

## 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 hereto, the following statements, representations and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions of this Agreement 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 Pursuant to Section 287.055, Florida Statutes, CITY has formed a Committee to evaluate the CONSULTANT's statement of qualifications and performance data to ensure that the CONSULTANT 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 services hereunder.

### ARTICLE 3 SCOPE OF SERVICES

- 3.1 The CONSULTANT shall perform the following professional services: To act as an extension of the City Engineering staff and assist with the design and implementation of the Las Olas Boulevard Corridor Improvement Project, more specifically described in Exhibit "A," Scope of Services, attached hereto and incorporated herein. CONSULTANT shall provide all services 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 CITY and CONSULTANT acknowledge that the Scope of Services does not delineate every detail and minor work tasks required to be performed by CONSULTANT to complete the Project, additional details for such work shall be included in Task Orders issued pursuant to this Agreement. Notice to Contract Administrator does not constitute authorization or approval by CITY to perform the work only an approved and fully executed Task Order constitutes authorization and approval by the City to perform work. 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 GENERAL PROVISIONS

- 4.1 Negotiations pertaining to the professional design, engineering, architectural and project management services to be performed by the CONSULTANT have been undertaken between CONSULTANT and a committee of CITY representatives pursuant to Section 287.055, Florida Statutes, and this Agreement incorporates the results of such negotiation.
- 4.2 CONSULTANT shall include CITY's specific Task Order number as part of the heading on all correspondence, invoices and drawings. All correspondence shall be directed specifically to the Contract Administrator.

### ARTICLE 5 TASK ORDERS SERVICES

- 5.1 Task Orders for services shall be jointly prepared by the CITY and CONSULTANT defining the detailed scope of services to be provided for the

Project. Each Task Order shall be separately numbered and approved in accordance with this Agreement and all applicable CITY code requirements. These Task Orders shall be considered supplemental to the general description of basic services as described in Exhibit "A" but shall in no event exceed the parameters set forth in Exhibit A.

- 5.2 Under all Task Orders and Projects, CITY may require the CONSULTANT, by specific written authorization, and for mutually agreed upon additional compensation, to provide or assist in obtaining one or more of the following special services. These services may include, at the discretion of the CITY, the following items:
  - 5.2.1 Providing additional copies of reports, contract drawings and documents; and
  - 5.2.2 Assisting CITY with litigation support services arising from the planning, development, or construction.
- 5.3 Prior to initiating the performance of any services under this Agreement, CONSULTANT must receive a written Notice to Proceed / Purchase Order from the CITY. The CONSULTANT must receive the approval of the Contract Administrator or his designee in writing prior to beginning the performance of services in any subsequent Task Order under this Agreement.
- 5.4 In the event CONSULTANT is unable to complete the services on the date or dates as provided in this Agreement, or subsequent Task Orders, because of delays resulting from the untimely review and approval by CITY and other governmental authorities having jurisdiction over the Project, CITY may grant an appropriate extension of time for completion of the work. It shall be the responsibility of the CONSULTANT to notify the CITY promptly in writing whenever a delay in approval by a governmental agency is anticipated or experienced, and to inform the CITY of all facts and details related to the delay.
- 5.5 If, in the opinion of the CITY, the CONSULTANT is improperly performing the services under a specific Task Order, or if at any time the CITY shall be of the opinion that said Task Order is being unnecessarily delayed and will not be completed within the agreed upon time, the CITY shall notify the CONSULTANT in writing. The CONSULTANT has within ten (10) working days thereafter to take such measures as will, in the judgment of the CITY, ensure satisfactory performance and completion of the work. If the CONSULTANT fails to cure within the ten (10) working days, the CITY may notify the CONSULTANT to discontinue all work under the specified Task Order. The CONSULTANT shall immediately respect said notice and stop said work and cease to have any rights in the possession of the work and shall forfeit the Task Order and any remaining monies. The CITY may then decide, after City Commission approval, to issue a new Task Order for the uncompleted work to another consultant using the remaining funds. Any excess costs arising therefrom over and above the original supplemental Task Order price shall be charged against CONSULTANT, as the original CONSULTANT.

ARTICLE 6  
TERM OF AGREEMENT; TIME FOR PERFORMANCE

- 6.1 CONSULTANT shall perform the basic services described in Exhibit "A" within the time periods specified in mutually agreed upon Project schedules, developed before commencement of work and made a part of each individual Task Order. All said time periods in the Project schedule for each Task Order shall commence from the date of the Notice to Proceed for such services.
- 6.2 Prior to beginning the performance of any services under this Agreement, CONSULTANT must receive a Notice to Proceed and a purchase order. CONSULTANT must receive written approval from the Contract Administrator prior to beginning the performance of services in any subsequent phases of the Agreement. Prior to granting approval for CONSULTANT to proceed to a subsequent phase, the Contract Administrator may, at his or her sole option, require CONSULTANT to submit itemized deliverables for the Contract Administrator's review.
- 6.3 In the event CONSULTANT is unable to complete the above services because of delays resulting from untimely review by CITY or other governmental authorities having jurisdiction over the Project, and such delays are not the fault of CONSULTANT, or because of delays which were 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 the CONSULTANT to notify CITY promptly in writing whenever a delay in approval by a governmental agency is anticipated or experienced, and to inform CITY of all facts and details related to the delay.
- 6.4 The time for the performance of services described in Exhibit "A," Scope of Services and supplemental Task Orders shall be negotiated by the CITY and the CONSULTANT as the services are requested and authorized by the CITY.
- 6.5 The Term of this Agreement shall be limited to the time required to complete the Basic Services of the Project and any additional Project related Task Orders for additional services.

ARTICLE 7  
COMPENSATION AND METHOD OF PAYMENT

7.1 AMOUNT AND METHOD OF COMPENSATION

7.1.1 Not To Exceed Amount Compensation

CITY agrees to pay CONSULTANT as compensation for performance of basic services as related to Exhibit "A" required under the terms of this Agreement up to a Not to Exceed Amount of \$4,380,000.00, and to reimburse CONSULTANT for Reimbursables as described in Section 7.2,

up to a Not to Exceed Amount of \$120,000.00, for a total Not to Exceed Amount of \$4,500,000.00. It is agreed that the method of compensation is that of "Not to Exceed Amount" which means that CONSULTANT shall perform all services set forth in Exhibit "A" for total compensation in the amount of or less than that stated above. The total hourly rates payable by CITY for each of CONSULTANT's employee categories are shown on Exhibit "B." The total hourly rates payable by CITY for each of CONSULTANT's employee categories are shown on Exhibit "B."

## 7.2 REIMBURSABLES

7.2.1 Direct non-salary expenses, entitled Reimbursables, directly attributable to the Project will be charged at actual cost. Reimbursable expenses are in addition to the compensation for basic services and include actual expenditures made by the CONSULTANT and the CONSULTANT'S employees directly attributable to the Project and will be charged at actual cost, without reference to the professional service fees above. CITY shall not withhold retainage from payments for Reimbursable Expenses. CONSULTANT shall be compensated for Reimbursables associated with a particular Task Order only up to the amount allocated for such Task Order. Any reimbursable or portion thereof which, when added to the Reimbursables related to a particular Task Order previously billed, exceeds the amount allocated for such Task Order shall be the responsibility of the CONSULTANT unless otherwise agreed to in writing by the Contract Administrator. Travel and subsistence expenses for the CONSULTANT, his staff and subconsultants and communication expenses, long distance telephone, courier and express mail between CONSULTANT's and subconsultants' various offices are not reimbursable under this Agreement. Reimbursables shall include only the following listed expenses unless authorized in writing by the Contract Administrator:

A. Cost of reproduction, postage and handling of drawings and specifications which are required to deliver services set forth in this Agreement, excluding reproductions for the office use of the CONSULTANT. Reimbursable printing and photocopying expenses shall include only those prints or photocopies of original documents which are (i) exchanged among CONSULTANT, CITY and other third parties retained or employed by any of them or (ii) submitted to CITY for review, approval or further distribution. Documents, which are reproduced for CONSULTANT's internal drafts, reviews, or other purposes, are not eligible for reimbursement.

B. Identifiable testing costs approved by Contract Administrator.

C. All permit 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.



D. Overnight Delivery/Courier Charges (when CITY requires/requests this service).

- 7.2.2 Reimbursable subconsultant expenses are limited to the items described above when the subconsultant agreement provides for reimbursable expenses. A detailed statement of expenses must accompany any request for reimbursement. Local travel to and from the Project site or within the Tri-County Area will not be reimbursed.
- 7.2.3 It is acknowledged and agreed to by CONSULTANT that the dollar limitation set forth in each Task Order is a limitation upon, and describes the maximum extent of CITY's obligation to reimburse CONSULTANT for direct, nonsalary expenses, but does not constitute a limitation, of any sort, upon CONSULTANT's obligation to incur such expenses in the performance of services hereunder. If CITY or Contract Administrator requests CONSULTANT to incur expenses not contemplated in the amount for Reimbursables, CONSULTANT shall notify Contract Administrator in writing before incurring such expenses. Any such expenses shall be reviewed and approved by CITY prior to incurring such expenses.

### 7.3 METHOD OF BILLING

#### 7.3.1 Not To Exceed Amount Compensation

CONSULTANT shall submit billings, which are identified by the specific project number on a monthly basis in a timely manner for all salary costs and Reimbursables 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 Reimbursables by category and identify same as to 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 Reimbursables, a copy of said approval shall accompany the billing for such Reimbursables. The statement shall show a summary of salary 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, as identifiable to the Project. Except for meals and travel expenses, it shall be deemed unacceptable for the CONSULTANT to modify the invoice or receipt by adding a project number or other identifier. 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, Reimbursables by category, and subconsultant fees on a task basis, so

that total hours and costs by task may be determined.

#### 7.4 METHOD OF PAYMENT

- 7.4.1 CITY shall pay CONSULTANT in accordance with the Florida Prompt Payment Act. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by Contract Administrator.
- 7.4.2 CITY will review CONSULTANT's invoices and, if inaccuracies or errors are discovered in said invoice, CITY will inform CONSULTANT within ten (10) working days by fax and/or by email of such inaccuracies or errors and request that revised copies of all such documents be re-submitted by CONSULTANT to CITY.
- 7.4.3 Upon mutual agreement by both CITY and CONSULTANT, payment shall be made by CITY to CONSULTANT using a CITY P-Card. If payment is not made using a CITY P-Card, payment will be made to CONSULTANT at the following address:

EDSA, Inc  
1512 E. Broward Boulevard – Suite 110  
Fort Lauderdale, Florida 33301

### ARTICLE 8 AMENDMENTS AND CHANGES IN SCOPE OF SERVICES

- 8.1 No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written Amendment prepared with the same formality as this Agreement and executed by the CITY and CONSULTANT.
- 8.2 CITY or CONSULTANT may request changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under a Task Order. Such changes must be contained in a written amendment, executed by the parties hereto, with the same formality and of equal dignity herewith, prior to any deviation from the terms of the Task Order including the initiation of any additional services. CITY shall compensate CONSULTANT for such additional services as provided in Article 7.
- 8.3 In the event a dispute between the Contract Administrator and CONSULTANT arises over whether requested services constitute additional services and such dispute cannot be resolved by the Contract Administrator and CONSULTANT, such dispute shall be promptly presented to the City Manager for resolution. The City Manager's decision shall be final and binding on the parties for amounts in the aggregate under \$100,000 per project. In the event of a dispute in an amount over \$100,000, the parties agree to use their best efforts to settle such dispute. To this effect, they shall consult and negotiate with each other, in good

faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If they do not reach such solution within a period of sixty (60) days, then upon notice to the other, either party may commence litigation to resolve the dispute in Broward County, Florida. Any resolution in favor of CONSULTANT shall be set forth in a written document in accordance with Section 8.2 above. During the pendency of any dispute, CONSULTANT shall promptly perform the disputed services.

## ARTICLE 9 CONSULTANT'S RESPONSIBILITIES

- 9.1 The CONSULTANT, following the CITY's approval of the Construction Documents and of the Final Statement of Probable Construction Costs, shall, when so directed and authorized by the CITY, assist the CITY in obtaining bids or negotiated proposals and assist in awarding and preparing contracts for construction. If requested, the CONSULTANT shall review and analyze the proposals received by the CITY, and shall make a recommendation for any award based on CITY's Purchasing Ordinance.
- 9.2 Should the lowest responsible, responsive proposal exceed the Final Statement of Probable Construction Costs by less than 10%, CONSULTANT, at no additional cost to the CITY, shall meet with the CITY's representatives and work to reduce costs to bring the Original Contract Price within the Final Statement of Probable Construction Costs. Should the lowest responsible, responsive proposal exceed the Final Statement of Probable Construction Costs by 10% or more, CONSULTANT shall, at the CITY's direction, redesign each Project and/or work with the CITY to reduce the costs to within the Final Statement of Probable Construction Costs at no additional expense to the CITY. If negotiations between the CITY and the CONSULTANT have not commenced within three months after completion of the final design phase, or if industry-wide prices are changed because of unusual or unanticipated events affecting the general level of prices or times of delivery in the construction industry, the established Construction Cost Limit may be adjusted in accordance with the applicable change in the Construction Cost Index for Twenty Cities from the date of completion of the final design phase and the date on which proposals are sought, as published monthly in "Engineering News Record". If each Project scope and design is expanded by the CITY after the CONSULTANT renders the estimated Construction Cost of the Plans and Specifications, the CONSULTANT shall not be responsible for any redesign without compensation.
- 9.3 The CONSULTANT shall provide the CITY with a list of recommended, prospective proposers.
- 9.4 The CONSULTANT shall attend all pre-proposal conferences.
- 9.5 The CONSULTANT shall recommend any addenda, through the Contract Administrator, as appropriate to clarify, correct, or change proposal documents.

- 9.6 If pre-qualification of proposers is required as set forth in the request for proposal, CONSULTANT shall assist the CITY, if requested, in developing qualification criteria, review qualifications and recommend acceptance or rejection of the proposers. If requested, CONSULTANT shall evaluate proposals and proposers, and make recommendations regarding any award by the CITY.
- 9.7 The CITY shall make decisions on all claims regarding interpretation of the Construction Documents, and on all other matters relating to the execution and progress of the work after receiving a recommendation from the CONSULTANT. The CONSULTANT shall check and approve samples, schedules, shop drawings and other submissions for conformance with the concept of each Project, and for compliance with the information given by the Construction Documents. The CONSULTANT may also prepare Change Orders, assemble written guarantees required of the Contractor, and approve progress payments to the Contractor based on each Project Schedule of Values and the percentage of work completed.
- 9.8 The CITY shall maintain a record of all Change Orders which shall be categorized according to the various types, causes, etc. that it may be determined are useful or necessary for its purpose. Among those shall be Change Orders identified as architectural/engineering Errors or Omissions.
- 9.8.1 Unless otherwise agreed by both parties in writing, it is specifically agreed that any change to the work identified as an Error on the part of the CONSULTANT shall be considered for purposes of this Agreement to be an additional cost to the CITY which would not be incurred without the Error.
- 9.8.2 Unless otherwise agreed by both parties in writing, it is further specifically agreed for purposes of this Agreement that fifteen percent (15%) of the cost of Change Orders for any item categorized as an Omission shall be considered an additional cost to the CITY which would not be incurred without the Omission. So long as the total of those two numbers (Change Order costs of Errors plus fifteen percent (15%) of Omissions) remains less than two percent (2%) of the total Construction Cost of the Project, the CITY shall not look to the CONSULTANT for reimbursement for Errors and Omissions.
- 9.8.3 Should the sum of the two as defined above (cost of Errors plus fifteen percent (15%) of the cost of Omissions) exceed two percent (2%) of the Construction Cost, the CITY shall recover the full and total additional cost to the CITY as a result of CONSULTANT's Errors and Omissions from the CONSULTANT, that being defined as the cost of Errors plus fifteen percent (15%) of the cost of Omissions above two percent (2%) of the Construction Cost.
- 9.8.4 To obtain such recovery, the CITY shall deduct from the CONSULTANT's fee a sufficient amount to recover all such additional cost to the CITY.

9.8.5 In executing this Agreement, the CONSULTANT acknowledges acceptance of these calculations and to the CITY's right to recover same as stated above. The recovery of additional costs to the CITY under this paragraph shall not limit or preclude recovery for other separate and/or additional damages which the CITY may otherwise incur.

9.8.6 The Contract Administrator's decision as to whether a Change Order is caused by an Error or caused by an Omission, taking into consideration industry standards, shall be final and binding on both parties for amounts in the aggregate under \$100,000 per project. In the event of a dispute in an amount over \$100,000, the parties agree to use their best efforts to settle such dispute. To this effect, they shall consult and negotiate with each other, in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If they do not reach such solution within a period of sixty (60) days, then upon notice to the other, either party may commence litigation to resolve the dispute in Broward County, Florida.

## ARTICLE 10 CITY'S RESPONSIBILITIES

- 10.1 CITY shall assist CONSULTANT by placing at CONSULTANT's disposal all information CITY has available pertinent to the Project including previous reports and any other data relative to design or construction of the Project.
- 10.2 CITY shall arrange for access to, and make all provisions for, CONSULTANT to enter upon public and private property as required for CONSULTANT to perform its services.
- 10.3 CITY shall review the itemized deliverables/documents identified per Task Order.
- 10.4 CITY shall give prompt written notice to CONSULTANT whenever CITY observes or otherwise becomes aware of any development that affects the scope or timing of CONSULTANT's services or any defect in the work of the Contractor.

## ARTICLE 11 MISCELLANEOUS

### 11.1 OWNERSHIP OF DOCUMENTS

All documents including, but not limited to, drawings, renderings, models, and specifications prepared or furnished by CONSULTANT, its dependent professional associates and consultants, pursuant to this Agreement shall be owned by the CITY.

Drawings, specifications, designs, models, photographs, reports, surveys and other data prepared in connection with this Agreement are and shall remain the

property of the CITY whether the Project for which they are made is executed or not, and are subject to reuse by the CITY in accordance with Section 287.055(10) of the Florida Statutes. They are not intended or represented to be suitable for reuse by the CITY or others on extensions of this Project or on any other project without appropriate verification or adaptation. This does not, however, relieve the CONSULTANT of liability or legal exposure for errors, omissions, or negligent acts made on the part of the CONSULTANT in connection with the proper use of documents prepared under this Agreement. Any such verification or adaptation may entitle the CONSULTANT to further compensation at rates to be agreed upon by the CITY and the CONSULTANT. This shall not limit the CITY's reuse of preliminary or developmental plans or ideas incorporated therein, should the Project be suspended or terminated prior to completion.

## 11.2 TERMINATION

11.2.1 It is expressly understood and agreed that the CITY may terminate this Agreement at any time by giving the CONSULTANT notice by telephone, or personally to one of the officers of the CONSULTANT, confirmed by certified mail, return receipt requested, to the principal office of the CONSULTANT. In the event that the Agreement is terminated, the CONSULTANT shall be entitled to be compensated for the services rendered from the date of execution of the Agreement up to the time of termination. Such compensation shall be based on the fee as set forth above, wherever possible. For those portions of services rendered to which the applicable fee cannot be applied, payment shall be based upon the appropriate rates for the actual time spent on the project. In the event that the CONSULTANT abandons this Agreement or through violation of any of the terms and conditions of this Agreement, causes it to be terminated, CONSULTANT shall indemnify the CITY against any loss pertaining to this termination. All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by CONSULTANT shall become the property of CITY and shall be delivered by CONSULTANT to the CITY within five (5) days of CITY's request. Upon payment of such sum by CITY to CONSULTANT, CITY shall have no further duties or obligations pursuant to or arising from this Agreement. CONSULTANT shall have the right to terminate this Agreement upon the substantial breach by the CITY of its obligations under this Agreement such as unreasonable delay in payment or non-payment of undisputed amounts.

11.2.2 This Agreement may also be terminated by CITY upon such notice as CITY deems appropriate in the event CITY or Contract Administrator determines that termination is necessary to protect the public health, safety, or welfare.

11.2.3 Notice of termination shall be provided in accordance with Section 11.27, NOTICES, except that Contract Administrator may provide a prior verbal stop work order if the Contract Administrator deems a stop work order of

this Agreement in whole or in part is necessary to protect the public's health, safety, or welfare. A verbal stop work order shall be promptly confirmed in writing as set forth in Section 11.27, NOTICES.

11.2.4 In the event this Agreement is terminated for convenience, CONSULTANT shall be paid for any services performed to the date the Agreement is terminated. Compensation shall be withheld until all documents specified in Section 11.3 of this Agreement are provided to the CITY. Upon being notified of CITY's election to terminate, CONSULTANT shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. Under no circumstances shall CITY make payment for services which have not been performed.

### 11.3 AUDIT RIGHT AND RETENTION OF RECORDS

CITY shall have the right to audit the books, records, and accounts of CONSULTANT that are related to this Project. CONSULTANT shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project.

CONSULTANT shall preserve and make available, at reasonable times for examination and audit by CITY all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by CITY to be applicable to CONSULTANT's records, CONSULTANT shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by CONSULTANT. 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.

CONSULTANT shall:

- (a) Keep and maintain public records that ordinarily and necessarily would be required by the CITY in order to perform the service.
- (b) Provide the public with access to public records on the same terms and conditions that the CITY would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

(d) Meet all requirements for retaining public records and transfer, at no cost, to the CITY all public records in possession of the CONSULTANT upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the CITY in a format that is compatible with the information technology systems of the CITY.

If the CONSULTANT does not comply with a public records request, the CITY shall enforce these provisions in accordance with this Agreement

#### 11.4 NON DISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND AMERICANS WITH DISABILITIES ACT

CONSULTANT shall not unlawfully discriminate against any person in its operations and activities in its use or expenditure of the funds or any portion of the funds provided by this Agreement and shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded in whole or in part by CITY, including Titles I and II of the ADA (regarding nondiscrimination or the basis of disability), and all applicable regulations, guidelines, and standards.

CONSULTANT's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully or appropriately used as a basis for service delivery.

CONSULTANT shall comply with Title I of the Americans with Disabilities Act regarding nondiscrimination on the basis of disability in employment and further shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability. In addition, CONSULTANT shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

CONSULTANT shall take affirmative action to ensure that applicants are employed and employees are treated without regard to race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability during employment. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.



## 11.5 MINORITY PARTICIPATION

Historically, the CITY has been able to achieve participation levels of approximately twelve percent (12%) by MBE/WBE firms in CITY projects, and in the purchase of goods and services. The CONSULTANT shall make a good faith effort to help the CITY maintain and encourage MBE/WBE participation levels consistent with such historical levels and market conditions. The CONSULTANT will be required to document all such efforts and supply the CITY with this documentation at the end of the Project, or in cases where projects are longer than one year, each CITY fiscal year.

## 11.6 PUBLIC ENTITY CRIMES ACT

CONSULTANT represents that the execution of this Agreement will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a "public entity crime", as defined by Section 287.133, Florida Statutes, may not submit a bid on a contract to provide any goods or services to CITY, may not submit a bid on a contract with CITY for the construction or repair of a public building or public work, may not submit bids on leases of real property to CITY, may not be awarded or perform work as a contractor, supplier, subconsultant, or consultant under a contract with CITY, and may not transact any business with CITY in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto, and may result in debarment from CITY's competitive procurement activities.

In addition to the foregoing, CONSULTANT further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether CONSULTANT has been placed on the convicted vendor list.

## 11.7 SUBCONSULTANTS

11.7.1 CONSULTANT may subcontract certain items of work to subconsultant. The parties expressly agree that the CONSULTANT shall submit pertinent information regarding the proposed subconsultant, including subconsultant's scope of work and fees, for review and approval by the CITY prior to sub-consultants proceeding with any work.

11.7.2 CONSULTANT shall utilize the subconsultants identified in the proposal that were a material part of the selection of CONSULTANT to provide the services for this Project. CONSULTANT shall obtain written approval of

Contract Administrator prior to changing or modifying the list of subconsultants submitted by CONSULTANT.

The list of subconsultants submitted is as follows:

Aquatic Design & Engineering, Inc  
Arquitectonica International Corporation  
Avirom & Associates, Inc.  
C.M.S.-Construction Management Services, Inc.  
Coastal Systems International, Inc.  
Douglas Coolman, PLA, FASLA  
Langan Engineering and Environmental Services, Inc  
Tinter Traffic, LLC  
Walker Parking Consultants/Engineers, Inc  
Kimley-Horn and Associates, Inc.  
EXP U.S. Services Inc.  
Dickey Consulting Services, Inc.

#### 11.8 ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered without the written consent of the other party, and CONSULTANT shall not subcontract any portion of the work required by this Agreement except as authorized pursuant to Section 11.7.

CONSULTANT represents that all persons delivering the services required by this Agreement have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in the Scope of Services and to provide and perform such services to CITY's satisfaction for the agreed compensation.

CONSULTANT shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of CONSULTANT's performance and all interim and final product(s) provided to or on behalf of CITY shall meet or exceed all professional standards of the State of Florida.

#### 11.9 INDEMNIFICATION OF CITY

11.9.1 CONSULTANT shall indemnify and hold harmless CITY, its 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 intentional wrongful conduct of CONSULTANT, and other persons employed or utilized by CONSULTANT in the performance of the duties under this Agreement. The provisions of this Section shall survive the expiration or early termination of this Agreement. To the extent considered necessary by Contract Administrator and City Attorney, any sums due to the CONSULTANT under this Agreement may be retained by CITY until all of CITY's claims for indemnification pursuant to this Agreement have been settled or

otherwise resolved, and any amount withheld shall not be subject to payment of interest by CITY.

11.9.2 It is specifically understood and agreed that the consideration inuring to the CONSULTANT for the execution of this Agreement are the promises, payments, covenants, rights and responsibilities contained herein and the award of this Agreement to the CONSULTANT.

11.9.3 The execution of this Agreement by the CONSULTANT shall obligate the CONSULTANT to comply with the foregoing indemnification provision.

#### 11.10 LIMITATION OF CITY'S LIABILITY

The CITY desires to enter into this Agreement only if in so doing the CITY can place a limit on the CITY'S liability for any cause of action arising out of this Agreement, so that the CITY'S liability for any breach never exceeds the sum of \$100.00. For other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the CONSULTANT expresses its willingness to enter into this Agreement with the knowledge that the CONSULTANT'S recovery from the CITY to any action or claim arising from the Agreement is limited to a maximum amount of \$100.00 less the amount of all funds actually paid by the CITY to the CONSULTANT pursuant to this Agreement. Accordingly, and notwithstanding any other term or condition of this Agreement that may suggest otherwise, the CONSULTANT agrees that the CITY shall not be liable to the CONSULTANT for damages in an amount in excess of \$100.00, which amount shall be reduced by the amount actually paid by the CITY to the CONSULTANT pursuant to this Agreement, for any action or claim arising out of this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any manner intended either to be a waiver of the limitation placed upon the CITY'S liability as set forth in Section 768.28, Florida Statutes, or to extend the CITY'S liability beyond the limits established in said Section 768.28; and no claim or award against the CITY shall include attorney's fees, investigative costs, extended damages, expert fees, suit costs or pre-judgment interest. Notwithstanding the foregoing, the parties agree and understand that the provisions of this Article 11.10 do not apply to monies owed, if any, for services rendered to CONSULTANT by the CITY under the provisions of this Agreement.

#### 11.11 INSURANCE

11.11.1 CONSULTANT shall provide and shall require all of its sub-consultants and sub-contractors to provide, pay for, and maintain in force at all times during the term of the Agreement, such insurance, including Commercial General Liability Insurance, Business Automobile Liability Insurance, Workers' Compensation Insurance, Employer's Liability Insurance, and Professional Liability Insurance, as stated below. Such policy or policies shall be issued by companies authorized to do business in the State of Florida and having agents upon whom service of process may be made in the State of Florida.

- A. The City is required to be named as additional insured on the Commercial General Liability insurance policy. BINDERS ARE UNACCEPTABLE. The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of the CONSULTANT. Any exclusions or provisions in the insurance maintained by the CONSULTANT that precludes coverage for the work contemplated in this Agreement shall be deemed unacceptable, and shall be considered a breach of contract.
  
- B. The CONSULTANT shall provide the CITY an original Certificate of Insurance for policies required by Article 11. All certificates shall state that the CITY shall be given ten (10) days notice prior to expiration or cancellation of the policy. The insurance provided shall be endorsed or amended to comply with this notice requirement. In the event that the insurer is unable to accommodate, it shall be the responsibility of the CONSULTANT to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested and addressed to the Finance Department. Such policies shall: (1) name the insurance company or companies affording coverage acceptable to the CITY, (2) state the effective and expiration dates of the policies, (3) include special endorsements where necessary. Such policies provided under Article 11 shall not be affected by any other policy of insurance, which the CITY may carry in its own name.
  
- C. CONSULTANT shall as a condition precedent of this Agreement, furnish to the City of Fort Lauderdale, c/o Project Manager, 100 N. Andrews Avenue, Fort Lauderdale, FL 33301, Certificate(s) of Insurance upon execution of this Agreement, which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

#### 11.11.2 COMMERCIAL GENERAL LIABILITY

- A. Limits of Liability:
 

Bodily Injury and Property Damage - Combined Single Limit	
Each Occurrence	\$1,000,000
Project Aggregate	\$1,000,000
General Aggregate	\$2,000,000
Personal Injury	\$1,000,000
Products/Completed Operations	\$1,000,000
  
- B. Endorsements Required:
  - City of Fort Lauderdale included as an Additional Insured
  - Broad Form Contractual Liability
  - Waiver of Subrogation
  - Premises/Operations

Products/Completed Operations  
Independent Contractors  
Owners and Contractors Protective Liability

#### 11.11.3 BUSINESS AUTOMOBILE LIABILITY

- A. Limits of Liability:  
Bodily Injury and Property Damage - Combined Single Limit  
All Autos used in completing the contract  
Including Hired, Borrowed or Non-Owned Autos  
Any One Accident \$1,000,000
- B. Endorsements Required:  
Waiver of Subrogation

#### 11.11.4 WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY

Limits: Workers' Compensation – Per Florida Statute 440  
Employers' Liability - \$500,000

Any firm performing work on behalf of the City of Fort Lauderdale must provide Workers' Compensation insurance. Exceptions and exemptions can only be made if they are in accordance with Florida Statute. For additional information contact the Department of Financial Services, Workers' Compensation Division at (850) 413-1601 or on the web at [www.fldfs.com](http://www.fldfs.com).

Consultant must be in compliance with all applicable State and Federal workers' compensation laws, including the U.S. Longshore Harbor Workers' Act or Jones Act.

#### 11.11.5 PROFESSIONAL LIABILITY/ERRORS AND OMISSIONS COVERAGE

Each Claim	\$1,000,000
General Aggregate Limit	\$2,000,000
Deductible- not to exceed	\$100,000

- 11.11.6 All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The Consultant's insurance must be provided by an A.M. Best's "A-" rated or better insurance company authorized to issue insurance policies in the State of Florida, subject to approval by the City's Risk Manager. Any exclusions or provisions in the insurance maintained by the Consultant that precludes coverage for work contemplated in this project shall be deemed unacceptable, and shall be considered breach of contract.

Compliance with the foregoing requirements shall not relieve the CONSULTANT of their liability and obligation under this section or under any other section of this Agreement.

The CONSULTANT shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the Project. If insurance certificates are scheduled to expire during the contractual period, the CONSULTANT shall be responsible for submitting new or renewed insurance certificates to the CITY at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates that cover the contractual period, the CITY shall:

- A. Suspend the Agreement until such time as the new or renewed certificates are received by the CITY.
- B. The CITY may, at its sole discretion, terminate the Agreement for cause and seek damages from the CONSULTANT in conjunction with the violation of the terms and conditions of the Agreement.

#### 11.12 REPRESENTATIVE OF CITY AND CONSULTANT

11.12.1 The parties recognize that questions in the day-to-day conduct of the Project will arise. The Contract Administrator, upon CONSULTANT's request, shall advise CONSULTANT in writing of one (1) or more CITY employees to whom all communications pertaining to the day-to-day conduct of the Project shall be addressed.

11.12.2 CONSULTANT shall inform the Contract Administrator in writing of CONSULTANT's representative to whom matters involving the conduct of the Project shall be addressed.

#### 11.13 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, the parties agree 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.

#### 11.14 CONSULTANT'S STAFF

CONSULTANT will provide the key staff identified in their proposal for the Project as long as said key staff are in CONSULTANT's employment.

CONSULTANT will obtain prior written approval of Contract Administrator to change key staff. CONSULTANT shall provide Contract Administrator with such information as necessary to determine the suitability of any proposed new key staff. Contract Administrator will be reasonable in evaluating key staff qualifications.

If Contract Administrator desires to request removal of any of CONSULTANT's staff, Contract Administrator shall first meet with CONSULTANT and provide reasonable justification for said removal.

#### 11.15 INDEPENDENT CONTRACTOR

CONSULTANT is an independent contractor under this Agreement. Services provided by CONSULTANT shall be subject to the supervision of CONSULTANT. In providing the services, CONSULTANT or its agents shall not be acting and shall not be deemed as acting 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 CONSULTANT. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.

#### 11.16 THIRD PARTY BENEFICIARIES

Neither CONSULTANT nor CITY intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement.

#### 11.17 CONFLICTS

Neither CONSULTANT nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with CONSULTANT's loyal and conscientious exercise of judgment related to its performance under this Agreement.

CONSULTANT agrees that none of its officers or employees shall, during the term of this Agreement, serve as expert witness against CITY in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process, nor shall such persons give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of CITY or in connection with any such pending or threatened legal or administrative proceeding. The limitations of this Section

shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding.

In the event CONSULTANT is permitted to utilize subconsultants to perform any services required by this Agreement, CONSULTANT agrees to prohibit such subconsultants, by written contract, from having any conflicts as within the meaning of this Section.

#### 11.18 CONTINGENCY FEE

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 a breach or violation of this provision the City Commission shall have the right to terminate this Agreement without liability at its discretion, or to deduct from the Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

#### 11.19 WAIVER OF BREACH AND MATERIALITY

Failure by CITY to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement.

CITY and CONSULTANT agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.

#### 11.20 COMPLIANCE WITH LAWS

CONSULTANT shall comply with all federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations related to this Agreement.

#### 11.21 SEVERANCE

In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless CITY or CONSULTANT elects to terminate this Agreement. The election to terminate this Agreement based upon this provision shall be made within seven (7) days after the findings by the court become final.

#### 11.22 JOINT PREPARATION

Preparation of this Agreement has been a joint effort of CITY and CONSULTANT and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.



#### 11.23 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1-11 of this Agreement shall prevail and be given effect.

#### 11.24 APPLICABLE LAW AND VENUE

This Agreement shall be construed with and governed by the laws of the State of Florida. Venue for any lawsuit by either party against the other party or otherwise arising out of this Agreement and for any other legal proceeding shall be in Broward County, Florida, and in the event of federal jurisdiction, in the Southern District of Florida.

#### 11.25 EXHIBITS

Each Exhibit referred to in this Agreement forms an essential part of this Agreement. The Exhibits, if not physically attached, should be treated as part of this Agreement, and are incorporated herein by reference.

#### 11.26 THREE ORIGINAL AGREEMENTS

This Agreement shall be executed in three (3), signed Agreements, with each one treated as an original.

#### 11.27 NOTICES

Whenever either party desires to give notice unto the other, it must be given by written notice, sent by certified 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 of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice, to-wit:

CITY:                      City Engineer  
                                 City of Fort Lauderdale  
                                 100 North Andrews Avenue  
                                 Fort Lauderdale, FL 33301  
                                 Telephone: (954) 828-5772

With a copy to:        City Manager  
                                 City of Fort Lauderdale  
                                 100 North Andrews Avenue  
                                 Fort Lauderdale, FL 33301  
                                 Telephone: (954) 828-5364

City Attorney  
City of Fort Lauderdale  
100 North Andrews Avenue  
Fort Lauderdale, FL 33301  
Telephone : (954) 828-5037

CONSULTANT: Mr. Paul Kissinger  
1512 E. Broward Blvd. Suite 110  
Fort Lauderdale, FL. 33301

#### 11.28 ATTORNEY FEES

If CITY or CONSULTANT incurs any expense in enforcing the terms of this Agreement through litigation, the prevailing party in that litigation shall be reimbursed for all such costs and expenses, including but not limited to court costs, and reasonable attorney fees incurred during litigation.

#### 11.29 PERMITS, LICENSES AND TAXES

CONSULTANT shall, at its own expense, obtain all necessary permits and licenses, pay all applicable fees, and pay all applicable sales, consumer, use and other taxes required to comply with local ordinances, state and federal law. CONSULTANT is responsible for reviewing the pertinent state statutes regarding state taxes and for complying with all requirements therein. Any change in tax laws after the execution of this Agreement will be subject to further negotiation and CONSULTANT shall be responsible for complying with all state tax requirements.

#### 11.30 TRUTH-IN-NEGOTIATION CERTIFICATE

Signature of 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 and any additions thereto shall be adjusted to exclude any significant sums, by which the CITY determines that contract price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs.

#### 11.31 EVALUATION

The CITY maintains the right to periodically review the performance of the CONSULTANT. This review will take into account the timely execution of Task Orders, the quality of the work performed, the cost to the CITY and the good faith efforts made by the CONSULTANT to maintain MBE/WBE participation in CITY projects. Any deficiencies in performance will be described in writing and an opportunity afforded, where practicable, for the CONSULTANT to address and/or remedy such deficiencies.

#### 11.32 STATUTORY COMPLIANCE

CONSULTANT shall prepare all documents and other materials for the Project in accordance with all applicable rules, laws, ordinances and governmental regulations of the State of Florida, Broward County, the City of Fort Lauderdale, Florida and all governmental agencies having jurisdiction over the services to be provided by CONSULTANT under this Agreement or over any aspect or phase of the Project.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

**CITY**

CITY OF FORT LAUDERDALE, a  
municipal corporation of the State of  
Florida

By \_\_\_\_\_  
LEE R. FELDMAN, City Manager

(CORPORATE SEAL)

ATTEST:

\_\_\_\_\_  
JONDA K. JOSEPH  
City Clerk

Approved as to form:

\_\_\_\_\_  
DIANSJHAN WILLIAMS-PERSAD  
Assistant City Attorney

**CONSULTANT**

WITNESSES:

EDSA, INC, A Florida Corporation

\_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_

(Witness print name)

Title: \_\_\_\_\_

\_\_\_\_\_

ATTEST:

(Witness print name)

By \_\_\_\_\_

(CORPORATE SEAL)

STATE OF \_\_\_\_\_:  
COUNTY OF \_\_\_\_\_:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ and \_\_\_\_\_ as \_\_\_\_\_ and \_\_\_\_\_ respectively, of \_\_\_\_\_. They are ☐ personally known to me or ☐ have produced \_\_\_\_\_ as identification.

(SEAL)

\_\_\_\_\_  
Notary Public, State of  
(Signature of Notary taking Acknowledgment)

\_\_\_\_\_  
Name of Notary Typed, Printed or Stamped

My Commission Expires:

\_\_\_\_\_  
Commission Number

## **EXHIBIT "A"**

### **SCOPE OF SERVICES**

The CONSULTANT shall perform the following professional services related to a contract for consultant services for Las Olas Boulevard Corridor Improvement Project and shall include the following services:

Landscape architecture and engineering consultant shall act as an extension of the City Engineering staff and assist with the design and implementation the Las Olas Boulevard Corridor Improvement Project.

The services required may include, but not necessarily be limited to, civil engineering, architectural, design and landscape architecture design and review services. The selected firm will be responsible for working in cooperation with officials of the City, or their designees, and with the City's engineers and/or architects to supervise and administer the design and construction of the projects.

The firm will inspect the building sites and test for soil bearing capacity. The firm will advise the City on the most effective way to implement the overall project in terms of time and budget requirements. The firm will be required to coordinate and incorporate design details and construction schedules with other consultants working on adjacent Master Plan improvement projects.

Firm will attend and assist the City with regard to public information and public meetings.

The firm will be required to provide overall project coordination management, including oversight and review of a Contractor to provide Construction Manager-at-Risk services. The selected firm will also develop work plans, schedules and budgets, coordinate project design, procurement, contract negotiation and contract administration, visit the jobsite regularly to monitor construction progress, provide value engineering when required, monitor and approve payment requisitions from the contractor and consultants, monitor project funding, prepare financial projections as required, provide progress reports and status information on the assigned project to City officials, attend and address meetings with City officials, neighborhood groups, and private citizens concerning the projects, maintain conventional and electronic files (database) of all documentation and correspondence relating to the projects in an orderly system which will be submitted to the City upon completion of the project.

If legal issues should arise relating to the project after completion, the selected firm will provide records, depositions and testimony about the project if necessary on a supplementary fee basis.

A summary of the work proposed for implementation for the project is presented below.

#### **Summary**

The firm or team will be required to provide some or all of the following services on the projects:

- Assist with project programming.
- Prepare all necessary preliminary plans and elevations, renderings, general features including landscape design and details for DRC approval.
- Prepare all necessary permits for all state, local and environmental agencies including Florida Department of Environmental Protection (FDEP), Coastal Construction Control Line (CCCL) Permit and Florida Fish and Wildlife Conservation Commission (FWC)

- Prepare final working drawings including engineering calculations and drawings, plans for lighting drainage and other roadway or streetscape appurtenances.
- Inspect project site and test for soil bearing capacity.
- Recommend and suggest materials, construction and necessary adjustments in landscape architectural design to complement the existing beach facilities and or the adjacent Master Plan proposed projects. Inspect construction in the field and insure conformity with plans and material specifications.
- Process request for information submittals, shop drawings, change orders, pay applications, inspection reports and maintain current logs of each.
- Provide assistance with right-of-way acquisition and Easements.
- Provide construction management and inspection.
- Prepare financial data with regards to financing and operational expenses.
- Prepare all design and specifications for to LEED requirements for subsequent LEED certification. (City may or may not seek LEED Certification)
- Provide coordination, oversight and review with a Contractor providing "Construction Manager at Risk" pre-construction services and subsequent Guaranteed Maximum Price (GMP) for construction.
- Provide assistance with public outreach including a design and construction website and other public information activities.

#### **Quality Assurance/Quality Control:**

It is the intention of the City of Fort Lauderdale that the design Consultant is held responsible for their work. The Consultant is responsible for the professional quality, technical accuracy and coordination of design, drawings, specification, cost estimates and other services furnished by the consultant and their sub-consultants.

#### **Document Submittal Format**

All documents generated as a result of projects will become the property of the City of Fort Lauderdale. All projects documents shall be provided in a digital and hard copy format meeting all City of Fort Lauderdale format requirements. The project drawings shall be prepared in AutoCAD, in the version current to the City Engineering Division at the time that deliverables are due, and shall meet the requirements as set forth in the City's CADD specifications for project drawings current at the time of award of the project. Plot files shall also be prepared and submitted which meet the stated City standards. All reports cost estimates, calculations and project specifications and documents must be submitted in the Microsoft software format version current to the City's Engineering Division.

#### **TEAM :**

A landscape architecture / civil engineering team with design experience in high profile landscape architecture design for public and private projects shall head the design team. The team should include but is not limited to landscape architects, architects, structural engineers, mechanical engineers, electrical engineers, environmental engineers, civil engineers and parking garage design consultants.

#### **PROJECT SCOPE OF WORK:**

The services required may include, but not necessarily be limited to landscape architecture and civil engineering design and review services. The selected firm will be responsible for working in cooperation with officials of the City, or their designees, and with the City's engineers and/or architects and Construction Manager-at-Risk to supervise and administer the design and construction of this project. The design services will be implemented in two phases and may include the preparation of:

- Preliminary plans including site plan sketches and elevations, photo-realistic renderings, Design Review Committee (DRC) approval and submission to all permitting agencies.
- Final construction documents and permitting, including engineering calculations, drawings and plans for lighting and drainage.

## PROJECT BACKGROUND

This project is a part of implementing the overall Fort Lauderdale Beach Community Master Plan which can be found on the City's website at [www.fortlauderdale.gov](http://www.fortlauderdale.gov).

The overall goals of the project will include the following:

**Pedestrian Priority Corridor** – The project shall be focused on creating a pedestrian priority corridor between the Intracoastal Waterway and the beach. The consultant shall coordinate opportunities for multi-modal transportation connectivity and incorporate current Greenway plans ([www.broward.org](http://www.broward.org)).

**Legacy Project** - This project will be the legacy of the Beach Community Redevelopment Agency (CRA) which will sunset in 2019. Elements of the project shall be of the highest quality, world class design, useable for residents and recognizable from tourists around the world.

**Vision for the Future** - The proposed improvements shall be designed for future climate change impacts, re-development, transportation innovations, future population demands of the facility and beach events/activities.

**Sustainability** – Consultants shall be required to prepare a Sustainability Action Plan from implementation to maintenance to ensure the sustainability of the project.

**Green Roadway** – The Consultants shall explore all opportunities to incorporate “Green Roadway” innovations and technologies to achieve a minimum of 11 project requirements for Green Roadway Certification ([www.greenroads.com](http://www.greenroads.com)).

**Green Parking Garage** – The Consultants shall explore all opportunities to incorporate green parking practices, ingenuity and environmental services to achieve a certified “Green Parking Garage” ([www.greenparkingcouncil.org](http://www.greenparkingcouncil.org)).

**Iconic Memorable Place** - Currently the Las Olas corridor is world known as a destination for its shops and restaurants within the downtown area. This project will be an extension of that reputation of for the beach area. The entire corridor and project including the streetscape amenities, parking garage, roadway shall be developed with continuity with the goal of creating a holistic iconic memorable place. This section of Las Olas will have its own identity reflecting the recent transformation to a “*Beach Chic*” destination as part of the recent of redevelopment luxury hotels, restaurants and beach events.

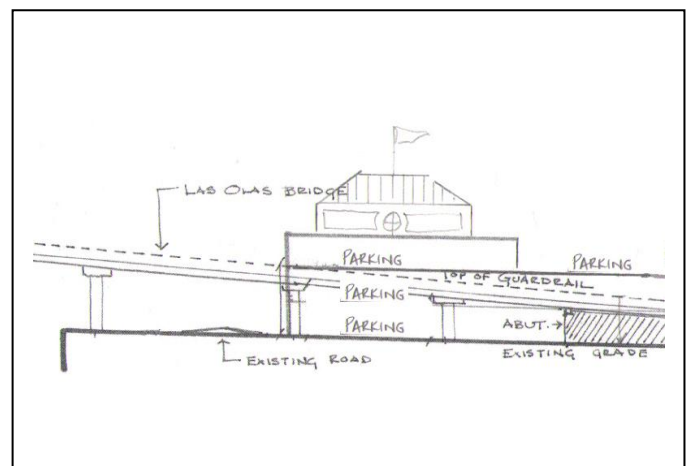
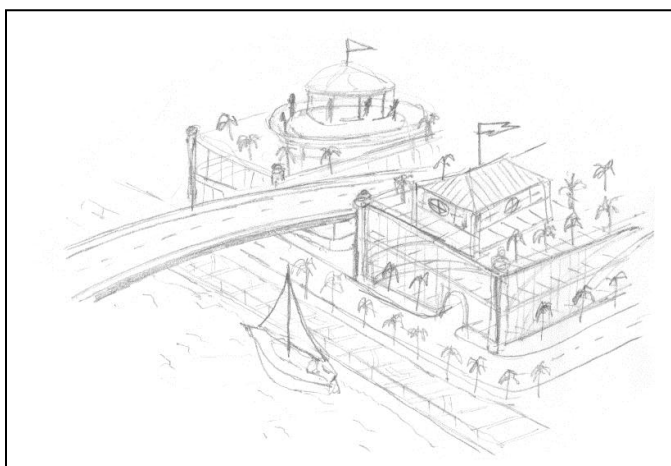
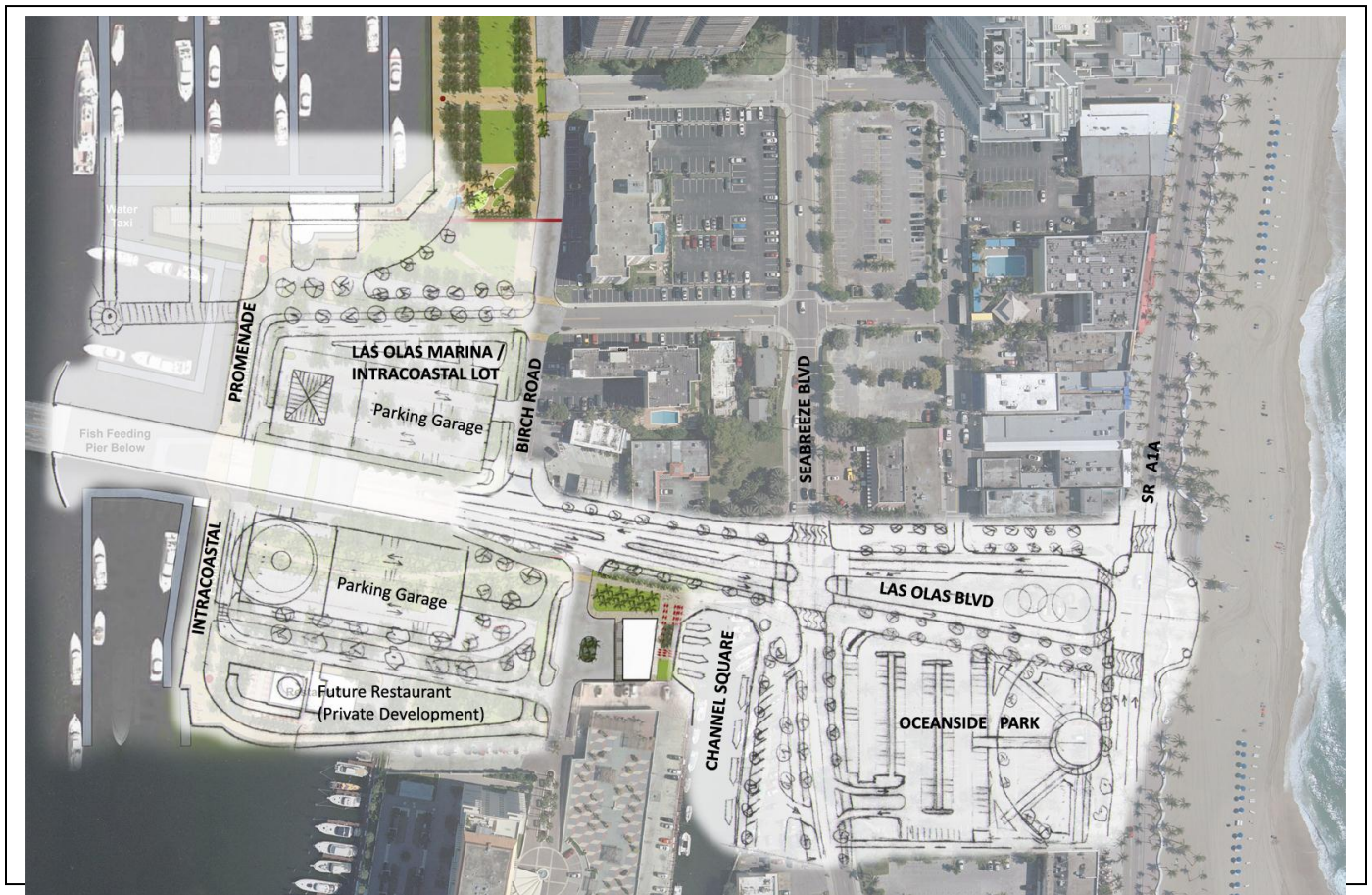
**Clear Vista of Atlantic Ocean** - Re-alignment of the segment of Las Olas Blvd from the Intracoastal Bridge to SR A1A will provide a clear vista of the ocean and facilitate a wide pedestrian priority concourse connecting the Intracoastal to the Beach.



**Open Park Space** – Converting a portion of the Oceanside Parking Lot into an open green space will provide an iconic memorable gathering space for informal activities as well as organized programmed events.

**Zero Net Loss of Parking** – The goal of the project will be to achieve a zero net-loss of parking spaces within the project vicinity.

Expansion of the existing Las Olas Marina is currently in the feasibility phase and all designs will be required to coordinate and accommodate any subsequent development.



Implementation of the overall project will include strategically phasing portions of the project including:

- Las Olas Blvd Re-alignment
- Oceanside Park
- Parking Garages at Las Olas Marina / Intracoastal Parking Lot
- Intracoastal Promenade
- Channel Square Canal Re-development

## **PROJECT DESCRIPTION**

### **Las Olas Blvd Re-Alignment**

Currently Las Olas Blvd is under the jurisdiction of FDOT and during the course of the design process the City may seek to gain jurisdiction of the ROW for the project development. The Las Olas Blvd re-alignment will include development of a roadway alignment to provide a true vista of the Atlantic Ocean and a pedestrian concourse connecting the Intracoastal Waterway to the Beach. The roadway will include bike lanes and other streetscape amenities including trees, lighting and landscaping.

As part of the Oceanside Lot redevelopment, a portion of the parking will be moved to a new parking garage structure flanking the Las Olas Bridge. During special events and peak beach demand the majority of the parking would be shifted to the new parking structure. As a result, a tram system may be incorporated into the design of the corridor to move people between the parking facility and the beach.

### **Oceanside Park**

The current Oceanside Parking Lot has 242 parking spaces on over 1.4 acres of City owned Land. City Ordinance No. C-97-36 approved by the City Commission on September 16, 1997 limits the use of the property to a parking garage of no more than four stories in height, open space and/or a park use. The propose improvements include creating a new open space area by removing a portion of the parking and redeveloping the site to include a new Ocean Park with a multi-purpose iconic feature. The feature may be an interactive water fountain platform that can be used for a performance venue or a small multi-purpose iconic structure. The remainder of the lot is to be redeveloped to accommodate surface parking and with provisional infrastructure to facilitate future events.

### **Las Olas Marina / Intracoastal Parking Lot**

The Las Olas Marina and Intracoastal Parking Facility currently has 60 boat slips and 513 surface parking spaces. A study of expanding the existing marina by carving out a portion of the parking lot is currently in the feasibility stage of development. The proposed parking garage facility and site improvements will be designed to accommodate the future expansion of the marina as well as provisions for the interim.

The proposed parking garage facility will flank the Las Olas Bridge and become an iconic gateway to the beach framing the view of the ocean on the new Las Olas Blvd alignment. The overall parking goal is to achieve a zero net-loss of parking within the project vicinity. The garage has been programmed as twin - three story tall structures with an open roof and iconic elements over the upper deck. Each garage will hold approximately 280 parking spaces for a total of 560 spaces. The garage will be a precast structure with state of the art way-finding signage and a rooftop green component for screening.

The site improvements will include new traffic circulation for Las Olas Circle from Poinsettia Street to Las Olas Blvd, an east / west pedestrian promenade, landscaping, lighting and other streetscape amenities. An area located on the southwestern point will include provisional infrastructure for a future restaurant.

### **Intracoastal Promenade**

The Intracoastal promenade is a pedestrian walkway around the perimeter of the parking lot peninsula. This wide walkway will require removing marina impediments (fencing, gates etc.) currently blocking continuous access. Improvements to the promenade will include a wide walkway surface, pedestrian lighting, landscaping, new marina access points and other streetscape amenities. The final configuration of the promenade will be determined upon the completion of the feasibility study of expanding the Las Olas Marina.

### **Channel Square**

Channel square has been identified as the terminus of an existing canal at the corner of Las Olas Blvd and Seabreeze Blvd. The end of the canal is adjacent to a City (CRA) owned parcel and two privately owned parcels. The property on the east side of the canal is currently operating as a privately owned marina for fishing charters.

The feasibility study for Channel Square confirmed that the vacant City own parcel and end of canal would be viable for use as a multi-modal hub for the water taxi, busses and the sun trolley. The proposed project will redevelop the canal waterfront to accommodate the new Las Olas Blvd alignment, ensure bulkhead accommodations for a water taxi stop and coordinate improvements with the adjacent private marina for redevelopment. Any vertical construction including an information center, café or restrooms may be developed as separate project depending upon funding availability.

## EXHIBIT “B”

### HOURLY BILLING RATES FOR TASK ORDERS FOR SERVICES

#### EDSA

Prime / Team Leader - Planning / Landscape Architecture / Urban Design	Hourly Rate	
	Principal	\$210.00
	Associate Principal	\$200.00
	Vice President	\$180.00
	Senior Associate	\$150.00
	Associate	\$120.00
	Designer	\$100.00
	Intern	\$50.00
	Administrative Support	\$50.00

#### Aquatic Design Engineers

Water Feature Designers	Hourly Rate
Principal	\$210.00
Studio Director	\$175.00
Senior Engineer	\$150.00
Water Quality Specialist	\$140.00
Studio Manager	\$150.00
Creative Director	\$150.00
Project Manager	\$150.00
Studio Coordinator	\$120.00
Electrical Engineer	\$115.00
Graphic Designer	\$85.00
Site Servies / Shop Drawing Review	\$85.00
CAD Manager	\$85.00
Production Team Member	\$65.00
Technical Assistant	\$65.00
Administrator	\$50.00

#### Arquitectonica

Architecture	Hourly Rate
Principal	\$210.00
Project Director / Senior Project Manager	\$175.00
Project Manager	\$150.00
Senior Architect / Design	\$125.00
Intermediate Architect / Designer	\$100.00
Junior Architect / Designer	\$80.00
Senior Interior Designer	\$125.00
Junior Interior Designer	\$60.00
Clerical	\$50.00

### Avirom

Surveying and Mapping	Hourly Rate
Principal	\$150.00
Professional Land Surveyor	\$100.00
Survey Crew	\$125.00
Computer Computations & Drafting	\$85.00

### Construction Management Service

Cost Estimator	Hourly Rate
Principal	\$185.91
Senior Estimator	\$108.07
Estimator	\$95.00
Junior Estimator	\$81.06

### Coastal Systems

Coastal / Environmental	Hourly Rate
Principal / Director	\$210.00
Department Head	\$190.00
Senior Project Manager	\$175.00
Project Manager	\$150.00
Senior Surveyor / Project Engineer	\$130.00
Scientist	\$120.00
IT Specialist / Junior Engineer	\$100.00
Designer / Assistant Project Engineer	\$80.00
Surveyor	\$75.00
Graphics - Media Technician / GIS Technologist	\$70.00
CADD / Engineering Technician	\$65.00
Administrative Assistant / Technical Assistant / Clerical	\$50.00

### Doug Coolman

Design Historian	Hourly Rate
Design Historian	\$85.00

### Langan Engineering

Geotechnical Engineering	Hourly Rate
Senior Principal	\$210.00
Principal	\$180.00
Senior Project Manager	\$165.00
Engineering Technicians / Inspectors / CADD and GIS Technicians	\$80.00
Technicians / Word Processors / Technical Typists / Financial Analysis	\$77.00

### Tinter Traffing LLC

Traffic Engineers / Planning		Hourly Rate
Principal		\$175.00
Traffic Engineer		\$130.00
Technician		\$80.00
Data Collector		\$45.00

### Walker Parking Consultants

Parking Garage Design		Hourly Rate
Senior Principal		\$210.00
Principal		\$190.00
Senior Project Manager		\$175.00
Project Manager		\$130.00
Assistant Project manager		\$100.00
Senior Parking Consultant		\$175.00
Parking Consultant		\$130.00
Parking Analyst / Planner		\$110.00
Senior Engineer / Senior Architect		\$150.00
Engineer / Architect		\$100.00
Designer		\$100.00
Senior Technician		\$80.00
Technician		\$65.00
Field Auditor		\$65.00
Senior Admin Assistant / Business Manager		\$60.00
Administrative Assistant		\$50.00

### Kimley Horn and Associates

Civil Engineering		Hourly Rate
Principal / Project Manager		\$210.00
Senior Professional		\$180.00
Professional / Senior Designer		\$145.00
Analyst		\$90.00
Support Staff		\$60.00

### EXP

Electrical Engineering and Sustainability		Hourly Rate
Principal		\$210.00
Lighting Designer 4		\$150.00
Engineer / Designer 4		\$159.00
Engineer / Designer 3		\$120.00
CAD 2		\$75.00
Admin 2		\$65.00

## Dickey Consulting

Consensus Building	Hourly Rate
Project Director	\$190.00
Project Manager	\$150.00
Senior Inspector	\$100.72
Document Control Specialist	\$75.00
Senior Project Coordinator	\$75.00
Project Coordinator	\$65.00
Administrative Assistant	\$60.00
Clerk	\$50.00