

**CITY OF MIRAMAR  
PROPOSED CITY COMMISSION AGENDA ITEM**

**Meeting Date:** November 1, 2023

**Presenter's Name and Title:** Marilyn Markwei, Senior Engineering Manager and Alicia Ayum, Director of Procurement

**Prepared By:** Kristy Gilbert, Assistant Public Works Director and Brenda Martin, Contracts Administration Manager

**Temp. Reso. Number:** 7951

**Item Description:** TEMP. RESO. #R7951, APPROVING THE AWARD OF INVITATION FOR BIDS ("IFB") NO. 23-026 (RE-BID) ENTITLED, "MILLING AND RESURFACING, SIDEWALK ADA UPGRADES AND DRAINAGE APRON INSTALLATION BC-MIRAM-FY2020-00003 – SURTAX PROJECT," TO THE STOUT GROUP, LLC, THE SECOND LOWEST RESPONSIVE RESPONSIBLE BIDDER, WITH A BID AMOUNT OF \$1,679,015, AND ALLOCATING A 20 PERCENT CONSTRUCTION ALLOWANCE IN THE AMOUNT OF \$335,803 FOR A TOTAL PROJECT COST OF \$2,014,818; AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN APPROPRIATE AGREEMENT WITH THE STOUT GROUP, LLC. *(Senior Engineering Manager Marilyn Markwei and Director of Procurement Alicia Ayum).*

Consent ☐ Resolution ☒ Ordinance ☐ Quasi-Judicial ☐ Public Hearing ☐

**Instructions for the Office of the City Clerk:** Public Works request execution of the agreement on the dais.

**Public Notice** – As required by the Sec. \_\_\_\_ of the City Code and/or Sec. \_\_\_\_, Florida Statutes, public notice for this item was provided as follows: on \_\_\_\_ in a \_\_\_\_ ad in the \_\_\_\_; by the posting the property on \_\_\_\_ and/or by sending mailed notice to property owners within \_\_\_\_ feet of the property on \_\_\_\_  
(fill in all that apply)

**Special Voting Requirement** – As required by Sec. \_\_\_\_, of the City Code and/or Sec. \_\_\_\_, Florida Statutes, approval of this item requires a \_\_\_\_ (unanimous, 4/5ths etc.) vote by the City Commission.

**Fiscal Impact:** Yes ☒ No ☐

**REMARKS:** Funds totaling \$2,014,818 will be expended from the Capital Improvement Program ("CIP") Account Nos. 393-50-901-541-000-606510-52022 in the amount of \$839,298 and 393-50-901-541-000-606510-52063 in the amount of \$1,175,520, entitled "CIP-Construction".

**Content:**


- Agenda Item Memo from the City Manager to City Commission
- Resolution TR7951
  - Exhibit A: Agreement with The Stout Group, LLC with Exhibits:

- Exhibit “A” to Exhibit “A” – The Stout Group Proposal
  - Exhibit “B” to Exhibit “A” – Project Schedule
- Exhibit B: Location Maps
- Exhibit C: Broward County Office of Economic and Small Business Development Memo
- Attachment(s)
  - Attachment 1: IFB No. 23-026 Bid Tab



**CITY OF MIRAMAR  
INTEROFFICE MEMORANDUM**

**TO:** Mayor, Vice Mayor, & City Commissioners

**FROM:** Dr. Roy L. Virgin, City Manager 

**BY:** Anthony Collins, Director of Public Works

**DATE:** October 26, 2023

**RE:** Temp. Reso. No. 7951, approving the award of Invitation for Bids ("IFB") No. 23-026 (Re-Bid) entitled, "Milling and Resurfacing, Sidewalk ADA Upgrades and Drainage Apron Installation BC-MIRAM-FY2020-00003 – Surtax Project"

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**RECOMMENDATION:** The City Manager recommends approval of Temp. Reso. No. 7951, approving the award of Invitation for Bids ("IFB") No. 23-026 (Re-Bid), entitled: "Milling and Resurfacing, Sidewalk ADA Upgrades and Drainage Apron Installation BC-MIRAM-FY2020-00003 – Surtax Project," to The Stout Group, LLC ("The Stout Group") with a bid amount of \$1,679,015, and allocating a 20 percent construction allowance in the amount of \$335,803 for a total project cost of \$2,014,818; and authorizing the City Manager to execute an appropriate agreement with The Stout Group, LLC.

**ISSUE:** In accordance with City Code Section 2-412(a)(1), City Commission approval is required for expenditures exceeding \$75,000 by a single City department from the same vendor in a single fiscal year.

**BACKGROUND:** On September 18, 2018, the City Commission adopted Resolution No. 18-182, approving Transportation System Interlocal Agreement ("ILA") among Broward County, City of Miramar, and the Metropolitan Planning Organization ("MPO") to rank municipal projects and determine eligibility for Surtax Funding. On November 6, 2018, Broward County voters approved the 30-year, One Cent Surtax for Transportation which took effect on January 1, 2019.

On May 20, 2020, the City Commission adopted Resolution No. 20-120 approving the submission of applications for funding from Broward County Transportation Surtax

Mobility Advancement Program ("Cycle 1") for maintenance and rehabilitation projects, specifically milling, pavement, and resurfacing of various roadways throughout the City. Subsequently, on January 25, 2023, the City Commission adopted Resolution No. 23-43 approving an Interlocal Agreement ("ILA") with Broward County for Project Number BC-MIRAM-FY2020-00003, which is the Phase 3 of 3 funding request. The ILA set forth the terms and conditions for the County to provide transportation surtax funding for the maintenance and rehabilitation project and the terms and conditions for the City to complete the Project.

On March 30, 2023, the City's Procurement Department advertised IFB No. 23-018 entitled: "Milling and Resurfacing, Sidewalk ADA Upgrades and Drainage Apron Installation BC-MIRAM-FY2020-00003 – Surtax Project" in a newspaper of general circulation and on Demand Star. The bid closed on May 4, 2023 with a total of two (2) bids received. Upon review, the lowest bid of \$3,532,567 exceeded the available budget of \$2,234,426. After evaluation of the bids, staff discussed revising the scope of work with Broward County to remove the two (2) feet of reconstruction proposed at the edge of the pavement and replace it with milling and resurfacing the approved roadways, remove clearing and grubbing of root removal within the reconstruction area and remove root barrier and arborist items. Based on bid item values, removing these items would allow the City to stay within the project budget. After careful evaluation, the County approved the reduction in scope and rebidding of the project.

**DISCUSSION:** On June 8, 2023, the City re-advertised IFB No. 23-026. A Non-Mandatory Pre-Bid meeting was held on June 15, 2023, with a total of two (2) firms in attendance. On July 6, 2023, the date the bids were due, four (4) bid responses were received by the City, as detailed in Attachment "1". The Procurement Department completed its due diligence review and submitted the bid tab and supporting documents to Broward County Office of Economic and Small Business Development ("OESBD") for review.

As part of the ILA to fund this project, the awarded contractor is required to meet a CBE goal of 40 percent. Failure to meet the requirement will result in liquidated damages in an amount equal to 50 percent of the actual dollar amount for failure to achieve the commitment, and up to a maximum amount of ten (10) percent of the total contract amount, excluding costs and reimbursable expenses.

**ANALYSIS:** The apparent lowest responsive responsible bidder, American Design Engineering Construction, Inc., submitted an Application for Evaluation of Good Faith Efforts. Upon review of the documentation, OESBD determined that the firm failed to demonstrate the quality, quantity, and extent of the various efforts, made in good faith, to meet the established CBE goal. Therefore, American Design was deemed non-compliant with the CBE requirements for the project, as detailed in OESBD memo dated September 21, 2023, as detailed in Exhibit "C". The second lowest responsive responsible bidder,

The Stout Group, LLC, submitted a bid price of \$1,679,015 and the Letter of Intent ("LOI") with its solicitation response meeting the established 40 percent CBE requirement that it has contractually agreed to meet. A 20 percent construction allowance of \$335,803 is being requested to allow for any unforeseen incidentals for a total project cost of \$2,014,818.

The resurfacing of various roadway segments, as detailed in Exhibit "B," totaling approximately five (5) lane miles will be resurfaced. The scope of work includes, but may not be limited to, furnishing all labor, materials, machinery, tools and equipment, services necessary for the street resurfacing, including but not limited to milling, asphaltic concrete pavement overlay, adjustment of surface utilities such as manholes, inlets, gate valves, sidewalk ADA upgrades, concrete drainage aprons, pavement marking, maintenance and protection of traffic, site restoration and all other appurtenant and miscellaneous items and work for a complete, functional and satisfactory installation of the project. The work will be completed in accordance with the Broward County ILA and all other applicable current standard specifications.

Funds totaling \$2,014,818 will be expended from CIP Account Nos. 393-50-901-541-000-606510-52022 in the amount of \$839,298 and 393-50-901-541-000-606510-52063 in the amount of \$1,175,520, entitled: "CIP-Construction".

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10/2/23  
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**CITY OF MIRAMAR  
MIRAMAR, FLORIDA**

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF MIRAMAR, FLORIDA, APPROVING THE AWARD OF INVITATION FOR BIDS (“IFB”) NO. 23-026 (RE-BID) ENTITLED “MILLING AND RESURFACING, SIDEWALK ADA UPGRADES AND DRAINAGE APRON INSTALLATION BC-MIRAM-FY2020-00003 – SURTAX PROJECT,” TO THE STOUT GROUP, LLC, THE SECOND LOWEST RESPONSIVE RESPONSIBLE BIDDER, WITH A BID AMOUNT OF \$1,679,015, AND ALLOCATING A 20 PERCENT CONSTRUCTION ALLOWANCE IN THE AMOUNT OF \$335,803 FOR A TOTAL PROJECT COST OF \$2,014,818; AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN APPROPRIATE AGREEMENT WITH THE STOUT GROUP, LLC; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Public Works Department’s Street Maintenance Program is responsible for the maintenance and condition of the City of Miramar’s (“City”) roadways;  
and

**WHEREAS**, the City has approximately 166 centerline miles of publicly maintained roadway infrastructure; and

**WHEREAS**, the City’s Capital Improvement Program (“CIP”) Project No. 52022 and 52063 provides funding for roadway resurfacing and sidewalk repair/replacement;  
and

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**WHEREAS**, on September 18, 2018, the City Commission adopted Resolution No. 18-182, approving the Transportation System Interlocal Agreement (“ILA”) among Broward County (“County”), City of Miramar (“City”), and the Metropolitan Planning Organization (“MPO”) to rank municipal projects and determine eligibility for Surtax Funding; and

**WHEREAS**, on November 6, 2018, the County voters approved the 30-year, one cent Surtax for transportation which took effect on January 1, 2019; and

**WHEREAS**, on May 20, 2020, the City Commission adopted Resolution No. 20-120, approving the submission of applications for funding from Broward County Transportation Surtax Mobility Advancement Program (“Cycle 1”) for maintenance and rehabilitation projects, specifically milling, pavement, and resurfacing of various roadways throughout the City; and

**WHEREAS**, on January 25, 2023, the City Commission adopted Resolution No. 23-43 approving an Interlocal Agreement with the County for Project Number BC-MIRAM-FY2020-00003, which is Phase 3 of 3 funding requests which sets forth the terms and conditions for the County to provide Transportation Surtax Funding for the maintenance and rehabilitation project and the terms and conditions for the City to complete the Project; and

**WHEREAS**, Section 2-412(a)(1) of the City Code provides that purchases of commodities or services by a single City department from the same vendor in excess of \$75,000 in a single fiscal year must be approved by the City Commission; and

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**WHEREAS**, on March 30, 2023, the City's Procurement Department advertised Invitation for Bids ("IFB") No. 23-018, entitled "Milling and Resurfacing, Sidewalk ADA Upgrades and Drainage Apron Installation BC-MIRAM-FY2020-00003 – Surtax Project" in a newspaper of general circulation and on Demand Star; and

**WHEREAS**, on May 4, 2023, the date of the scheduled bid opening, two (2) bid responses were received by the City with the lowest bid of \$3,532,567 exceeding the available budget of \$2,234,426; and

**WHEREAS**, after evaluation of both bids, staff analyzed, revised and reduced the scope of work, with the approval of the County; and

**WHEREAS**, on June 8, 2023, following Broward County re-evaluation, reduction and approval of the revised project scope, the City's Procurement Department re-advertised Invitation for Bids ("IFB") No. 23-026 (Re-Bid), entitled "Milling and Resurfacing, Sidewalk ADA Upgrades and Drainage Apron Installation BC-MIRAM-FY2020-00003 – Surtax Project" in a newspaper of general circulation and on Demand Star; and

**WHEREAS**, on June 15, 2023, the City conducted a Non-Mandatory Pre-Bid meeting where two (2) firms were in attendance; and

**WHEREAS**, on July 8, 2023, the date of the scheduled bid opening, four (4) bid responses were received by the City; and



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**WHEREAS**, the Procurement Department completed its due diligence review, recommended The Stout Group, LLC for the award and sought final approval from Broward County; and

**WHEREAS**, the County completed its review and determined that the second lowest responsive bidder, The Stout Group, LLC met the CBE and all requirements for the project, in the amount of \$1,679,015, attached hereto as Exhibit “C;” and

**WHEREAS**, the City Manager recommends approval of the award of IFB No. 23-026 (Re-Bid), entitled “Milling and Resurfacing, Sidewalk ADA Upgrades and Drainage Apron Installation BC-MIRAM-FY2020-00003 – Surtax Project” for resurfacing of various segments of roadways as detailed in the Location Maps, attached hereto as Exhibit “B,” to The Stout Group, LLC, the second lowest responsive responsible bidder, in the amount of \$1,679,015, and allocating a 20 percent (20%) construction allowance of \$335,803 for a total project cost of \$2,014,818, and seeks authorization to execute an agreement in the form attached hereto as Exhibit “A;” and

**WHEREAS**, the City Commission deems it to be in the best interest of the citizens and residents of the City of Miramar to award IFB No. 23-026 (Re-Bid), entitled “Milling and Resurfacing, Sidewalk ADA Upgrades and Drainage Apron Installation BC-MIRAM-FY2020-00003 – Surtax Project” for resurfacing of various segments of roadways as detailed in Exhibit “B” to The Stout Group, LLC, in the amount of \$1,679,015 and

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allocating a 20 percent construction allowance of \$335,803 for a total project cost of \$2,014,818, and to authorize the City Manager to execute the appropriate agreement in substantial conformity with Exhibit "A" attached hereto.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF MIRAMAR, FLORIDA AS FOLLOWS:**

**Section 1:** That the foregoing "**WHEREAS**" clauses are ratified and confirmed as being true and correct and are made a specific part of this Resolution.

**Section 2:** That the City Commission approves the award of Invitation for Bids No. 23-026 (Re-Bid) entitled "Milling and Resurfacing, Sidewalk ADA Upgrades and Drainage Apron Installation BC-MIRAM-FY2020-00003 – Surtax Project" to The Stout Group, LLC.

**Section 3:** That the City Manager is authorized to execute an agreement with The Stout Group, LLC in the amount of \$1,679,015 and allocating a 20 percent construction allowance of \$335,803, for a total project cost of \$2,014,818, in the form attached hereto as Exhibit "A", together with such non-substantial changes as are deemed appropriate by the City Manager and approved as to form and legal sufficiency by the City Attorney.

**Section 4:** That appropriate City staff is authorized to do all things necessary to carry out the aims of this Resolution.

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**Section 5:** That this Resolution shall take effect immediately upon adoption.

**PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Mayor, Wayne M. Messam

\_\_\_\_\_  
Vice Mayor, Alexandra P. Davis

ATTEST:

\_\_\_\_\_  
City Clerk, Denise A. Gibbs

I HEREBY CERTIFY that I have approved  
this RESOLUTION as to form:

\_\_\_\_\_  
City Attorney,  
Austin Pamies Norris Weeks Powell, PLLC

**Requested by Administration**

Commissioner Winston F. Barnes  
Commissioner Maxwell B. Chambers  
Commissioner Yvette Colbourne  
Vice Mayor Alexandra P. Davis  
Mayor Wayne M. Messam

**Voted**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Reso. No. \_\_\_\_\_



**AGREEMENT BETWEEN THE CITY OF MIRAMAR, FLORIDA  
AND  
THE STOUT GROUP, LLC.  
FOR**

**MIRAMAR MILLING AND RESURFACING, SIDEWALK ADA UPGRADES AND  
DRAINAGE APRON INSTALLATION, IFB NO. 23-026 (RE-BID)  
BC-MIRAM-FY2020-00003 - SURTAX PROJECT  
IN MIRAMAR, FLORIDA**

**THIS AGREEMENT** (the "Agreement") is entered into and dated [REDACTED], 2023, by and between the CITY OF MIRAMAR, FLORIDA (the "City"), a Florida municipal corporation, whose address is 2300 Civic Center Place, Miramar, Florida 33025, and The Stout Group, LLC. (the "Contractor"), Florida Limited Liability Company whose address is 10850 NW 138<sup>th</sup> Street, Bay #3, Hialeah Gardens, Florida 33018.

**WITNESSETH:**

**WHEREAS**, on [REDACTED], by Resolution No. [REDACTED], the City Commission approved the award of Invitation to Bids No. 23-026 (RE-BID) (the "IFB"), entitled: "Milling And Resurfacing, Sidewalk Ada Upgrades And Drainage Apron Installation- BC-MIRAM-FY2020-00003 - SURTAX PROJECT" (the "Work" or "Services"), to Contractor as the lowest, responsible, responsive Bidder whose bid is in the best interest of the City; and

**WHEREAS**, the City intends to contract for the Services related to the Work and desires to engage the services of Contractor for this purpose; and

**WHEREAS**, the Contractor desires to contract with the City to provide the Services as set forth in the IFB the terms of which are incorporated and made a part hereof, including all definitions set forth therein.

**NOW THEREFORE**, the City and Contractor, in consideration of the mutual covenants hereinafter set forth, the receipt and sufficiency of which is acknowledged, agree as follows:

**ARTICLE 1**  
**DEFINITIONS**

Except as provided herein, terms used in this Agreement are defined in the IFB, which is deemed fully incorporated herein for all purposes, and have the meanings indicated in the IFB, Transportation Surtax Addendum, or in the General Terms and

Conditions incorporated herein by reference. In the event of conflict, the definitions and all other terms and conditions contained in the IFB shall govern.

## **ARTICLE 2**

### **WORK**

The work shall include all labor, materials and equipment necessary for the proper execution and completion of the work detailed in the IFB, along with any and all additional Work included in the Contract Documents and the Contractor's proposal, attached hereto as **Exhibit "A"**, and specifically:

Work includes, but not limited to:

- a. Mill 1.0" of asphaltic pavement – Remove existing asphalt concrete pavement by milling 1". Contractor shall provide a straight sawcut at beginning and end limits of project. Use a street sweeper or other equipment capable of removing excess milled materials and controlling dust. Milled surface shall be resurfaced within 24 hours.
- b. Resurface 1.0" with superpave asphaltic concrete, traffic C, PG76-22. The temperature of the mix and pavement during compaction will be monitored. Spread rate will also be monitored. Clean milled surface of all loose and deleterious material using power brooms or blowers. Any dip or potholes shall be filled before resurfacing. It is the contractor's responsibility to ensure that the joint between old pavement and the new is sealed. Prime coat milled surface before placing asphalt. Asphalt mixtures from the plant shall be ceased when rain begins at the roadway site. Asphalt mixtures shall not be placed while rain is falling, or when there is water on the surface of the roadway to be resurfaced.
- c. Sidewalk segments replacement – sidewalks with damage or trip hazard will be replaced with 6" thick concrete and 6" at driveways. Existing sidewalk removal, roots pruning, irrigation repairs and all other restoration or repair work needed to be completed as part of the sidewalk work shall be included in the cost of concrete sidewalk. All debris will be disposed by contractor. Sidewalk to be replaced will be marked on site.
- d. Concrete Catch Basin apron installation - 24ft of concrete at a depth of 6" will be placed around catch basin's grates. Apron shall begin at edge of pavement and end at front of sidewalk. The width of concrete on the swale ends of the catch basin shall be 2 feet. Cost for removal of existing apron material, restoration, sod and all other work that needs to be performed as part of this work shall be included in the cost for the concrete for this work. Concrete shall be at least 3000psi in strength. Contractor shall prepare area and compact before placing concrete.
- e. Adjust Manhole and valve cover as needed.

#### **LANDSCAPING:**

The contractor shall be responsible for protection and preservation of all trees, palms, shrubs, irrigation systems, landscaping, signs etc. within the limits of the proposed work.

#### RESTORATION:

Contractor shall restore the project site to existing condition or better. It shall be the contractor's responsibility to take pre-existing condition pictures or video before commencement of project. Sod shall be installed adjacent to roadway or sidewalk if damaged during construction. This shall be included in the unit price for the item being constructed. Any damages to private property shall be the contractor's responsibility.

#### COORDINATION OF CONSTRUCTION WITH EXISTING UTILITIES:

The contractor shall call Sunshine 811 and request for locates before beginning work. The contractor shall at all times conduct its operation so as to interfere as little as possible with the existing utilities.

#### STAGING AREA:

Should the contractor require a staging area, he/she shall determine possible locations and submit for the City's approval. Any material or equipment stored in the ROW shall be properly shielded by the contractor. Any areas used by the contractor for staging shall be restored to same or better condition.

#### MAINTENANCE OF TRAFFIC:

The contractor shall adhere to the maintenance of traffic requirements, including, but not limited to: construction zone signing, pavement marking, barricades, barriers, etc. All affected residents and businesses shall be given at least seventy-two (72) hours' notice prior to the commencement of work using a VMS board. This shall be included in the cost for MOT

#### TRAFFIC SIGNAGE AND PAVEMENT MARKING:

All existing signs shall remain. Pavement markings shall be replaced per BCTED requirements. Temporary markings must be in place immediately after resurfacing. Thermoplastic pavement markings are to be placed no sooner than thirty (30) calendar days after the completion of the final pavement layer. Reflective pavement markers shall be placed on all final asphaltic concrete surfaces immediately after the temporary permanent striping is in place.

#### EROSION AND SEDIMENT CONTROL:

The contractor shall take steps and make suitable provisions to minimize siltation into the storm water system that may result from its operation during construction. The contractor shall make suitable arrangements, which may include street sweeping after milling and inlet protection to prevent storm water pollution. Project site shall be returned to its original condition to the satisfaction of the City upon completion of work.

Refer to FDOT Standard Specifications for Road and Bridge Construction latest edition for more information.

### **ARTICLE 3**

#### **CONTRACTOR AND CITY'S RELATIONSHIP**

**3.1** The Contractor accepts the relationship of trust and confidence established between it and the City by this Agreement. The Contractor represents that it will furnish its best skill and judgment in performing the Contractor's Services and the Work, and shall always act to further the interest of the City in the expeditious completion of the Project at the lowest responsible cost to the City, and in strict accordance with the Contract Documents and prudent and customary industry practices.

**3.2** By signing this Agreement, the Contractor accepts a fiduciary duty with the City and warrants and represents to the City that the Contractor:

- A.** Has all licenses and certifications required by applicable Law to perform the Contractor's Services and the Work;
- B.** Is experienced in all aspects of the Work required for projects similar to the Project;
- C.** Will act in the City's highest and best interest in performing the Contractor's Services and the Work; and
- D.** That no employee or affiliate of the Contractor, including all Subconsultants, Subcontractors and Suppliers (if any), at any tier, has been convicted of a public entity crime pursuant to Section §287.133, Florida Statutes, within the preceding 36 months from the date of execution of this Agreement.

**3.3** The Contractor acknowledges and agrees that the City is relying on these representations and covenants as a material inducement to enter into this Agreement.

### **ARTICLE 4**

#### **TIME FOR PERFORMANCE: CONTRACTOR DAMAGES**

**4.1** Contractor shall perform the Services within the time periods specified in Contractor Project Schedule, Exhibit "B". Time periods shall commence from the date of the applicable Notice to Proceed.

**4.2** Contractor must receive a Notice to Proceed from the Contract Administrator prior to commencement of Services and any phase of Services under this Agreement. Prior to granting approval for Contractor to proceed to any phase, the Contract Administrator may, at his or her sole option, require Contractor to submit the itemized deliverables and documents identified in Contractor Project Schedule, Exhibit "B" for the Contract Administrator's review.

**4.3** If the Contract Administrator determines that Contractor is unable to complete Services because of delays resulting from untimely review by City or other governmental agencies having jurisdiction over the Project and such delays are not the fault of Contractor, or because of delays caused by factors outside the control of

Contractor, 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 Contractor to notify the Contract Administrator in writing whenever a delay in approval by a governmental agency is anticipated or experienced, and whenever a delay has been caused by factors outside of Contractor's control, and to inform the Contract Administrator of all facts and details related to the delay. Contractor must provide such written notice to the Contract Administrator within three (3) business days after the occurrence of the event causing the delay.

**4.4** If (a) Contractor fails to substantially complete the Project on or before the substantial completion date specified in its agreement with City, or (b) if Contractor is granted an extension of time beyond said substantial completion date and Contractor's Services are extended beyond the substantial completion date through no fault of Contractor, then Contractor shall be compensated in accordance with Article 5 for all Services rendered by Contractor beyond the substantial completion date.

**4.5** Notwithstanding Section 4.4, if Contractor fails to substantially complete the Project on or before the substantial completion date specified in its agreement with City, and the failure to substantially complete is caused in whole or in part by Contractor, then Contractor shall pay to City its proportional share of any claim for damages to Contractor arising out of the delay. The provisions for the computation of delay costs, damages, or any other amounts, whether direct or indirect, in the agreement between the Contractor and City are incorporated herein. This section shall not affect the indemnification rights or obligations of either Party otherwise set forth in this Agreement.

**4.6** If Services are scheduled to end due to the expiration of this Agreement, at the request of the Project Manager, Contractor agrees to continue to provide Services for an extension period, not to exceed three months, upon the same terms and conditions as contained in this Agreement. Contractor shall be compensated for such Services at the rate in effect when the extension is invoked by City. To exercise an extension authorized by this section, the City Engineer shall notify Contractor in writing prior to the end of the term of this Agreement.

## **ARTICLE 5**

### **CONTRACTOR RESPONSIBILITIES**

**51** Contractor agrees that it shall prepare and review plans and documents ensuring that such plans and documents conform with guidelines set forth in the City's Code and all other applicable Laws, ordinances and governmental rules, Regulations and orders, now or at any time during the term of this Agreement.

**52** Contractor shall provide City with a detailed breakdown of its monthly bills, indicating each task performed and time allocated to each task.

**53** Contractor agrees that all meetings relating to Work performed pursuant to this Agreement shall take place at a City facility and all site visits relating to such Work shall take place with a City representative present.

**54** Contractor agrees that its Services are to be performed within the limits



prescribed by the City and represents that the standard of care for all Services performed or furnished by Contractor under this Agreement, will be the care and skill ordinarily used by members of the Contractor's profession practicing under similar conditions.

**5.5** Contractor is prepared to begin Work on the Project immediately upon receipt of a copy of this fully executed Agreement. Contractor, in consultation with the City, shall perform its Work in such a manner as to comply with an agreed upon Project Schedule, attached as **Exhibit "B."**

## **ARTICLE 6**

### **CITY'S RESPONSIBILITIES**

**6.1** In exchange for the Services to be performed by Contractor, outlined herein and in **Exhibit "A"** of this Agreement, the City agrees to compensate the Contractor pursuant to the Services in the amount of One Million Six Hundred Seventy-Nine Thousand and Fifteen Dollars (\$1,679,015.00).

**6.2** Compensation shall be invoiced by Contractor and paid by the City as follows: Contractor shall submit monthly invoices to the City for review. Each invoice shall indicate the original fee estimate for the Service provided the invoice date, the amount of the invoice and the estimated fees remaining. Payment for Services rendered by Contractor during the previous billing period shall be due and payable as of the date of the invoice, and shall be paid by the City no later than the 30<sup>th</sup> Day after the date of invoice, in accordance with Chapter 218, Florida Statutes, Part VIII, Prompt Payment Act, unless some other mutually agreeable period of required payment is established. All invoices are subject to the City's approval.

**6.3** The Contractor shall be responsible for reimbursing the City, in addition to liquidated damages, for all costs incurred by the Engineer administering the construction of the Project beyond the Final Completion date specified above or beyond an approved extension of time granted to the Contractor, whichever is later. Such costs shall be deducted from the monies due the Contractor for performance of Work under this Agreement by means of unilateral Change Orders (if any) issued periodically by the City as costs are incurred by the Engineer and agreed to by the City.

## **ARTICLE 7**

### **INDEMNIFICATION**

**7.1** To the fullest extent permitted by Laws and Regulations, the Contractor shall indemnify, defend, and hold harmless the City, its officers, directors, agents, and employees, against and from liabilities damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Contractor and other persons employed or utilized by the Contractor in the performance of the contract, but not from the sole negligence or willful misconduct of the City. Such indemnification by the Contractor shall include but not be limited to the following:

- A. Liability or claims resulting directly or indirectly from the negligence or carelessness of the Contractor, its employees, or agents in the performance of the Work, or in guarding or maintaining the same, or from any improper Materials, implements, or appliances used in the Work, or

by or on account of any act or omission of the Contractor, its employees, or agents;

- B. Liability or claims arising directly or indirectly from bodily injury, occupational sickness or disease, or death of the Contractor's or Subcontractor's own employees engaged in the Work resulting in actions brought by or on behalf of such employees against the City and/or the Engineer;
- C. Liability or claims arising directly or indirectly from or based on the violation of any Law, ordinance, Regulation, order, or decree, whether by the Contractor, its employees, or agents;
- D. Liability or claims arising directly or indirectly from the use or manufacture by the Contractor, its employees or agents in the performance of this Agreement, of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article, or appliance, unless otherwise specifically stipulated in this Agreement;
- E. Liability or claims arising directly or indirectly from the breach of any warranties, whether express or implied, made to the City or any other parties by the Contractor, its employees or agents;
- F. Liabilities or claims arising directly or indirectly from the willful misconduct of the Contractor, its employees or agents; and
- G. Liabilities or claims arising directly or indirectly from any breach of the obligations assumed herein by the Contractor.

**7.2** The Contractor shall reimburse the City and the Engineer for all costs and expenses (including but not limited to fees and charges of Engineers, architects, attorneys, and other professionals and court costs) incurred by the City and the Engineer in enforcing the provisions of this indemnification.

**7.3** This indemnification obligation shall not be limited in any way by any limitation of the amount or type of damages, compensation, or benefits payable by or for the Contractor or any Subcontractor or other person or organization under workers' compensation acts, disability benefit acts, or other employee benefit acts, or insurance coverage.

**7.4** The Contractor acknowledges receipt and the adequacy of the specific consideration in the amount of \$100.00, which sum was included in the total Bid Price and is included in the Contract Price to be paid by City to the Contractor as consideration for the indemnification given by the Contractor to the City.

**7.5** Nothing in this Agreement shall be deemed or treated as a waiver by the City of any immunity to which it is entitled to by law, including but not limited to the City's sovereign immunity set forth in Section 768.28, Florida Statutes.

## **ARTICLE 8** **TERMINATION**

**8.1** **TERM OF AGREEMENT** - This Agreement shall commence on the date that it is fully executed by all parties. Architect shall begin Work promptly after receipt of a fully

executed copy of this Agreement from City and complete the Project within the completion timeframes established in the Project Schedule as set forth in Exhibit "B". With respect to such schedule, performance shall be timely under this Agreement, and time is of the essence. However, the completion timeframes shall be extended for periods of delay resulting from strikes, natural disasters, and similar circumstances over which the Architect has no control, if City approves such extensions in writing.

**82**     **TERMINATION - For Convenience** - This Agreement may be terminated by City for convenience upon 30 calendar Days' written notice to Architect. In the event of termination by City, Architect shall be paid for all authorized Services rendered to the date of such termination. The amount payable to Architect in the event of such termination shall be a pro rata amount determined on the basis of the amount and value of the Work performed prior to Architect's receipt of notice of termination for the applicable Work performed. In exchange for such payment, Architect shall turn over to City all work product which has been paid for by City. Under no circumstances shall City make payment for Services that have not been performed.

**8.3**     **TERMINATION - For Cause** - This Agreement may be terminated by either party upon five calendar Days' written notice to the other should such other party fail substantially to perform in accordance with its material terms through no fault of the party initiating the termination. In the event Architect abandons this Agreement or causes it to be terminated by City, Architect shall indemnify City against loss pertaining to this termination. In the event that City terminates the Agreement for cause, and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a termination for convenience under Article 8.2 and the provisions of Article 8.2 shall apply.

## **ARTICLE 9** **DEFAULT**

**9.1**     An event of default shall mean a breach of this Agreement by Contractor. Without limiting the generality of the foregoing and in addition to those instances referred to as a breach, an event of default shall include the following:

- a.     Contractor has not performed Services on a timely basis as set forth in the Project Schedule attached as, Exhibit "B";
- b.     Contractor has refused or failed, except in the case for which an extension of time is provided, to supply enough properly skilled staff personnel;
- c.     Contractor has failed to make prompt payment to Subcontractors or Suppliers (if any) for any Services;
- d.     Contractor has become insolvent or has assigned the proceeds received for the benefit of Contractor's creditors, or Contractor has taken advantage of any insolvency statute or debtor/creditor law or, if Contractor's affairs have been put in the hands of a receiver;

- e. Contractor has failed to obtain the approval of City where required by this Agreement;
- f. Contractor has failed in the honoring of any warranties; or
- g. Contractor has refused or failed, except in the case for which an extension of time is provided, to provide the Services as defined in this Agreement.

**9.2** In the event Contractor fails to comply with the provisions of this Agreement, City may declare Contractor in default, notify Contractor in writing, and give Contractor 15 calendar Days to cure the default. If Contractor fails to cure the default, compensation will only be due for any completed professional Services, minus any damages pursuant to Article 8.3. In the event payment has been made for such professional Services not completed, Contractor shall return these sums to City within ten (10) days after notice that these sums are due. Nothing in this Section shall limit City's right to terminate, at any time, pursuant to Article 8 above, and its right for damages under Article 9.3.

**9.3** In the event of Default, Contractor shall be liable for all damages resulting from the default, including but not limited to:

- a. Lost funding, and
- b. The difference between the cost associated with procuring services and the amount actually expended by City, including procurement and administrative costs.

**9.4** City may take advantage of each and every remedy specifically existing at law or in equity. Each and every remedy shall be in addition to every other remedy specifically given or otherwise existing and may be exercised from time to time as often and in such order as may be deemed expedient by City. The exercise or the beginning of the exercise of one remedy shall not be deemed to be a waiver of the right to exercise any other remedy. City's rights and remedies as set forth in this Agreement are not exclusive and are in addition to any other rights and remedies available to City at Law or in equity.

## **ARTICLE 10**

### **LIQUIDATED DAMAGES**

City and the Contractor recognize that time is of the essence of this Agreement and that the City will suffer financial loss if the Work is not completed within the time specified herein. They also recognize the delays, expense, and difficulties involved in proving in a legal proceeding the actual loss suffered by the City if the Work is not completed on time. Accordingly, instead of requiring any such proof, the City and the Contractor agree that as liquidated damages for delay (but not as a penalty), the Contractor shall pay the City \$6,000 for each Day that expires after the time specified

herein for Substantial Completion until Substantial Completion is achieved, and \$3000 for each calendar Day that expires after the time herein for Final Completion and full acceptance is achieved. Liquidated damages are cumulative.

## **ARTICLE 11**

### **DELIVERY OF MATERIALS**

**11.1** Upon receipt of notice of termination under Articles 8 or 9 above, Contractor shall immediately deliver to City all Materials held or used by Contractor in connection with the Services except those Materials, if any, owned by Contractor or supplied by Contractor at Contractor's own cost. If, at the time of termination further sums are due Contractor, Contractor shall not be entitled to sums until all Materials required to be delivered to the City are delivered in electronic format, including any additional format of delivery of Materials requested by the City.

**11.2** Upon receipt of notice of termination for any reason, Contractor shall promptly cease all Services, except for additional Services that the City may, in its discretion, request Contractor to perform. Contractor shall perform additional Services with the standard of care as stated in Article 5 above.

## **ARTICLE 12**

### **CONTRACT DOCUMENTS**

**12.1** The Contract Documents which comprise the entire agreement between City and Contractor concerning the Work consist of this Agreement, including amendments hereto and the following:

- All Change Orders (if any) which may be delivered or issued after the Effective Date of this Agreement;
- All Addenda;
- Contractor's Bid;
- Solicitation, General Provisions;
- General Conditions;
- Technical Specifications;
- Referenced Standard Specifications; and
- Drawings.

**12.2** There are no Contract Documents other than those listed herein. The Contract Documents may only be amended by written Change Order (if any) as provided in the General Conditions. In the event of any conflict between this Agreement and any other of the Contract Documents, this Agreement and amendments shall govern first and then the other Contract Documents in the order listed above.

## **ARTICLE 13**

### **ASSIGNMENT**

No assignment by the Contractor of any rights or obligations hereunder or interests in the Contract Documents will be binding on the City without the written consent of the City, which may be withheld for any reason, in the City's sole discretion.

**ARTICLE 14**  
**APPLICABLE LAW; ACCIDENT PREVENTION AND REGULATIONS**

Contractor shall comply with all applicable Laws and Regulations at all times. Precautions shall be exercised at all times for the protection of persons and property. The Contractor and all Subcontractors shall conform to all OSHA, federal, state, county and City Regulations while performing under the terms and conditions of this Agreement. Any fines levied by the above-mentioned authorities because of inadequacies to comply with these requirements shall be borne solely by the Contractor.

**ARTICLE 15**  
**AUDIT AND INSPECTION RIGHTS**

**15.1** The City may, at reasonable times and for a period of up to three years following the date of Final Completion, audit, or cause to be audited, those books and records of Contractor that are related to Contractor's performance under this Agreement. Contractor agrees to maintain all such books and records at its principal place of business for a period of three years after final payment is made under this Agreement.

**15.2** The City may, at reasonable times during the term hereof, inspect Contractor's facilities and perform such inspections as the City deems reasonably necessary to determine whether the Services required to be provided by Contractor under this Agreement conform to the terms hereof and/or the terms of this Agreement. Contractor shall make available to the City all reasonable facilities and assistance to facilitate the performance of inspections by the City's representatives. All inspections shall be subject to, and made in accordance with, all applicable Laws, including but not limited to the provisions of the City Code and the Code of Broward County, Florida, as same may be amended or supplemented from time to time.

**15.3** The City may, as deemed necessary, require from the Contractor support and/or documentation for any submission. Upon execution of the Agreement, the Contractor agrees that the City shall have unrestricted access during normal working hours to all Contractor's records relating to this Project, including hard copy as well as electronic records, for a period of three years after Final Completion.

**15.4** In accordance with Section 20.055(5) F.S., It is the duty of every state officer, employee, agency, special district, board, commission, contractor, and subcontractor to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to this section. Beginning July 1, 2015, each contract, bid, proposal, and application or solicitation for a contract shall contain a statement that the corporation, partnership, or person understands and will comply with this subsection.

**ARTICLE 16**  
**NON-SOLICITATION**

Contractor represents and warrants to the City that it has not employed or retained any person or company employed by the City to solicit or secure this Agreement and that it has not offered to pay, paid, or agreed to pay any person any fee,

commission, percentage, brokerage fee, or gift of any kind contingent upon or in connection with, the award or making of this Agreement. For the breach or violation of this provision, the City shall have the right to terminate the Agreement without liability at its discretion, to deduct from the Contract Price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

## **ARTICLE 17**

### **PUBLIC RECORDS**

**17.1** The Contractor shall comply with The Florida Public Records Act as follows:

**17.1.1** Keep and maintain public records in the Contractor's possession or control in connection with the Contractor's performance under this Agreement, that ordinarily and necessarily would be required by the City in order to perform the service.

**17.1.2** Upon request by the City's records custodian, provide the City with a copy of requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

**17.1.3** Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement, and following completion of this Agreement until the records are transferred to the City.

**17.1.4** Upon completion of this Agreement or in the event of termination of this Agreement by either party, any and all public records relating to this Agreement in the possession of the Contractor shall be delivered by the Contractor to the City, at no cost to the City, within seven (7) days. All records stored electronically by the Contractor shall be delivered to the City in a format that is compatible with the City's information technology systems. Once the public records have been delivered to City upon completion or termination of this Agreement, the Contractor shall destroy any and all duplicate public records that are exempt or confidential and exempt from public record disclosure requirements.

**17.1.5** The Contractor's failure or refusal to comply with the provisions of this Section shall result in the immediate termination of this Agreement by the City.

**17.1.6 IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 954-602-3011, [dagibbs@miramarfl.gov](mailto:dagibbs@miramarfl.gov) OR BY MAIL: City Of Miramar – City Clerk's Office, 2300 Civic Center Place, Miramar, FL 33025.**

## **ARTICLE 18**

### **COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS**

**18.1** Contractor understands that agreements between private entities and local governments are subject to certain Laws and Regulations, including, by example and not limited to, Laws pertaining to public records, conflict of interest, and record keeping. Contractor agrees to comply with and observe all applicable Laws, codes and ordinance as they may be amended from time to time.

**18.2** The Contractor agrees that it shall not make any statements, press releases or publicity releases concerning this Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the City and securing prior written consent, unless and except otherwise required by Law. The Contractor also agrees that it shall not publish, copyright or patent any of the data developed under this Agreement, it being understood that such data or information are works made for hire and the property of the City.

**18.3** The knowing employment by Contractor or its Subcontractors or Subconsultants of any alien not authorized to work by the immigration Laws or the Attorney General of the United States is prohibited and shall be a default of this Agreement.

## **ARTICLE 19**

### **CERTIFICATE OF COMPETENCY**

Contractor shall, at the time of executing this Agreement, hold a valid certificate of competency or applicable license for providing the Services, if applicable, issued by the federal, state, or county examining board qualifying the Contractor to perform the Work. If a Subcontractor(s) or Subconsultant(s) is employed, an applicable certificate of competency or license issued to the Subcontractor(s) or Subconsultant(s) shall be submitted along with Contractor's certificate or license upon execution of this Agreement; provided, however, that the City may, at its sole option, upon written approval to Contractor, and in its best interest, allow Contractor to supply the certificate(s) to the City during the first week of Work or Services.

## **ARTICLE 20**

### **INSURANCE**

**20.1** Contractor shall maintain the following required types and minimum limits of insurance coverage during the term of the Agreement. The Contractor shall furnish the City's Risk Manager, at 2300 Civic Center Place, Miramar, Florida 33025, with certificates of insurance and all required endorsements indicating that insurance coverage has been obtained and meets the requirements below:

- a) Comprehensive General Liability Insurance on a comprehensive basis in an amount not less than \$1,000,000 per occurrence. The City **must** be shown as an additional insured and with waiver of subrogation in its favor on both endorsements.



b) Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Work, in an amount not less than \$1,000,000 per occurrence. Coverage shall stipulate that it is primary over any insurance or self-insurance program available to the City, (if applicable).

c) Workers' Compensation Insurance for all employees of the Vendor as required by Florida Statute Chapter 440, and Employer's Liability limits of not less than \$1,000,000 per accident.

d) The insurance coverage required shall include those classifications, as listed in the standard liability insurance manuals, which most nearly reflect the operations of the Contractor.

e) 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:

i. The company must be rated no less than "A" as a management, and no less than "Class VII" as to financial strength, by the latest edition of Best's Key Rating Guide.

**20.2** This Agreement shall not be deemed approved until the Contractor has obtained all insurance requirements under this section and has supplied the City with evidence of such coverage in the form of a Certificate of Insurance and endorsement. The City shall be named as the certificate holder and an additional insured on all certificates. All liability insurance policies shall have endorsements adding the City of Miramar as an additional insured, a waiver of subrogation in favor of the City and a separate endorsement for automobile liability. Insurance shall be maintained continuously during the term of the Contract up to the date of Final Completion, but the Contractor's liabilities under this Agreement shall not be deemed limited in any way to the insurance coverage required.

**20.3** Insurance shall be maintained continuously during the term of the Contract up to the date of Final Completion, but the Contractor's liabilities under this Agreement shall not be deemed limited in any way to the insurance coverage required. All policies of insurance so required to be purchased and maintained shall contain a provision of endorsement that the coverage afforded shall not be cancelled, materially changed or renewal refused until at least 30 calendar days' written notice has been given to the City by certified mail.

## **ARTICLE 21**

### **INDEPENDENT CONTRACTOR**

Contractor has been procured and is being engaged to provide Services to the City as an independent contractor, and not as an agent or employee of the City. The Contractor will be responsible for planning all the work without the assistance of City staff. Accordingly, Contractor shall not attain nor be entitled to any rights or benefits of the City, nor any rights generally afforded, classified or unclassified, employees of the City. Contractor further understands that Florida Workers' Compensation benefits available to employees of the City are not available to Contractor, and agrees to provide workers' compensation insurance for any employee or agent of Contractor rendering

Services to the City under this Agreement.

## **ARTICLE 22**

### **REAFFIRMATION OF REPRESENTATIONS**

Contractor reaffirms all of the representations contained in the Solicitation documents and previously made in all Contract Documents.

## **ARTICLE 23**

### **NONDISCRIMINATION**

Contractor represents and warrants to the City that Contractor does not and shall not engage in discriminatory practices and that there shall be no discrimination in connection with Contractor's performance under this Agreement on account of sex, race, color, ethnic or national origin, religion, marital status, disability, genetic information, age, political beliefs, sexual orientation, gender, gender identification, social and family background, linguistic preference, pregnancy, and any other legally prohibited basis, or any other factor which cannot be lawfully used as a basis for Service delivery. Contractor further covenants that no otherwise qualified individual shall, solely by reason of his/her sex, race, color, ethnic or national origin, religion, marital status, disability, genetic information, age, political beliefs, sexual orientation, gender, gender identification, social and family background, linguistic preference, pregnancy, and any other legally prohibited basis, or any other factor which cannot be lawfully used as a basis for Service delivery, be excluded from participation in, be denied any Services, or be subject to discrimination under any provision of the General Conditions.

## **ARTICLE 24**

### **COSTS AND ATTORNEY FEES**

If either City or Contractor is required to enforce the terms of this Agreement by court proceedings or otherwise, whether or not formal legal action is required, the prevailing party shall be entitled to recover from the other party all such costs and expenses, including but not limited to court costs and reasonable attorney's fees.

## **ARTICLE 25**

### **COUNTERPARTS**

This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same Agreement.

## **ARTICLE 26**

### **WAIVER**

The waiver by either party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement shall not be construed as a waiver of any future or continuing similar or dissimilar failure. No waiver shall be effective unless made in writing.

**ARTICLE 27**  
**BINDING AUTHORITY**

Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement. This Agreement shall be binding upon the parties hereto, their heirs, executors, legal representatives, successors, or assigns.

**ARTICLE 28**  
**NOTICES**

All notices or other communications required under this Agreement shall be in writing and shall be given by Electronic Mail Transmittal, hand-delivery or by registered or certified U.S. Mail, return receipt requested, addressed to the other party at the address indicated herein or to such other address as a party may designate by notice given as herein provided. Notice shall be deemed given on the day on which personally delivered, or, if by mail, on the fifth day after being posted or the date of actual receipt, whichever is earlier.

**TO CONTRACTOR:**

ATTN: Jose Sanchez  
Manager  
THE STOUT GROUP, LLC.  
10850 NW 138<sup>th</sup> Street, Bay #3  
Hialeah Gardens, Florida 33018  
Telephone: (786) 452-1481  
Fax: (305) 397-2311  
Email: [jsanchez@thestoutgroup.com](mailto:jsanchez@thestoutgroup.com)

**TO CITY OF MIRAMAR:**

ATTN: Dr. Roy L. Virgin,  
City Manager  
CITY OF MIRAMAR  
2300 Civic Center Place  
Miramar, Florida 33025  
Telephone: (954) 602-3120  
Fax: (954) 602-3672  
Email: [rvirgin@miramarfl.gov](mailto:rvirgin@miramarfl.gov)

**WITH A COPY TO:**

City Attorney  
Austin Pamies Norris Weeks Powell, PLLC  
401 NW 7<sup>th</sup> Avenue  
Ft. Lauderdale, FL 33311  
Tel: 954-768-9770  
Fax: 954-768-9790  
Email: [miramarcityattorney@apnwplaw.com](mailto:miramarcityattorney@apnwplaw.com)

**ARTICLE 29**  
**CITY'S OWN FORCES**

**29.1** The City reserves the right to perform operations related to the Project with the City's own forces, and to award contracts in connection with the Project which are not part of the Contractor's responsibilities under this Agreement.

**29.2** The City will have the right to inspect and conduct periodic inspections of the Work and/or Materials to determine compliance with the requirements of the Contract. Any Work and/or Materials rejected by the City for non-compliance shall be replaced and/or corrected at the Contractor's expense. Failure to reject Defective Work and/or Materials, whether from lack of discovery of such defect or for any other reason, will not relieve the Contractor from responsibility to complete the Work in full compliance with all Contract requirements and shall in no way prevent later rejection of such Defective Work when discovered.

**ARTICLE 30**  
**LIMITATION OF LIABILITY**

**30.1** The City desires to enter into this Agreement only if in so doing the City can place a limit on City's liability for any cause of action for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds the fee paid to Contractor herein, less any sums paid by the City. Contractor hereby expresses its willingness to enter into this Agreement with Contractor's recovery from the City for any damage action for breach of contract to be limited to a maximum fee paid to Contractor herein, less any sums paid by the City.

**30.2** Accordingly, and notwithstanding any other term or condition of this Agreement, Contractor agrees that the City shall not be liable to Contractor for damages in an amount in excess of the fee paid to the Contractor herein, less any sums paid by the City, for any action or claim for breach of contract arising out of the performance or non-performance of any obligations imposed upon the City by this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Section 768.28, Florida Statutes.

**30.3** In no event shall either party be liable for any indirect, incidental, special, or consequential damages, including, without limitation, loss of profits, revenue, or use incurred by either party or any third party, whether in an action in contract or tort, even if the other party or any other person has been advised of the possibility of such damages.

**ARTICLE 31**  
**THIRD PARTY BENEFICIARY**

It is specifically agreed to between the City and Contractor executing this Agreement that it is not intended by any of the provisions of any part of the Agreement to create in the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

## **ARTICLE 32**

### **WARRANTY AND GUARANTEE**

**32.1** Architect warrants that its Services are to be performed within the limits prescribed by City and with the usual thoroughness and competence of Architect's profession. Architect shall be responsible for technically deficient designs, reports or studies due to errors and omissions directly related to the Services provided by Architect pursuant to this Agreement for four years after the date of acceptance of the Services by City. Architect shall, upon the request of City, promptly correct or replace all Defective Work due to errors or omissions directly related to the Services provided by Architect pursuant to this Agreement at no cost to the City.

**32.2** Contractor's compensation under this Agreement is based upon its representations to City, and Contractor certifies that the wage rates, factual unit costs, and other information supplied to substantiate Contractor's compensation, including, without limitation, in the negotiation of this Agreement, are accurate, complete, and current as of the date Contractor executes this Agreement. Contractor's compensation will be reduced to exclude any significant sums by which the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs.

**32.3** Unless this Agreement is exempt from the provisions of the Broward County Domestic Partnership Act, Section 16½-157, Broward County Code of Ordinances, Contractor certifies and represents that it will comply with the provisions of Section 16½-157 for the duration of this Agreement. The contract language referenced in Section 16½-157 is deemed incorporated in this Agreement as though fully set forth in this section.

## **ARTICLE 33**

### **HEADINGS AND INTERPRETATION**

Title and paragraph headings are for convenient reference and are not a part of this Agreement. Contractor has been given an opportunity for counsel of its choice to review this Agreement. Accordingly, no party shall be deemed to have any benefit as the drafter of the document for interpretation purposes.

## **ARTICLE 34**

### **SEVERABILITY**

**34.1** Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under any applicable Law, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such Laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect for limitation of its use.

**34.2** City and Contractor each binds itself, its partners, successors, assign and legal representatives to the other party hereto, its partners, successors, assign and legal

representatives in respect of all covenants, agreements and obligations contained in this Agreement and in all the Contract Documents.

## **ARTICLE 35**

### **SCRUTINIZED COMPANIES**

**35.1** Contractor certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, F.S., the City may immediately terminate this Agreement at its sole option if the Contractor or its subcontractors are found to have submitted a false certification; or if the Contractor, or its subcontractors are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.

**35.2** If this Agreement is for more than one million dollars, the Contractor certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S. Pursuant to Section 287.135, F.S., the City may immediately terminate this Agreement at its sole option if the Contractor, its affiliates, or its subcontractors are found to have submitted a false certification; or if the Contractor, its affiliates, or its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.

**35.3** The Contractor agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

**35.4** As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

## **ARTICLE 36**

### **CONFLICT-OF-INTEREST**

**36.1** To avoid any conflicts of interest, or any appearance thereof, Contractor, for the term of this Agreement, agrees that it will not represent any private sector entities (including but not limited to developers, corporations, real estate investors, etc.) in Miramar, Florida, without notifying the City of the services to be performed. If after such notification the City reasonably determines that a material conflict exists, Contractor will not perform such conflicting Work. The conditions and requirements of this paragraph will also apply to any SubContractors utilized by Contractor in completion of the Work tasks under this Agreement.

**36.2** Furthermore, Contractor covenants that no person under its employ who presently exercises any functions or responsibilities on behalf of the City in connection with this Agreement has any personal financial interest, direct or indirect, with

contractors or vendors providing professional services on projects assigned to Contractor, except as fully disclosed and approved by the City. Contractor further covenants that, in the performance of this Agreement, no person having such conflicting interest shall be employed. Any such interest on the part of Contractor or its employees must be disclosed in writing to the City.

### **ARTICLE 37**

#### **VENUE AND JURISDICTION**

This Agreement shall be construed and enforced according to the Laws of the State of Florida. The parties submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of or relating to this Agreement. Venue for any action arising out of this Agreement shall be in Broward County, Florida.

### **ARTICLE 38**

#### **SURVIVAL OF PROVISIONS**

Any terms or conditions of this Agreement that require acts beyond the date of its termination shall survive the termination of this Agreement, shall remain in full force and effect unless and until the terms or conditions are completed, and shall be fully enforceable by either party.

### **ARTICLE 39**

#### **E-VERIFY PROGRAM**

In accordance with Florida Statutes §448.095, the Contractor, prior to commencement of services or payment by the City, will provide to the City proof of participation/enrollment in the E-Verify system of the Department of Homeland Security. Evidence of participation/enrollment will be a printout of the Company's "Company Profile" page from the E-Verify system. Failure to be continually enrolled and participating in the E-Verify program will be a breach of contract which will be grounds for immediate termination of the contract by the City. The Contractor will not hire any employee who has not been vetted through E-Verify. The Contractor may not subcontract any work for the City to any subcontractor that has not provided an affidavit stating that the subcontractor does not employ, contract with or subcontract with an unauthorized alien."

### **ARTICLE 40**

#### **EQUITABLE ADJUSTMENT**

The City may, in its sole discretion, make an equitable adjustment in the Contract Terms and conditions and/or pricing. If pricing or availability of supply is affected by extreme or unforeseen volatility in the marketplace that satisfy all the following criteria: 1) the volatility is due to causes wholly beyond the Contractor's control; 2) the volatility affects the marketplace or industry, not just the particular Contractor's source of supply; 3) the effect on pricing or availability of supply is substantial; and 4) the volatility so affects the Contractor that continued performance of the Contract would result in substantial loss. Any

adjustment would require irrefutable evidence and written approval by the Director of Purchasing Services.

## **ARTICLE 41**

### **EQUAL EMPLOYMENT OPPORTUNITY AND CBE COMPLIANCE**

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

**41.2** Contractor shall comply with all applicable requirements of Section 1-81, Broward County Code of Ordinances, in the award and administration of this Agreement. Failure by Contractor to carry out any of the requirements of this article shall constitute a material breach of this Agreement, which shall permit City to terminate this Agreement or exercise any other remedy provided under this Agreement, the Broward County Code of Ordinances, the Broward County Administrative Code, or under other applicable law, all such remedies being cumulative.

**41.3** Contractor must meet or exceed the required CBE goal by utilizing the CBE firms listed in Exhibit "A" of the Addendum (or a CBE firm substituted for a listed firm, if permitted) for thirty percent (30%) of total Services under this Agreement (the "Commitment") for the scope of the work and the percentage of work amounts identified on each Letter of Intent. Promptly upon execution of this Agreement by Municipality, Contractor shall enter into formal contracts with the CBE firms listed in Exhibit "A" of the Addendum and, upon request, shall provide copies of the contracts to the Contract Administrator and OESBD.

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

**41.5** The Parties stipulate that if Contractor fails to meet the Commitment, the damages to City arising from such failure are not readily ascertainable at the time of contracting. If Contractor fails to meet the Commitment and Broward County determines,



in the sole discretion of the OESBD Program Director, that Contractor failed to make Good Faith Efforts (as defined in Section 1-81, Broward County Code of Ordinances) to meet the Commitment, Contractor shall pay City liquidated damages in an amount equal to fifty percent (50%) of the actual dollar amount by which Contractor failed to achieve the Commitment, up to a maximum amount of ten percent (10%) of the total contract amount, excluding costs and reimbursable expenses. An example of this calculation is stated in Section 1-81.7, Broward County Code of Ordinances. As elected by City, such liquidated damages amount shall be either credited against any amounts due from City, or must be paid to City within thirty (30) days after written demand. These liquidated damages shall be City's sole contractual remedy for Contractor's breach of the Commitment, but shall not affect the availability of administrative remedies under Section 1-81. Any failure to meet the Commitment attributable solely to force majeure, changes to the scope of work by City, or inability to substitute a CBE Subcontractor where the OESBD Program Director has determined that such inability is due to no fault of Contractor, shall not be deemed a failure by Contractor to meet the Commitment.

**41.6** Contractor acknowledges that OESBD may make minor administrative modifications to Section 1-81, Broward County Code of Ordinances, which shall become applicable to this Agreement if the administrative modifications are not unreasonable. Written notice of any such modification shall be provided to Contractor and shall include a deadline for Contractor to notify City in writing if Contractor concludes that the modification exceeds the authority under this section. Failure of Contractor to timely notify City of its conclusion that the modification exceeds such authority shall be deemed acceptance of the modification by Contractor.

**41.7** OESBD may modify the required participation of CBE firms under this Agreement in connection with any amendment, extension, modification, change order, or Work Authorization to this Agreement that, by itself or aggregated with previous amendments, extensions, modifications, change orders, or Work Authorizations, increases the initial Agreement price by ten percent (10%) or more. Contractor shall make a good faith effort to include CBE firms in work resulting from any such amendment, extension, modification, change order, or Work Authorization, and shall report such efforts, along with evidence thereof, to OESBD.

**41.8** No later than ten (10) business days after the end of the month, Contractor shall provide written monthly reports to the Contract Administrator and to the OESBD Director attesting to Contractor's compliance with the Commitment. In addition, Contractor shall allow Municipality and OESBD to engage in onsite reviews to monitor Contractor's progress in achieving and maintaining the Commitment. The Contract Administrator in conjunction with OESBD shall perform such review and monitoring.

The presence of a "pay when paid" provision in a Contractor's contract with a CBE firm shall not preclude City or its representatives from inquiring into allegations of nonpayment or exercising any right stated in the IFB.

**ARTICLE 42**  
**ENTIRE AGREEMENT**

The Contract Documents constitute the sole and entire agreement of the parties relating to the subject matter hereof and correctly set forth the rights, duties, and obligations of each to the other as of its date. Any prior agreements, promises, negotiations, or representations not expressly set forth therein, are of no force or effect. No modification or amendment thereto shall be valid unless in writing and executed by properly authorized representatives of the parties herein.

**IN WITNESS WHEREOF**, the parties have set their hands and seals the day and year first above written.

**CITY OF MIRAMAR:**

By: \_\_\_\_\_  
City Manager  
Dr. Roy L. Virgin

**THE STOUT GROUP, LLC.:**

By: \_\_\_\_\_  
Manager  
Jose M. Sanchez III

This \_\_\_\_ day of \_\_\_\_\_, 2023.

Date: \_\_\_\_\_

**ATTEST:**

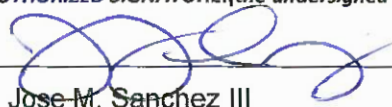
\_\_\_\_\_  
Denise A. Gibbs, City Clerk

\_\_\_\_\_  
Corporate Seal

Approved as to form and legal sufficiency  
for the use of and reliance by the City of  
Miramar, Florida only:

\_\_\_\_\_  
City Attorney  
Austin Pamies Norris Weeks Powell, PLLC.

**SECTION 300 – BID FORMS**  
**BID COVER SHEET – IFB No. 23-026 (RE-BID)**

<b>BIDDER'S NAME (Name of Firm, Entity or Organization):</b> The Stout Group, LLC	
<b>FEDERAL EMPLOYER IDENTIFICATION NUMBER:</b> 45-5312119	
<b>NAME AND TITLE OF BIDDER'S AUTHORIZED CONTACT PERSON:</b>	
Name: Jose M. Sanchez III	Title: Manager
<b>EMAIL ADDRESS:</b> jsanchez@thestoutgroup.com	
<b>MAILING ADDRESS:</b> The Stout Group, LLC	
<b>Street Address:</b> 10850 NW 138th St. Bay #3	
<b>City, State, Zip:</b> Hialeah Gardens, FL 33018	
<b>TELEPHONE:</b>	<b>FAX:</b>
( 786 ) 452-1481	(305) 397-2311
<b>BIDDER'S ORGANIZATION STRUCTURE:</b>	
X <input checked="" type="checkbox"/> LLC Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Proprietorship <input type="checkbox"/> Joint Venture <input type="checkbox"/> Other (Explain):	
<b>IF CORPORATION:</b>	
Date Incorporated/Organized: 05/2012	
State of Incorporation/Organization: Florida	
States registered in as foreign Corporation: N/A	
<b>BIDDER'S SERVICES OR BUSINESS ACTIVITIES OTHER THAN WHAT THIS SOLICITATION REQUESTS:</b>	
Drainage, Water, Sewer, Lift Station, Sheet Pile, Concrete Bulkhead Wall Construction, Concrete Curve and Side Walks, Earthworks, Stripping, Asphalt Pavement	
<b>LIST NAMES OF BIDDER'S SUBCONTRACTORS AND/OR SUBCONSULTANTS FOR THIS PROJECT:</b>	
TBD	
<b>BIDDER'S AUTHORIZED SIGNATURE: (the undersigned hereby certifies that this Bid is submitted in response to the Solicitation)</b>	
Signed by: 	Date: 7/5/23
Print name: Jose M. Sanchez III	Title: Manager

**FAILURE TO COMPLETE, SIGN AND RETURN THIS FORM MAY DEEM YOUR BID NON-RESPONSIVE**

**CITY OF MIRAMAR**  
**MILLING AND RESURFACING, SIDEWALK ADA UPGRADES AND**  
**DRAINAGE APRON INSTALLATION**  
**BC-MIRAM-FY2020-00003 - SURTAX PROJECT**  
**IFB NO. 23-026 (RE-BID)**  
**BID FORM SUMMARY**

The Price for each listed item shall include the cost for all Work, Material, labor and equipment necessary to complete the item. Incidental cost for each item shall be included in the cost for the item.

PAY ITEM	DESCRIPTION	QUANTITY	UNIT OF MEASURE	UNIT PRICE	TOTAL PRICE
0101 1	MOBILIZATION	1	LS	\$79,000.00	\$79,000.00
0102 1*	MAINTENANCE OF TRAFFIC	1	LS	\$23,000.00	\$23,000.00
0104 18	INLET PROTECTION SYSTEM	1	LS	\$5,000.00	\$5,000.00
0327 70 1	MILLING EXISTING ASPHALT PAVEMENT ONE INCH AVG DEPTH	37,600	SY	\$2.50	\$94,000.00
0334 1 53	SUPERPAVE ASPHALTIC CONCRETE, TRAFFIC C, PG76-22	2,150	Ton	\$180.00	\$387,000.00
0522 2*	CONCRETE SIDEWALK AND DRIVEWAYS, 6" THICK	12,400.00	SY	\$79.00	\$979,600.00
0527 2	DETECTABLE WARNINGS	150	SF	\$40.00	\$6,000.00
0350 3 5*	PLAIN CEMENT CONCRETE PAVEMENT, CATCH BASIN APRON)	56.7	CY	\$450.00	\$25,515.00
0425 5	MANHOLE, ADJUST (COVER)	2	EA	\$850.00	\$1,700.00
0425 6	VALVE BOXES, ADJUST (COVER)	8	EA	\$650.00	\$5,200.00
	ALL PAVEMENT MARKINGS (TEMPORARY - PAINT)	1	LS	\$18,000.00	\$18,000.00

	ALL PAVEMENT MARKINGS (PERMANENT THERMOPLASTIC)	1	LS	\$50,000.00	\$50,000.00
	RPM	1	LS	\$5,000.00	\$5,000.00
	<b>TOTAL BID AMOUNT</b>				<b>\$1,679,015.00</b>

\* Refer to article 2 work of IFB for additional description of item

### BID FORM SUMMARY

\$1,679,015.00

**TOTAL BID AMOUNT:** \_\_\_\_\_  
(Write Amount in Figures)

One million, six hundred and seventy nine thousand and fifteen dollars 00/xx

**TOTAL BID AMOUNT:** \_\_\_\_\_  
(Write Amount in words)

AMOUNTS SHALL BE SHOWN IN BOTH WORDS AND FIGURES. IN CASE OF DISCREPANCIES, THE AMOUNT SHOWN IN WORDS SHALL GOVERN FOR EACH BID ITEM AND TOTAL BASE BID.

Bidder acknowledges that included in the various items of the Bid or proposal and in the total Bid price are costs for complying with the Florida Trench Safety Act, Florida Statutes Section 553.60-.64. By signing and submitting the Trench Safety Act Compliance Statement, the Bidder is guaranteeing and warranting to the City that it will perform any trench excavation in accordance with applicable trench safety standards. Contract award shall be based upon the Total Bid Price, as identified above, by the lowest responsive, responsible Bidder.

Bidder acknowledges that the purpose of the Bid Worksheet is for Bid balancing comparisons and use as a unit price for potential add/delete items. These worksheets must be completed in their entirety and returned together with the sealed Bids in order for the Bid to be deemed complete, responsive and accepted by the City.

Bidder acknowledges that the units that are listed may not be a complete list of units and are provided by the City for informational purposes only. Bidder further acknowledges that the Project shall be completed for the total Lump Sum Project Bid based on the Contract Documents and Technical Special Provisions unless otherwise modified in writing via a formal Contract Amendment and/or Change Order (if any).

Bidder acknowledges that the Bid Worksheet in no way includes all the specific items found in the Contract Documents and Technical Special Provisions, nor represent all the parts of the Project required by this Contract.

Project/Development Name: CITY OF MIRAMAR – IFB 23-026 (RE-BID) - MILLING AND RESURFACING, SIDEWALK ADA UPGRADES AND DRAINAGE APRON INSTALLATION, BC-MIRAM-FY2020-00003 SURTAX PROJECT

Contractor Company Name: The Stout Group, LLC

Contractor Acknowledgement Jose M. Sanchez III/Manager

Print Name/Title

  
Signature

Date: JULY 5, 2023

END OF DOCUMENT

## **EXHIBIT “B” TO EXHIBIT “A”**



**AGREEMENT BETWEEN THE CITY OF MIRAMAR, FLORIDA  
AND  
THE STOUT GROUP, LLC.  
FOR**

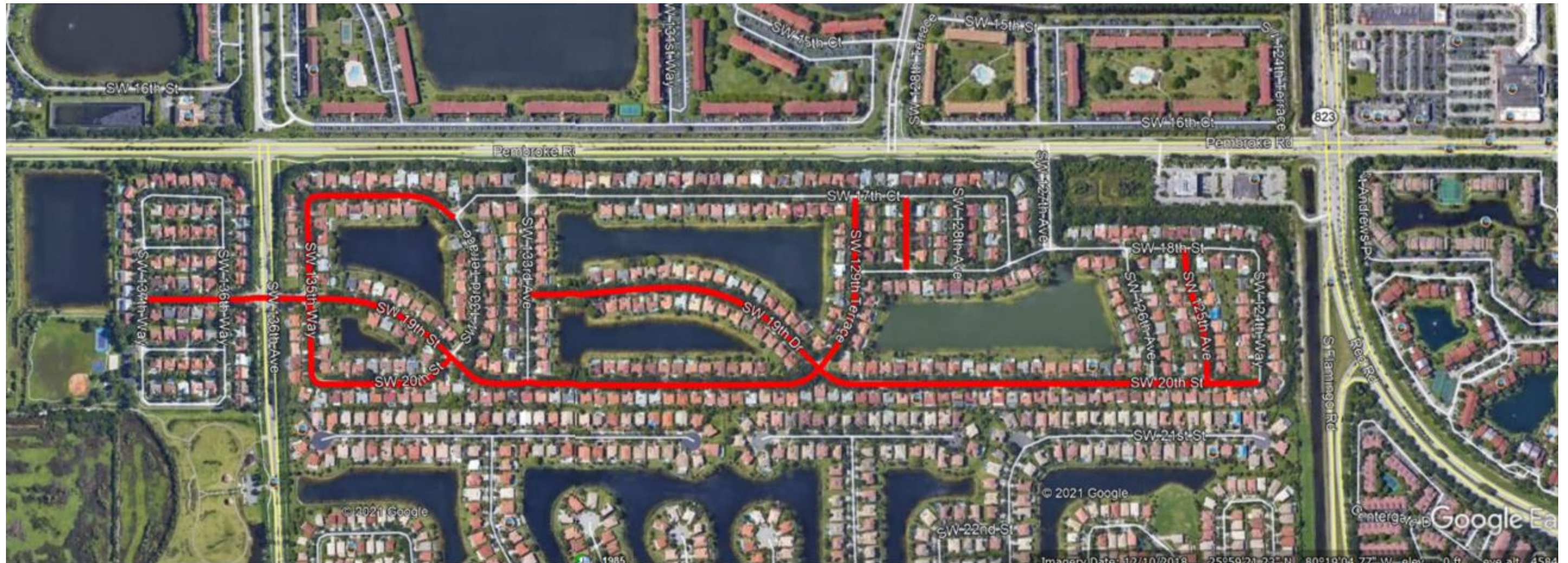
**MIRAMAR MILLING AND RESURFACING, SIDEWALK ADA UPGRADES AND  
DRAINAGE APRON INSTALLATION, IFB NO. 23-026 (RE-BID)  
BC-MIRAM-FY2020-00003 - SURTAX PROJECT  
IN MIRAMAR, FLORIDA**

## **PROJECT SCHEDULE**

**(PROJECT SCHEDULE TO BE DETERMINED)**



City of Miramar - Location map  
Flamingo Estates - Program Year 2016 - 2020







**OFFICE OF ECONOMIC AND SMALL BUSINESS DEVELOPMENT**  
**Governmental Center Annex**

115 S. Andrews Avenue, Room A680 • Fort Lauderdale, Florida 33301 • 954-357-6400

**DATE:** September 21, 2023

**TO:** Brenda Martin, Sr. Contracts Administrator Manager  
 City of Miramar

**THRU:** Sandy-Michael McDonald, Director  
 Office of Economic and Small Business Development

**SANDY-MICHAEL MCDONALD**

Digitally signed by SANDY M CHAEL MCDONALD  
 Date: 2023.09.21 13:26:50 -0

**FROM:** Donna-Ann Knapp, Small Business Development Manager  
 Office of Economic and Small Business Development

**DONNA-ANN KNAPP**

Digitally signed by DONNA-KNAPP  
 Date: 2023.09.21 09:44 19

**SUBJECT:** BC-MIRAM -FY2020-00002 Milling and Resurfacing, Sidewalk ADA Upgrades, Drainage Apron and Root Barrier Installation - **Surtax**

The Office of Economic and Small Business Development (OESBD) conducted a review of the vendor responses, as provided by the City of Miramar, to determine compliance with the CBE program requirements for the above referenced project. An overview is provided as follows:

The CBE goal for this project: 40%

**Met the CBE Requirements:**

**Firms**

**Category      Percentage**

**The Stout Group, LLC. (Prime)**

Concrete Pro, Inc.

CBE

40%

**Total**

40%

**Weekley Asphalt Paving, Inc. (Prime)**

Heavy Civil Inc.

CBE

40.3%

**Total**

40.3%

**Did not meet the CBE Requirements:**

**Firms**

<b>H &amp; M Development (Prime)</b>	<b>0%</b>
<b>Total</b>	<b>0%</b>
<b>American Design Engineering Construction</b>	<b>0%</b>
<b>Total</b>	<b>0%</b>

**CBE Compliance Comments:**

The Stout Group, LLC, and Weekley Asphalt Paving, Inc. each submitted Letters of Intent (LOIs) with their respective solicitation responses, which meet the established 40% County Business Enterprise (CBE) goal, making them compliant with the CBE Program requirements of the solicitation.

American Design Engineering Construction Inc. and H&M Development did not submit LOIs that meet the established CBE goal. H&M Development was given (3) three business days to submit LOIs, executed with CBE firms, that meet the 40% goal or provide documentation of their good faith efforts to meet the goal. H&M did not submit the required documentation in the specified time frame, and as a result is deemed non-compliant with the CBE Program requirements of the solicitation. American Engineering Construction Inc. submitted an Application for Evaluation of Good Faith Efforts form and support documentation with its solicitation response. This form, along with supporting documentation submitted in relation to their good faith efforts to meet the goal, was reviewed and evaluated in accordance with Section 1-81.5 (d) (2) of the Small Business Opportunity Act, as amended.

Section 1-81.5 (d) (2) of the Small Business Opportunity Act outlines the factors considered when evaluating a bidder's good faith efforts to meet CBE Participation requirements. These factors include:

- a) Engaging in activities such as attending pre-bid meetings, advertising, or issuing written notices to gauge the interest of certified CBEs that have the necessary ability and capacity to perform the contract work.
- b) Identifying specific portions of the contract that could reasonably be performed by a CBE, thereby increasing the likelihood of achieving CBE goals.
- c) Providing timely and adequate information about the contract's plans, specifications, and requirements to each interested CBE.
- d) Engaging in genuine and fair negotiations with each interested CBE.

These factors were considered when evaluating the information and supporting documentation provided by the vendor.

- a) American Design Engineering Construction Inc. was not in attendance during the City's pre-bid meeting, nor did they provide documentation that they promoted the opportunity through written notices or advertisements to CBE firms.
- b) The vendor did not provide documentation that it identified appropriate work for CBE firms to perform.
- c) There was no documentation showing that project information, including, plans, specifications, and requirements, were provided to interested CBEs.
- d) No documentation of attempted negotiations with interested CBEs was provided.

After careful evaluation of American Design Engineering Construction Inc.'s submitted documentation of their good faith efforts, OESBD has determined that the firm did not demonstrate maximum efforts to meet the CBE participation requirements outlined in Section 1.81.5 (d) (2) of the Broward County Business Opportunity Act, as amended.

The vendor failed to attend the pre-bid meeting held on June 15, 2023, and did not actively engage CBEs through written notices, publications, or advertisements. Furthermore, they did not allocate appropriate work specifically for CBE firms throughout the project. Although the vendor provided evidence of searching for CBEs, they did not provide phone logs or email communications to substantiate their claim of contacting and informing CBEs about the opportunity.

Additionally, while the vendor stated that they made efforts to engage CBEs by reaching out to local business development offices, trade associations, and community organizations, no supporting documentation was provided to validate these claims. The vendor also communicated their difficulty in finding qualified CBEs to the Municipality but did not seek assistance from OESBD in locating qualified CBEs.

Based on these findings, and the fact that two other bidders were able to submit LOIs that meet the 40% goal, our office has determined that American Design Engineering Construction, Inc. has failed to demonstrate the quality, quantity, and extent of the various efforts, made in good faith, to meet the established CBE goal and is therefore deemed non-compliant with the CBE requirements of the solicitation.

**Please be reminded to inform our office when this project is awarded.**  
Feel free to contact us with any questions that you may have at 954-357-6400.

cc: Maribel Feliciano, Assistant Director, OESBD  
Kenneth Lopez, Small Business Development Specialist, OESBD



**MILLING AND RESURFACING, SIDEWALK ADA UPGRADES AND  
DRAINAGE APRON INSTALLATION  
IFB NO. 23-026(RE-BID)-BC-MIRAM-FY2020-00002 / SURTAX PROJECT  
BID OPENING – JULY 6, 2023**

COMPANY NAME		CBE/SBE	3 - REFERENCES/ QUALIFICATIONS	LETTER OF INTENT/GOOD FAITH EFFORT	TOTAL BASE BID
1	AMERICAN DESIGN ENGINEERING CONSTRUCTION, INC.	NO	YES	GOOD FAITH EFFORT	\$1,573,877.00
2	H & M DEVELOPMENT, LLC.	NO	NO	LETTER OF INTENT	\$8,467,840.00
3	THE STOUT GROUP, LLC.	NO	YES	LETTER OF INTENT	\$1,679,015.00
4	WEEKLEY ASPHALT PAVING, INC.	NO	YES	LETTER OF INTENT	\$2,029,759.00

**NOTE:** Offers listed from the Vendors herein are only offers received timely as of the above opening date and time. All other offers submitted in response to this solicitation, if any, are hereby rejected as late.