

AGREEMENT

THIS IS AN AGREEMENT (the "Agreement") entered into on _____, 2014, between the City of Dania Beach, Florida, a Florida municipal corporation, having an address of 100 West Dania Beach Boulevard, Dania Beach, Florida 33004, (the "City"), and EDSA, Inc., a Florida corporation, having an address of 1512 East Broward Boulevard, Suite 110, Fort Lauderdale, Florida 33301, (the "Consultant").

In consideration of the mutual covenants, terms and conditions contained in this Agreement, and other good and valuable consideration, the adequacy and receipt of which are acknowledged and agreed upon, the parties agree as follows:

1. Scope of Services. The Consultant agrees to perform consultant services for the City in accordance with the Letter of Proposal (specifying its "Scope of Services") dated August 8, 2014, for Dania Beach Ocean Park Revitalization Plan-Phase I Project described in attached Exhibit "A-1", which is made a part of and incorporated into this Agreement by this reference.

2. Subcontracts. Consultant may subcontract certain items of work. It is expressly agreed to by the parties, however, that the City shall approve in advance in writing any subcontractors, and the fees to be paid them by Consultant prior to any such subcontractor proceeding with any such work.

3. Payment for Services. The City agrees to pay EDSA (per its Letter of Proposal (specifying its "Scope of Services") dated August 8, 2014, an amount not to exceed One Hundred Eighty Thousand Dollars (\$180,000.00), relating only to Task Nos. 1 and 2 (schematic/design-development, and development of construction documents); both Task Nos. 3 and 4 (environmental permitting, bidding assistance, and construction permitting and construction observation) may be performed on an as needed basis as directed by the City and will be billed hourly, in an amount not to exceed One Hundred Thirteen Thousand Dollars (\$113,000.00);

a. The Fee 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, approved in writing in advance by the City. Any such costs are payable at the City reimbursement rate.

b. Any necessary additional work, as determined by City, which is not covered under the Letter of Proposal (specifying its "Scope of Services")

described in the attached Exhibit "A-1", shall not be undertaken without a written amendment to this Agreement to that effect, executed in advance by both parties.

c. Consultant shall submit its invoices in the format and with supporting documentation as may be required by City.

d. City shall pay Consultant monthly for services rendered within thirty (30) calendar days from date of approval of each Consultant's invoices by the City Manager. If any errors or omissions are discovered in any invoice, City will inform Consultant and request revised copies of all such documents. If any disagreement arises as to payment of any portion of an invoice, City agrees to pay all undisputed portions, and the parties agree to cooperate by promptly conferring to resolve the disputed portion.

e. Any invoice which is not timely paid as prescribed above will be subject to the accrual of interest at the statutory rate prescribed by applicable Florida law.

4. Indemnification of City. The Consultant shall in addition to any other obligation to indemnify the Owner and to the fullest extent permitted by law, protect, defend, indemnify and hold harmless the Owner, including its agents, elected officials and employees from and against all claims, actions, liabilities, losses (including economic losses), or costs arising out of any actual or alleged:

(a) bodily injury, sickness, disease or death, or injury to or destruction of tangible property including the loss of use resulting from, or any other damage or loss arising out of or resulting or claimed to have resulted in whole or in part from any actual or alleged act or omission of the Consultant or its subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable in the performance of the work;

(b) any violation of law, statute, ordinance, governmental administrative order, rule, regulation, or infringement of patent, copyright or trademark rights by Consultant or its subcontractors in the performance of the work;

(c) liens, claims, actions made by the Consultant or its subcontractors or other party performing the work;

(d) claims of whatsoever nature related to collection practices or any actions of a contradictory nature pursuant to Contract or in an attempt to collect monies

due or claimed to be due to the Owner.

5. Insurance Coverage. The Consultant shall not commence Work under the Agreement until Consultant has obtained all insurance required under paragraph, and not until such time that the coverages are approved by the Risk Manager of the City. The Consultant shall not allow any employee of Consultant or any Subcontractor to commence Work on any subcontract until the Subcontractor and all Coverages required of any Subcontractor have been obtained and approved by the Risk Manager of the City. In addition, Consultant shall be responsible for any and all policy deductibles and self-insured retentions.

5.1 “Official” Certificates of Insurance must be delivered to the City Clerk’s office and Risk Manager of the City. If the “Official” certificates are not delivered before or on the fourteenth (14th) Business Day after the issuance by the City of the “Notice of Apparent Low Respondent”, then the City has the right to consider the awarded Agreement to the successful Respondent as void and to negotiate a contract with the next lowest Respondent. “Special Provisions”, as referenced below under each type of insurance requirement shall be fully confirmed on or attached to the “Official” certificates.

5.2 All Certificates of Insurance must clearly identify the contract to which they pertain, including a brief description of the subject matter of the contract. The certificates shall contain a provision that coverage afforded under the policies will not be canceled until at least thirty (30) days’ prior written notice has been given to City. If this coverage is not provided, then Consultant is responsible for such notice to City. Insurance policies for required coverages shall be issued by companies authorized to do business under the laws of the State of Florida and any such companies’ financial ratings must be no less than A-VII in the latest edition of the “BEST’S KEY RATING GUIDE”, published by A.M. Best Guide. In the event that the insurance carrier’s rating shall drop, the insurance carrier shall immediately notify the City in writing.

5.3 Coverages shall be in force until all Work required to be performed under the terms of this Agreement, including any applicable warranty period, is satisfactorily completed as evidenced by the formal written acceptance by the City. In the event insurance certificates provided to City indicate that the insurance shall terminate and lapse during the period of the Agreement, including any applicable warranty period, then in that event, the Consultant shall furnish, at least thirty (30) days prior to the expiration of the date of such insurance, a renewed Certificate of Insurance as proof that equal and like coverages for the balance of the period of the Agreement, including any extension of it, and including any applicable warranty period, is in effect. THE CONSULTANT AND ANY SUBCONTRACTOR OF THE CONSULTANT SHALL NOT PERFORM OR CONTINUE WORK PURSUANT TO THE AGREEMENT, UNLESS ALL COVERAGES REMAIN IN FULL FORCE AND EFFECT. ANY DELAY IN THE WORK CAUSED BY A LAPSE IN

COVERAGE SHALL BE NON-EXCUSABLE, SHALL NOT BE GROUNDS FOR A TIME EXTENSION, AND WILL BE SUBJECT TO ANY OTHER APPLICABLE PROVISIONS DESCRIBED IN THIS AGREEMENT OR ELSEWHERE IN THE BID DOCUMENTS, WHICH DOCUMENTS ARE MADE A PART OF AND INCORPORATED INTO THIS AGREEMENT, CONCERNING CONSULTANT OR ITS CONTACTOR OR SUBCONTRACTOR'S DELAY.

5.4 Insurance Requirements. The below coverages are minimum limit requirements. Umbrella or Excess Liability policies are acceptable to provide the total required liability limits, as long as the Risk Manager of the City reviews and approves in writing the insurance limits on each of the policies. The City must approve any changes to these specifications and has the right to review and amend coverage requirements. The Consultant shall be held responsible for any modifications, deviations, or omissions in these insurance requirements. Consultant shall be responsible for any deductible amounts.

5.5 Professional Liability Insurance covering any engineering, architectural design consulting or other licensed services related to the scope of the Work in an amount of no less than One Million Dollars (\$1,000,000.00).

**SPECIAL PROVISIONS AS TO PROFESSIONAL LIABILITY INSURANCE:
(to be confirmed on or attached to the Official Certificate of Insurance)**

- 30 Days' Notice of Cancellation or modification to City (if not available on the insurance policies, then Consultant has responsibility for notification); and
- Professional Liability coverage must apply to the job for a minimum of two (2) years following the Project's completion date by evidence of written acceptance of completion by the City.

5.6 General Liability Insurance to include bodily injury, broad form property damage, products completed operations, blanket contractual liability, and personal injury with limits of no less than Two Million Dollars (\$2,000,000.00) per occurrence, and Four Million Dollars (\$4,000,000.00) annual aggregate.

**SPECIAL PROVISIONS AS TO GENERAL LIABILITY INSURANCE:
(to be confirmed on or attached to the Official Certificate of Insurance)**

- Annual Aggregate shall apply "Per Job";
- "The City of Dania Beach, Florida" is added as "Additional Named Insured";
- Additional Named Insured status is included for Products completed operations coverage for a period of no less than five (5) years following the completion date of the Work or Project, as evidenced by a written acceptance of completion by the City;
- Additional named insured coverage shall be no more restrictive than Insurance Services Office (ISO) form CG 2037 (07 04);
- Consultant's insurance shall be primary and non-contributory;

- Waiver of Subrogation in favor of the City;
- 30 Days' Notice of Cancellation or modification to City (if not available on the insurance policies, then Consultant has responsibility for notification); and
- Copy of Additional Named Insured Endorsement or other endorsements may be attached to the Certificate.

5.7 Workers' Compensation Insurance shall be maintained by Consultant and any contractors or subcontractors during the life of the Agreement, including any applicable warranty period(s), and it is to apply to all "statutory employees" of Consultant (as that phrase is defined by Chapter 440, Florida Statutes), in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws, for the benefit of the Consultant, its employees, and subcontractors.

In the case any work is sublet as otherwise addressed in the Agreement or Bid Documents, the Consultant shall require any subcontractors similarly to provide Workers' Compensation Insurance for all of the latter's employees, in addition to any coverage afforded by the Contractor or Subcontractor, by furnishing statutory limits Part A, and no less than and One Million Dollars (\$1,000,000.00) employers' liability limits Part B.

In no event shall the consultant be permitted to utilize in the prosecution of the work, the following: i) any employee, subcontractor or subcontractor employee that is exempted or purported to be exempt from workers' compensation insurance coverage; or ii) any employee, subcontractor or subcontractor employees who will be covered by an employee leasing arrangement.

**SPECIAL PROVISIONS AS TO WORKERS' COMPENSATION INSURANCE:
(to be confirmed on or attached to the Official Certificate of Insurance)**

- 30 Days' Notice of Cancellation or modification to City (if not available on the insurance policies, then Consultant has responsibility for notification); and
- Waiver of Subrogation in favor of the City.

5.8 Automobile Liability Insurance shall be maintained with combined single limits of no less than Two Million Dollars (\$2,000,000.00), to include coverage for owned, hired, and non-owned vehicles.

**SPECIAL PROVISIONS AS TO AUTOMOBILE LIABILITY INSURANCE:
(to be confirmed on or attached to the Official Certificate of Insurance)**

- "The City of Dania Beach" is added as "Additional Named Insured";
- 30 Days' Notice of Cancellation or modification to City (if not available on the insurance policies, then Consultant has responsibility for notification); and
- Waiver of Subrogation in favor of the City.

6. Assignment of Agreement.

a. It is understood and agreed by both parties that this Agreement, in whole or in part, cannot be assigned, sublet or transferred by the Consultant without the prior written consent of City. The City is relying upon the apparent qualifications and expertise of Kona Gray, ASLA, one of Consultant's principals, and such person's familiarity with the City's circumstances and desires for this Project. In the event Consultant wishes to re-assign or replace such individual, the Consultant shall tender substitutes acceptable to City. In the event the City is not, for any reason or no reason at all, satisfied with such substitute, Consultant shall be considered in breach of the Agreement. Violation of the terms of this paragraph shall constitute a breach of Agreement by Consultant and City may, at its discretion, terminate this Agreement for cause and all rights, title and interest of Consultant in the Agreement shall then cease and terminate.

b. The Consultant acknowledges, understands and agrees that its performance under this Agreement is or may be contingent upon the City receiving timely services from other consultants (the "Supporting Consultants"). The Consultant agrees to use its best efforts to coordinate its services with the services of the Supporting Consultants, and further agrees that in the event the rendition of any services of any of the Supporting Consultants is delayed, such delay will not entitle the Consultant to any additional compensation or payment of any kind. Furthermore, the Consultant shall not be entitled to an increase in compensation, or be entitled to payment of any kind from the City, for damages or expenses incurred which are direct, indirect or consequential or other costs and lost profits of any kind including, but not limited to, costs of acceleration, inefficiency or extended overhead, arising because of any other delay, disruption, interruption, interference or hindrance from any cause whatsoever, whether such delay, disruption or interference be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable; provided, however, that this provision shall not preclude recovery of damages by the Consultant for hindrances or delays caused solely by fraud, bad faith or active malicious interference on the part of the City. The Consultant shall only be entitled to extensions of time for performance as the exclusive and sole remedy for delay.

7. Examination of Records. Consultant shall maintain books, records, documents and other evidence directly pertinent to performance of work under this Agreement in accordance with generally accepted accounting principles and practices. The Consultant shall also maintain the financial information and data used by the Consultant in the preparation of support of any claim for reimbursement for any out-of-pocket expense or cost. The City shall have access to such books, records, documents and other evidence for inspection, audit and copying during normal business hours. The Consultant will provide proper facilities for such access and inspection. Audits conducted under this section shall observe generally accepted auditing standards and established procedures and guidelines of the City. The Florida Public Records Act, Chapter 119 of the Florida Statutes, may have application to records or documents pertaining to this Agreement and Consultant acknowledges that such laws have possible application and agrees to comply with all such laws.

8. Termination.

a. Termination of Agreement for Convenience. It is expressly understood and agreed that the City may terminate this Agreement at any time for any reason or no reason at all by giving the Consultant notice by certified mail, return receipt requested, directed to the principal office of the Consultant, thirty (30) days in advance of the termination date. In the event that the Agreement is terminated pursuant to this provision, the Consultant shall be entitled to be compensated for the services rendered from the effective date of execution of the Agreement up to the date of receipt of Notice of termination. Such compensation shall be based on the percentage of work completed, as fairly and reasonably determined by City after conferring with Consultant.

b. Termination of Agreement for Cause. If City elects to terminate the Agreement for cause, City will provide Consultant five (5) days' advance written notice. If Consultant promptly cures the matter giving rise to the cause within that time, this Agreement shall continue. If not timely cured, the Agreement will stand terminated and the City will pay Consultant for work completed less any costs, expenses and damages incurred by City as a result of such termination. If a court of competent jurisdiction determines that the termination was not authorized under the circumstances then the termination shall be deemed to be a termination for convenience.

9. Ownership of Documents. All correspondence, studies, data, analyses, documents, instruments, applications, memorandums and the like, including drawings and specifications prepared or furnished by Consultant (and Consultant's independent professional sub-consultants or subcontractors) pursuant to this Agreement, shall become owned by and be the property of the City and the City shall consequently obtain ownership of them by any statutory common law and other reserved rights, including copyright, when the Consultant is paid in full for services; however, such documents are not intended or represented by Consultant to be suitable for reuse by City on extensions of the work or on any other work or project. Any such reuse, modification or adaptation of such document without written verification or permission by Consultant for the specific purpose intended will be at City's sole risk and without liability or legal exposure to Consultant or to Consultant's independent professional sub-consultants. If City alters any such documents, City will expressly acknowledge same so that no third party will be in doubt as to the creation or origination of any such document.

10. Notices. Except as provided above, whenever either party desires to give notice to the other, it must be given by written notice, sent by certified U.S. 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 persons and places for giving of notice:

City: Robert Baldwin, City Manager
City of Dania Beach, Florida
100 West Dania Beach Boulevard
Dania Beach, Florida 33004

With a copy to: Thomas J. Ansbro, City Attorney
City of Dania Beach, Florida
100 West Dania Beach Boulevard
Dania Beach, Florida 33004

Consultant: EDSA, Inc.
1512 East Broward Boulevard, Suite 110
Fort Lauderdale, Florida 33301

11. Consent to Jurisdiction. The parties agree that the jurisdiction for any legal action arising out of or pertaining to this Agreement shall be the Circuit Court for the Seventeenth Judicial Circuit in and for Broward County, Florida, or the federal District Court in the Southern

District of the United States. Each party further agrees that venue of any action to enforce this Agreement shall be in Broward County, Florida.

12. Governing Law. The parties agree that this Agreement shall be construed in accordance with and governed by the laws of the State of Florida.

13. Attorneys' Fees and Costs. If City or Consultant incurs any expense in enforcing the terms of this Agreement, whether suit is brought or not, each party shall bear its own costs and expenses including, but not limited to, court costs and reasonable attorneys' fees.

14. Headings. Headings in this document are for convenience of reference only and are not to be considered in any interpretation of this Agreement.

15. Exhibits. Each exhibit referred to in this Agreement forms an essential part of this Agreement and such exhibit is a part of and is incorporated into this Agreement by this reference.

16. Severability. If any provision of this Agreement or the application of it to any person or situation shall to any extent be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected, shall continue in full force and effect, and shall be enforced to the fullest extent permitted by law.

17. All Prior Agreements Superseded. This document incorporates and includes all prior negotiations, correspondence, conversations, advertisement for bids, bid documents, any and all addendum, addenda, drawings, etc., to the bid documents, and any agreements and understandings applicable to the matters contained in this Agreement, 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 of this Agreement shall be predicated upon any prior representations or agreements, whether oral or written.

18. Consultant and its employees, subcontractors, and agents shall be and remain independent contractors and not employees of City with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties to this Agreement. All agents, employees and subcontractors of the

Consultant retained to perform services pursuant to this Agreement shall comply with all laws of the United States concerning work eligibility.

19. The Consultant understands and agrees that the City, during any fiscal year, is not authorized to expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year and that any contract, verbal or written, made in violation of this subsection is null and void and that consequently, no money may be paid on such contract beyond such limits. Nothing contained in this Agreement shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Consultant shall not proceed with services under this Agreement without City's written verification that the funds necessary for Consultant compensation and other necessary expenditures are budgeted as available within the appropriate fiscal year budget.

20. Consultant warrants and represents that no elected official, officer, agent or employee of the City has a financial interest, directly or indirectly, in this Agreement or the compensation to be paid under it and, further, that no City employee who acts in the City of Dania Beach as a "purchasing agent" as defined in Chapter 112, Florida Statutes, nor any elected or appointed officer of the City of Dania Beach, nor any spouse or child of such purchasing agent, employee or elected or appointed officer, is a partner, officer, director or proprietor of the Consultant and, further, that no such City employee, purchasing agent, City elected or appointed officer, or the spouse or child of any of them, alone or in combination, has a material interest in the Consultant. Material interest means direct or indirect ownership of more than five percent (5%) of the total assets or capital stock of the Consultant.

21. Consultant shall comply with all federal, state and City laws applicable to the Consultant services and specifically those covering Equal Opportunity Employment, the Americans With Disabilities Act ("ADA") eligibility to perform services as specified in the Florida Public Entity Crime law and the Florida Building Code. The Consultant is expected to fully comply with all provisions of all laws and the City reserves the right to verify the Consultant's compliance with them. Failure to comply with any laws will be grounds for termination of the Agreement for cause.

22. In the event of any conflict between any provisions of this Agreement and any provision in any attached Exhibit, the parties agree that the provisions of this Agreement are controlling (including, but not limited to, all terms and provisions governing compensation).

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

ATTEST:

CITY:

**CITY OF DANIA BEACH, FLORIDA,
a Florida municipal Corporation**

LOUISE STILSON, CMC
CITY CLERK

WALTER B. DUKE, III
MAYOR

ROBERT BALDWIN
CITY MANAGER

DATED: _____

AS TO SCOPE OF WORK:

Marc LaFerrier, Director of the
Community Development Dept.

PRINT Name

APPROVED FOR FORM AND CORRECTNESS:

THOMAS J. ANSBRO
CITY ATTORNEY

CONSULTANT:

EDSA, Inc., a Florida corporation

WITNESSES:

Signature

PRINT Name

Signature

PRINT Name

Signature

PRINT Name
Principal and Shareholder

Title

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me on _____ 2014, by _____, as _____ of EDSA, Inc., a Florida corporation, on behalf of the corporation. He/she is personally known to me or produced _____ as identification and did (did not) take an oath.

My Commission Expires:

NOTARY PUBLIC
State of Florida