

AGREEMENT

THIS IS AN AGREEMENT (the "Agreement") entered into on _____, 2015, between the City of Dania Beach, Florida, a Florida municipal corporation, (the "City") with an address of 100 West Dania Beach Boulevard, Dania Beach, Florida 33004, and Carnahan, Proctor and Cross, Inc., a Florida corporation (the "Consultant"), with an address of 814 South Military Trail, Deerfield Beach, Florida 33442.

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

1. Scope of Services. The Consultant agrees to provide general consulting engineering services for the City under those terms and conditions set forth in the City of Coconut Creek, Florida General Professional Engineering Services (RFQ No. 11-19-14-10), dated November 19, 2014, a copy of which is made a part of and is incorporated into this Agreement by this reference and is attached as Exhibit "One".

2. Subcontracts. It is expressly agreed to by the parties, that the City shall approve in advance in writing any sub-consultants and the fees to be paid them by Consultant, prior to any such sub-consultant proceeding with any such work.

3. Term. The term of this Agreement shall terminate on February 1, 2018.

4. Payment for Services. City agrees to pay Consultant for general engineering consultant services provided by it an annual amount which will exceed Twenty-Five Thousand Dollars (\$25,000.00) (the "Fee"). The pricing for these consulting services will be from the Fee Schedule attached and made part of the City of Coconut Creek, Florida General Professional Engineering Services (RFQ No. 11-19-14-10). 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, which costs shall be approved in writing, in advance by the City. Any such costs are payable at the City reimbursement rate.

4.1. Any necessary additional work, as determined by City, which is not covered by the Scope of Services described in the attached Exhibit "One", shall not be undertaken without a written amendment to this Agreement to that effect, executed in advance by both parties.

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

4.3. City shall pay Consultant monthly for services rendered within thirty (30) calendar days from date of approval of each of 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

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(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.

7. **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 Proposer shall be held responsible for any modifications, deviations, or omissions in these insurance requirements.

7.1 **GENERAL LIABILITY INSURANCE** is to include bodily injury, broad form property damage, products completed operations, blanket contractual liability, and personal injury with limits of no less than One Million Dollars (\$1,000,000.00) per occurrence, and no less than Two Million Dollars (\$2,000,000.00) annual aggregate, per job.

SPECIAL PROVISIONS AS TO GENERAL 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 Proposer has responsibility for notification); and
- "The City of Dania Beach, Florida" is named as an Additional "Named" Insured;
- Additional Named Insured status is included for Products completed operations coverage;
- Additional insured coverage shall be no more restrictive than Insurance Services Office (ISO) form CG 2037 (07 04);
- Proposer's insurance shall be primary and non-contributory; Waiver of Subrogation in favor of the City; and
- Copy of Additional "Named" Insured Endorsement or other endorsements may be attached to the Certificate.

7.2 **PROFESSIONAL LIABILITY INSURANCE** with minimum limits of liability of no less than One Million Dollars (\$1,000,000.00) to assure the City of coverages of the indemnification specified in the Agreement.

7.3 **WORKERS' COMPENSATION INSURANCE** shall be maintained by the Proposer and any Subcontractors during the term of the Agreement, and it is to apply to all "statutory employees" of Proposer (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 Proposer, its employees, and Subcontractors.

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.

4.4. 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.

5. Licenses, Permits and Fees. In accordance with the Public Bid Disclosure Act, Section 218.80, Florida Statutes, each license, permit, or fee, Consultant will have to pay the City before or during the Work, items or services to be provided or the percentage method or unit method of all licenses, permits and fees required by the City and payable to the City by virtue of the Work, items or services as part of this Agreement are as follows:

5.1. Consultant shall have and maintain during the term of this Agreement any and all appropriate City licenses, fees (and business tax receipts, if applicable), which shall be paid in full in accordance with the City's fee structure for such items. There will not be any percentage reduction or waiving of City licenses, fees (or business tax receipts, if applicable).

5.2. During the performance of this Agreement, there may be times when Consultant will be required to obtain a City permit for such Work, or in connection with the items or services. It is the responsibility of Consultant to insure that it has the appropriate City permits as may become necessary during the performance of this Agreement. Any fees related to the City required permits in connection with this Agreement, will be the responsibility of Consultant.

6. 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.

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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 Proposer shall be held responsible for any modifications, deviations, or omissions in these insurance requirements.

7.1 **GENERAL LIABILITY INSURANCE** is to include bodily injury, broad form property damage, products completed operations, blanket contractual liability, and personal injury with limits of no less than One Million Dollars (\$1,000,000.00) per occurrence, and no less than Two Million Dollars (\$2,000,000.00) annual aggregate, per job.

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- 30 Days' Notice of Cancellation or modification to City (if not available on the insurance policies, then Proposer has responsibility for notification); and
- "The City of Dania Beach, Florida" is named as an Additional "Named" Insured;
- Additional Named Insured status is included for Products completed operations coverage;
- Additional insured coverage shall be no more restrictive than Insurance Services Office (ISO) form CG 2037 (07 04);
- Proposer's insurance shall be primary and non-contributory; Waiver of Subrogation in favor of the City; and
- Copy of Additional "Named" Insured Endorsement or other endorsements may be attached to the Certificate.

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7.3 **WORKERS' COMPENSATION INSURANCE** shall be maintained by the Proposer and any Subcontractors during the term of the Agreement, and it is to apply to all "statutory employees" of Proposer (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 Proposer, its employees, and Subcontractors.

- In the case any Services are sublet as otherwise addressed in the Agreement or RFP Documents, the Proposer 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 Proposer, by furnishing statutory limits Part A.
- Employer's Liability Part B shall be in an amount of no less than One Hundred Thousand Dollars (\$100,000.00) each accident, and Five Hundred Thousand Dollars (\$500,000.00) for disease policy and limits of no less than One Hundred Thousand (\$100,000.00) for each employee.

IN NO EVENT SHALL THE PROPOSER BE PERMITTED TO UTILIZE IN THE PROSECUTION OF THE SERVICES, THE FOLLOWING:

I) ANY EMPLOYEE, SUBCONTRACTOR OR SUBCONTRACTOR EMPLOYEE, WHO 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 Proposer has responsibility for notification); and
- Waiver of Subrogation in favor of the City.

7.4 **AUTOMOBILE LIABILITY INSURANCE** shall be maintained with combined single limits of no less than One Million Dollars (\$1,000,000.00) per occurrence, and no less than One Million Dollars (\$1,000,000.00) annual aggregate, to include coverage for owned, hired, 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, Florida" is named as an Additional "Named" Insured;
- 30 Days' Notice of Cancellation or modification to City (if not available on the insurance policies, then Proposer has responsibility for notification); and
- Waiver of Subrogation in favor of City.

7.5 If Consultant hires a sub-consultant for any portion of any work, then such sub-consultant shall provide general liability insurance with minimum limits of liability of One Million Dollars (\$1,000,000.00). The City is to be included as an "additional" named insured with respect to any claims arising out of this Agreement, and Owner shall

be provided a certificate of insurance evidencing coverage and a named insured status on the policy.

7.6 The Consultant shall provide the Risk Manager of the City Certificates of Insurance for coverages and policies required by this Agreement. All certificates shall state that the City shall be given thirty (30) days' advance notice prior to expiration or cancellation of any policy. Such policies and coverages shall not be affected by any other policy of insurance which the City may carry in its own name. All certificates must clearly identify the contract to which they pertain, including a brief description of the subject matter of the contract.

8. Assignment of Agreement. 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. In recognition of the fact that Consultant is not entitled to costs of acceleration arising out of the delays caused by Supporting Consultants, Consultant shall not be required to accelerate its services where delays have resulted from Supporting Consultants, unless the City agrees to compensate Consultant for such accelerated efforts.

9. 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.

10. 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 to the Consultant. 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.

11. 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 sub-consultants) 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; 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.

12. 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: Carnahan, Proctor and Cross, Inc..
Attn: Gregory M. Proctor, P.E.
814 S. Military Trail
Deerfield Beach, Florida 33442

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

14. Bankruptcy. It is agreed upon that if the Consultant is adjudged bankrupt, either voluntarily or involuntarily, then this Agreement shall terminate effective the date and at the time the bankruptcy petition is filed. Upon such filing of Bankruptcy, Consultant will automatically be in default of this Agreement and the provisions of Article 9 will be enforced at City's discretion.

15. Venue; Fees. All claims, counterclaims, disputes and other matters in question between City and Consultant arising out of, relating to or pertaining to this Agreement, or the breach of it, or the services of it, or the standard of performance required in it, shall be addressed by resort to non-binding mediation as authorized under the laws and rules of Florida; provided, however, that in the event of any dispute between the parties, the parties agree to first negotiate with each other for a resolution of the matter or matters in dispute and, upon failure of such negotiations to resolve the dispute, the parties shall resort to mediation.

15.1 If mediation is unsuccessful, any such matter may be determined by litigation in a court of competent 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. In any litigation, the parties agree to each waive any trial by jury of any and all issues. In the event of any litigation which arises out of, pertains to, or relates to this Agreement, or the breach of it, or the standard of performance required in it, the prevailing party shall be entitled to recover reasonable attorney's fees from the non-prevailing party.

15.2 Operations During Dispute. In the event that a dispute, if any, arises between the City and the Consultant relating to this Agreement, or its performance or compensation, the Consultant agrees to continue to render service in full compliance with all terms and conditions of this Agreement as required by the City.

16. Legal Representation. It is acknowledged that each party to this Agreement had the opportunity to be represented by counsel in the preparation of this Agreement.

17. 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 attorney's fees.

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

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

20. 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.

21. All Prior Agreements Superseded. This document incorporates and includes all prior negotiations, correspondence, conversations, 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.

22. Consultant and its employees and agents shall be and remain independent Consultants 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 sub-consultants of the Consultant retained to perform services pursuant to this Agreement shall comply with all laws of the United States concerning work eligibility.

23. 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.

24. 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.

25. 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.

26. 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).

27. Consultant agrees to perform its obligations under this Agreement in accordance with the degree of skill and care exercised by practicing design professionals performing similar services under similar conditions. Consultant makes no other representations and no warranties, whether express or implied, with respect to the quality of its performance under this Agreement.

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

CITY:

ATTEST:

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

LOUISE STILSON, CMC
CITY CLERK

MARCO A. SALVINO, SR.
MAYOR

ROBERT BALDWIN
CITY MANAGER
Dated: _____, 2015.

APPROVED FOR FORM AND CORRECTNESS:

THOMAS J. ANSBRO
CITY ATTORNEY

CONSULTANT:

**CARNAHAN, PROCTOR
AND CROSS INC.,
a Florida corporation**

WITNESSES:

SIGNATURE

PRINT Name

SIGNATURE

PRINT Name

SIGNATURE

PRINT Name

Title

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me on _____ 2015, by _____, as _____ of Carnahan Proctor and Cross, 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