

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 2024 (the “Effective Date”), by and between the **CITY OF STONE MOUNTAIN, GEORGIA**, a municipal corporation of the State of Georgia, acting by and through its governing authority, the Mayor and City Council (hereinafter referred to as the “City”), and **POND AND COMPANY**, a Georgia corporation (herein after referred to as the “Consultant”), collectively referred to herein as the “Parties.”

WITNESSETH:

WHEREAS, City desires to retain Consultant to provide certain services in the completion of a Project (defined below); and

WHEREAS, City finds that specialized knowledge, skills, and training are necessary to perform the Work (defined below) contemplated under this Agreement; and

WHEREAS, Consultant has represented that it is qualified by training and experience to perform the Work; and

WHEREAS, Consultant desires to perform the Work as set forth in this Agreement under the terms and conditions provided in this Agreement; and

WHEREAS, the public interest will be served by this Agreement; and

WHEREAS, Consultant has familiarized itself with the nature and extent of the Agreement, the Project, and the Work, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that may in any manner affect cost, progress or performance of Work.

NOW, THEREFORE, for and in consideration of the mutual promises, the public purposes, and the acknowledgements and agreements contained herein, and other good and adequate consideration, the sufficiency of which is hereby acknowledged, the Parties do mutually agree as follows:

I. SCOPE OF SERVICES AND TERMINATION DATE

A. Agreement. The Agreement shall consist of this Professional Services Agreement and each of the Exhibits hereto, which are incorporated herein by reference, including:

Exhibit A – Consultant Proposal/Scope of Work (04-24-2024)

Exhibit B – Project-Related ARC Subgrant Agreement

Exhibit B – Contractor Affidavit (E-Verify)

Exhibit C – Subcontractor Affidavit (E-Verify)

B. Project Description. The “Project” at issue in this Agreement is generally described as: Connecting Parks, Paths, and Public Spaces Consultancy Services.

C. The Work. The Work to be completed under this Agreement (the “Work”) includes, but shall not be limited to, the work described in the Scope of Work provided in **Exhibit A**, attached hereto and incorporated herein by reference. Unless otherwise stated in **Exhibit A**, the Work includes all material, labor, insurance, tools, equipment, machinery, water, heat, utilities, transportation, facilities, services and any other miscellaneous items and work necessary to complete the Work. Some details necessary for proper execution and completion of the Work may not be specifically described in the Scope of Work, but they are a requirement of the Work if they are a usual and customary component of the contemplated services or are otherwise necessary for proper completion of the Work.

D. Schedule, Completion Date, and Term of Agreement. Consultant understands that time is of the essence of this Agreement and warrants and represents that it will perform the Work in a prompt and timely manner, which shall not impose delays on the progress of the Work. The term of this Agreement (“Term”) shall commence as of the Effective Date, and the Work shall be completed, and the Agreement shall terminate, on or by **February 28, 2025** (provided that certain obligations will survive termination/expiration of this Agreement).

Consultant shall provide an updated Project Schedule to the City based on the Effective Date hereof. Consultant acknowledges the terms, conditions and timeline requirements in the ARC Subgrant Agreement, a copy of which is attached hereto at **Exhibit B**, and Consultant represents and warrants that all Work will be completed such that all terms, conditions, timeline and deliverable requirements imposed upon the City as Subgrantee thereunder shall be met.

The Parties agree that this Agreement, as required by O.C.G.A. § 36-60-13, shall terminate absolutely and without further obligation on the part of City on December 31 each calendar/fiscal year of the Term, and further, that this Agreement shall automatically renew on January 1 of each subsequent calendar/fiscal year absent City’s provision of written notice of non-renewal to Consultant at least five (5) days prior to the end of the then current calendar/fiscal year. Title to any supplies, materials, equipment, or other personal property shall remain in Consultant until fully paid for by City.

II. WORK CHANGES

A. Change Order Defined. A “Change Order” means a written modification of the Agreement, signed by representatives of City and Consultant with appropriate authorization.

B. Right to Order Changes. City reserves the right to order changes in the Work to be performed under this Agreement by altering, adding to, or deducting from the Work. All such changes shall be incorporated in written Change Orders and executed by Consultant and City. Such Change Orders shall specify the changes ordered and any necessary adjustment of compensation and completion time.

C. **Change Order Requirement.** Any work added to the scope of this Agreement by a Change Order shall be executed under all the applicable conditions of this Agreement. No claim for additional compensation or extension of time shall be recognized, unless contained in a written Change Order duly executed on behalf of City and Consultant.

D. **Authority to Execute Change Order.** The City Manager has authority to execute, without further action of the Mayor or City Council, any number of Change Orders so long as their total effect does not materially alter the terms of this Agreement or increase the Maximum Contract Price, as set forth in Section III(B) below. Any such Change Orders materially altering the terms of this Agreement, or any Change Order affecting the price, must be approved by the City Council.

III. COMPENSATION AND METHOD OF PAYMENT

A. **Payment Terms.** City agrees to pay Consultant for the Work performed and costs incurred by Consultant upon certification by City that the Work was actually performed and costs actually incurred in accordance with the Agreement. Compensation for Work performed and, if applicable, reimbursement for costs incurred shall be paid to Consultant upon City's receipt and approval of invoices, setting forth in detail the services performed and costs incurred, along with all supporting documents requested by City to process the invoice. Invoices shall be submitted on a monthly basis, and such invoices shall reflect costs incurred versus costs budgeted. Any material deviations in tests or inspections performed, or times or locations required to complete such tests or inspections, and like deviations from the Work described in this Agreement shall be clearly communicated to City *before charges are incurred* and shall be handled through Change Orders as described in Section II above. City shall pay Consultant within thirty (30) days after approval of the invoice by City staff.

B. **Maximum Contract Price.** The total amount paid under this Agreement as compensation for Work performed and reimbursement for costs incurred shall not, in any case, exceed **TWO HUNDRED THOUSAND US DOLLARS (\$200,000.00)** (the "Maximum Contract Price"), except as outlined in Section II(C) above, and Consultant represents that this amount is sufficient to perform all of the Work set forth in and contemplated by this Agreement. The compensation for Work performed shall be based upon the delineated fee schedule included at **Exhibit A**.

C. **Reimbursement for Costs.** The Maximum Contract Price set forth in Section III(B) above includes all costs, direct and indirect, needed to perform the Work and complete the Project.

IV. COVENANTS OF CONSULTANT

A. **Expertise of Consultant; Licenses, Certification and Permits.** Consultant accepts the relationship of trust and confidence established between it and City, recognizing that City's intention and purpose in entering into this Agreement is to engage an entity with the requisite capacity, experience, and professional skill and judgment to provide the Work in pursuit of the timely and competent completion of the Work undertaken by Consultant under this

Agreement. Consultant shall employ only persons duly qualified in the appropriate area of expertise to perform the Work described in this Agreement.

Consultant covenants and declares that it has obtained all diplomas, certificates, licenses, permits or the like required of Consultant by any and all national, state, regional, county, or local boards, agencies, commissions, committees or other regulatory bodies in order to perform the Work contracted for under this Agreement. Further, Consultant agrees that it will perform all Work in accordance with the standard of care and quality ordinarily expected of competent professionals and in compliance with all federal, state, and local laws, regulations, codes, ordinances, or orders applicable to the Project, including, but not limited to, any applicable records retention requirements and Georgia's Open Records Act (O.C.G.A. § 50-18-71, *et seq.*). Any additional work or costs incurred as a result of error and/or omission by Consultant as a result of not meeting the applicable standard of care or quality will be provided by Consultant at no additional cost to City. This provision shall survive termination of this Agreement.

B. Budgetary Limitations. Consultant agrees and acknowledges that budgetary limitations are not a justification for breach of sound principals of Consultant's profession and industry. Consultant shall take no calculated risk in the performance of the Work. Specifically, Consultant agrees that, in the event it cannot perform the Work within the budgetary limitations established without disregarding sound principles of Consultant's profession and industry, Consultant will give written notice immediately to City.

C. City's Reliance on the Work. Consultant acknowledges and agrees that City does not undertake to approve or pass upon matters of expertise of Consultant and that, therefore, City bears no responsibility for Consultant's Work performed under this Agreement. Consultant acknowledges and agrees that the acceptance of Work by City is limited to the function of determining whether there has been compliance with what is required to be produced under this Agreement. City will not, and need not, inquire into adequacy, fitness, suitability or correctness of Consultant's performance. Consultant further agrees that no approval of designs, plans, specifications or other work product by any person, body or agency shall relieve Consultant of the responsibility for adequacy, fitness, suitability, and correctness of Consultant's Work under professional and industry standards, or for performing services under this Agreement in accordance with sound and accepted professional and industry principles.

D. Consultant's Reliance on Submissions by City. Consultant must have timely information and input from City in order to perform the Work required under this Agreement. Consultant is entitled to rely upon information provided by City, but Consultant shall provide immediate written notice to City if Consultant knows or reasonably should know that any information provided by City is erroneous, inconsistent, or otherwise problematic.

E. Consultant's Representative. **LILIAN AL HADDAD**, Project Manager, and **ANDREW KOHR**, Principal in Charge, shall be authorized to act on Consultant's behalf with respect to the Work as Consultant's designated representative, provided that this designation shall not relieve either Party of any written notice requirements set forth elsewhere in this Agreement.

F. Assignment of Agreement. Consultant covenants and agrees not to assign or transfer any interest in, or delegate any duties of this Agreement, without the prior express written consent of City. As to any approved subcontractors, Consultant shall be solely responsible for reimbursing them, and City shall have no obligation to them.

G. Responsibility of Consultant and Indemnification of City. Consultant shall indemnify and hold harmless City and City's elected and appointed officials, officers, boards, commissions, employees, representatives, consultants, servants, agents, attorneys and volunteers (individually an "Indemnified Party" and collectively "Indemnified Parties") from and against any and all claims, suits, actions, judgments, injuries, damages, losses, costs, expenses and liability of any kind whatsoever, including but not limited to attorney's fees and costs of defense ("Liabilities"), which arise from or are the result of willful, negligent or tortious acts or omissions arising out of the Work, performance of contracted services, or operations by Consultant, any subcontractor, anyone directly or indirectly employed by Consultant or subcontractor or anyone for whose acts or omissions Consultant or subcontractor may be liable. This indemnity obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this provision.

In any and all claims against an Indemnified Party, by any employee of Consultant, its subcontractor, anyone directly or indirectly employed by Consultant or subcontractor or anyone for whose acts Consultant or subcontractor may be liable, the indemnification obligation set forth in this provision shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Consultant or any subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts. This obligation to indemnify and hold harmless the Indemnified Party(ies) shall survive expiration or termination of this Agreement, provided that the claims are based upon or arise out of actions or omissions that occurred during the performance of this Agreement.

H. Independent Contractor. Consultant hereby covenants and declares that it is engaged in an independent business and agrees to perform the Work as an independent contractor and not as the agent or employee of City. Nothing in this Agreement shall be construed to make Consultant or any of its employees, servants, or subcontractors, an employee, servant or agent of City for any purpose. Consultant agrees to be solely responsible for its own matters relating to the time and place the Work is performed and the method used to perform such Work; the instrumentalities, tools, supplies and/or materials necessary to complete the Work; hiring of consultants, agents or employees to complete the Work; and the payment of employees, including benefits and compliance with Social Security, withholding and all other regulations governing such matters. Consultant agrees to be solely responsible for its own acts and those of its subordinates, employees, and subcontractors during the life of this Agreement. There shall be no contractual relationship between any subcontractor or supplier and City by virtue of this Agreement with Consultant. Any provisions of this Agreement that may appear to give City the right to direct Consultant as to the details of the services to be performed by Consultant or to exercise a measure of control over such services will be deemed to mean that Consultant shall follow the directions of City with regard to the results of such services only. It is further understood that this Agreement is not exclusive, and City may hire additional entities to perform the Work related to this Agreement.

Inasmuch as City and Consultant are independent of each other, neither has the authority to bind the other to any third person or otherwise to act in any way as the representative of the other, unless otherwise expressly agreed to in writing signed by both Parties hereto. Consultant agrees not to represent itself as City's agent for any purpose to any party or to allow any employee of Consultant to do so, unless specifically authorized, in advance and in writing, to do so, and then only for the limited purpose stated in such authorization. Consultant shall assume full liability for any contracts or agreements Consultant enters into on behalf of City without the express knowledge and prior written consent of City.

I. Insurance. Consultant shall have and maintain in full force and effect for the duration of this Agreement, insurance insuring against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work by Consultant, its agents, representatives, employees or subcontractors. These requirements are subject to amendment or waiver if so approved in writing by the City Manager.

Consultant shall maintain the following insurance policies with coverage and limits no less than:

- (1) Commercial General Liability coverage of at least \$1,000,000 (one million dollars) combined single limit per occurrence and in the aggregate for comprehensive coverage including for bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting therefrom.
- (2) Commercial Automobile Liability (owned, non-owned, hired) coverage of at least \$1,000,000 (one million dollars) combined single limit per occurrence for comprehensive coverage including bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting therefrom.
- (3) Professional Liability coverage of at least \$1,000,000 (one million dollars) for claims arising out of professional services and caused by Consultant's errors, omissions, or negligent acts.
- (4) Employers' Liability limits of \$1,000,000 (one million dollars) per occurrence or disease.
- (5) Workers' Compensation limits as required by the State of Georgia.

J. Employment of Unauthorized Aliens Prohibited – E-Verify Affidavit. Pursuant to O.C.G.A. § 13-10-91, City shall not enter into a contract for the physical performance of services unless Consultant shall provide evidence on City-provided forms, copies of which are attached hereto as **Exhibits C and D** that it and Consultant's subcontractors have registered with, are authorized to use and use the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91, and that they will continue to use the federal work authorization program throughout the contract period. Further, Consultant hereby agrees to comply

with the requirements of the federal Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603, O.C.G.A. § 13-10-91 and Georgia Department of Labor Rule 300-10-1-.02.

Consultant agrees that the employee-number category designated below is applicable to Consultant.

_____ 500 or more employees.

_____ 100 or more employees.

_____ Fewer than 100 employees.

The above requirements shall be in addition to the requirements of state and federal law and shall be construed to be in conformity with those laws.

K. Records, Reports and Audits.

(1) Records:

- (a) Books, records, documents, account ledgers, data bases, and similar materials relating to the Work performed for City under this Agreement (“Records”) shall be established and maintained by Consultant in accordance with applicable law and requirements prescribed by City with respect to all matters covered by this Agreement. Except as otherwise authorized or required, such Records shall be maintained for at least three (3) years from the date that final payment is made to Consultant by City under this Agreement. Furthermore, Records that are the subject of audit findings shall be retained for three (3) years or until such audit findings have been resolved, whichever is later.
- (b) All costs claimed or anticipated to be incurred in the performance of this Agreement shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.

(2) Reports and Information: Upon request, Consultant shall furnish to City any and all Records in the form requested by City. All Records provided electronically must be in a format compatible with City’s computer systems and software.

(3) Audits and Inspections: At any time during normal business hours and as often as City may deem necessary, Consultant shall make available to City or City’s representative(s) for examination all Records. Consultant will permit City or City’s representative(s) to audit, examine, and make excerpts or transcripts from such

Records. Consultant shall provide proper facilities for City or City's representative(s) to access and inspect the Records, or, at the request of City, shall make the Records available for inspection at City's office. Further, Consultant shall permit City or City's representative(s) to observe and inspect any or all of Consultant's facilities and activities during normal hours of business for the purpose of evaluating Consultant's compliance with the terms of this Agreement. In such instances, City or City's representative(s) shall not interfere with or disrupt such activities.

L. Ethics Code; Conflict of Interest. Consultant agrees that it shall not engage in any activity or conduct that would result in a violation of the City of Stone Mountain Code of Ethics or any other similar law or regulation. Consultant certifies that to the best of its knowledge no circumstances exist which will cause a conflict of interest in performing the Work. Should Consultant become aware of any circumstances that may cause a conflict of interest during the Term of this Agreement, Consultant shall immediately notify City. If City determines that a conflict of interest exists, City may require that Consultant take action to remedy the conflict of interest or terminate the Agreement without liability. City shall have the right to recover any fees paid for services rendered by Consultant when such services were performed while a conflict of interest existed if Consultant had knowledge of the conflict of interest and did not notify City within five (5) business days of becoming aware of the existence of the conflict of interest.

Consultant and City acknowledge that it is prohibited for any person to offer, give, or agree to give any City employee or official, or for any City employee or official to solicit, demand, accept, or agree to accept from another person, a gratuity of more than nominal value or rebate or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor. Consultant and City further acknowledge that it is prohibited for any payment, gratuity, or offer of employment to be made by or on behalf of a sub-consultant under a contract to the prime Consultant or higher tier sub-consultant, or any person associated therewith, as an inducement for the award of a subcontract or order.

M. Confidentiality. Consultant acknowledges that it may receive confidential information of City and that it will protect the confidentiality of any such confidential information and will require any of its subcontractors, consultants, and/or staff to likewise protect such confidential information. Consultant agrees that confidential information it learns or receives or such reports, information, opinions or conclusions that Consultant creates under this Agreement shall not be made available to, or discussed with, any individual or organization, including the news media, without prior written approval of City. Consultant shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City information whether specifically deemed confidential or not.

Consultant acknowledges that City's disclosure of documentation is governed by Georgia's Open Records Act, and Consultant further acknowledges that if Consultant submits records containing trade secret information, and if Consultant wishes to keep such records confidential, Consultant must submit and attach to such records an affidavit affirmatively declaring that specific information in the records constitutes trade secrets pursuant to Article 27 of Chapter 1 of Title 10, and the Parties shall follow the requirements of O.C.G.A. § 50-18-72(a)(34) related thereto.

N. Meetings. Consultant is required to meet with City's personnel, or designated representatives, to resolve technical or contractual problems that may occur during the Term of this Agreement at no additional cost to City. Meetings will occur as problems arise and will be coordinated by City. City shall inform Consultant's Representative of the need for a meeting and of the date, time and location of the meeting at least three (3) full business days prior to the date of the meeting. Face-to-face meetings are desired. However, at Consultant's option and expense, a conference call meeting may be substituted. Consistent failure to participate in problem resolution meetings, two consecutive missed or rescheduled meetings, or failure to make a good faith effort to resolve problems, may result in termination of this Agreement for cause.

O. Authority to Contract. The individual executing this Agreement on behalf of Consultant covenants and declares that it has obtained all necessary approvals of Consultant's board of directors, stockholders, general partners, limited partners or similar authorities to simultaneously execute and bind Consultant to the terms of this Agreement, if applicable.

P. Ownership of Work. All reports, designs, drawings, plans, specifications, schedules, work product and other materials, including, but not limited to, those in electronic form, prepared or in the process of being prepared for the Work to be performed by Consultant ("Materials") shall be the property of City, and City shall be entitled to full access and copies of all Materials in the form prescribed by City. Any Materials remaining in the hands of Consultant or subcontractor upon completion or termination of the Work shall be delivered immediately to City whether or not the Project or Work is commenced or completed; provided, however, that Consultant may retain a copy of any deliverables for its records. Consultant assumes all risk of loss, damage or destruction of or to Materials. If any Materials are lost, damaged or destroyed before final delivery to City, Consultant shall replace them at its own expense. Any and all copyrightable subject matter in all Materials is hereby assigned to City, and Consultant agrees to execute any additional documents that may be necessary to evidence such assignment.

Q. Nondiscrimination. In accordance with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and all other provisions of Federal law, Consultant agrees that, during performance of this Agreement, Consultant, for itself, its assignees and successors in interest, will not discriminate against any employee or applicant for employment, any subcontractor, or any supplier because of race, color, creed, national origin, gender, age or disability. In addition, Consultant agrees to comply with all applicable implementing regulations and shall include the provisions of this paragraph in every subcontract for services contemplated under this Agreement.

R. Statutory Compliance. Pursuant to O.C.G.A. § 36-80-28, the Consultant hereby represents to City as follows:

- (1) The Consultant shall avoid any appearance of impropriety and shall follow all policies and procedures of the City;
- (2) With the exception of economic development activities that are confidential pursuant to O.C.G.A. Title 50, Chapter 18, Article 4, the Consultant shall immediately disclose to the City any material transaction or relationship, including, but not limited to, that of the Consultant, the Consultant's employees, or the Consultant's agents or subsidiaries, that reasonably could be expected to give rise to a conflict of interest, including, but not limited to, past, present, or known prospective engagements, involvement in litigation or other dispute, client relationships, or other business or financial interest, and shall immediately disclose to the City any material transaction or relationship subsequently discovered during the pendency of the Agreement; and
- (3) The Consultant acknowledges that any violation or threatened violation of the Agreement may cause irreparable injury to the City entitling the City to seek injunctive relief in addition to all other legal remedies.

V. COVENANTS OF CITY

A. Right of Entry. City shall provide for right of entry for Consultant provided that Consultant shall not unreasonably encumber any City property or Project site(s) with materials or equipment.

B. City's Representative. DARNETTA TYUS, City Manager, shall be authorized to act on City's behalf with respect to the Work as City's designated representative on this Project, provided that any changes to the Work or the terms of this Agreement must be approved as provided in Section II above.

VI. TERMINATION

A. For Convenience. City may terminate this Agreement for convenience at any time upon providing written notice thereof at least seven (7) calendar days in advance of the termination date.

B. For Cause. Consultant shall have no right to terminate this Agreement prior to completion of the Work, except in the event of City's failure to pay Consultant within thirty (30) calendar days of Consultant providing City with notice of a delinquent payment and an opportunity to cure. In the event of Consultant's breach or default under this Agreement, City may terminate this Agreement for cause. City shall give Consultant at least seven (7) calendar days' written notice of its intent to terminate the Agreement for cause and the reasons therefor. If Consultant fails to cure the breach or default within that seven (7) day period, or otherwise remedy the breach or default to the reasonable satisfaction of City, then City may, at its election: (a) in writing terminate the

Agreement in whole or in part; (b) cure such default itself and charge Consultant for the costs of curing the default against any sums due or which become due to Consultant under this Agreement; and/or (c) pursue any other remedy then available, at law or in equity, to City for such default.

C. Statutory Termination. In compliance with O.C.G.A. § 36-60-13, this Agreement shall be deemed terminated as provided in I(D) of this Agreement. Further, this Agreement shall terminate immediately and absolutely at such time as appropriated or otherwise unobligated funds are no longer available to satisfy the obligation of City.

D. Payment Upon Termination. Upon termination, City shall provide for payment to Consultant for services rendered and, where authorized, expenses incurred prior to the termination date; provided that, where this Agreement is terminated for cause, City may deduct from such payment any portion of the cost for City to complete (or hire someone to complete) the Work, as determined at the time of termination, not otherwise covered by the remaining unpaid Maximum Contract Price.

E. Conversion to Termination for Convenience. If City terminates this Agreement for cause and it is later determined that City did not have grounds to do so, the termination will be converted to and treated as a termination for convenience under the terms of Section VI(A) above.

F. Requirements Upon Termination. Upon termination, Consultant shall: (1) promptly discontinue all services, cancel as many outstanding obligations as possible, and not incur any new obligations, unless the City directs otherwise; and (2) promptly deliver to City all data, drawings, reports, summaries, and such other information and materials as may have been generated or used by Consultant in performing this Agreement, whether completed or in process, in the form specified by City.

G. Reservation of Rights and Remedies. The rights and remedies of City and Consultant provided in this Article are in addition to any other rights and remedies provided under this Agreement or at law or in equity.

VII. MISCELLANEOUS

A. Entire Agreement. This Agreement, including any exhibits hereto, constitutes the complete agreement between the Parties and supersedes any and all other agreements, either oral or in writing, between the Parties with respect to the subject matter of this Agreement. No other agreement, statement or promise relating to the subject matter of this Agreement not contained in this Agreement shall be valid or binding. This Agreement may be modified or amended only by a written Change Order (as provided in Section II above) or other document signed by representatives of both Parties with appropriate authorization.

B. Successors and Assigns. Subject to the provision of this Agreement regarding assignment, this Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the respective Parties.

C. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia without regard to choice of law principles. If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the rules, regulations, statutes and laws of the State of Georgia will control. Any action or suit related to this Agreement shall be brought in the Superior Court of DeKalb County, Georgia, or the U.S. District Court for the Northern District of Georgia – Atlanta Division, and Consultant submits to the jurisdiction and venue of such court.

D. Captions and Severability. All headings herein are intended for convenience and ease of reference purposes only and in no way define, limit or describe the scope or intent thereof, or of this Agreement, or in any way affect this Agreement. Should any article(s) or section(s) of this Agreement, or any part thereof, later be deemed illegal, invalid or unenforceable by a court of competent jurisdiction, the offending portion of the Agreement should be severed, and the remainder of this Agreement shall remain in full force and effect to the extent possible as if this Agreement had been executed with the invalid portion hereof eliminated, it being the intention of the Parties that they would have executed the remaining portion of this Agreement without including any such part, parts, or portions that may for any reason be hereafter declared in valid.

E. Business License. Prior to commencement of the Work to be provided hereunder, Consultant shall apply to City for a business license, pay the applicable business license fee, and maintain said business license during the Term of this Agreement, unless Consultant provides evidence that no such license is required.

F. Notices.

- (1) **Communications Relating to Day-to-Day Activities.** All communications relating to the day-to-day activities of the Work shall be exchanged between City's Representative (named above) for City and Consultant's Representative (named above) for Consultant.
- (2) **Official Notices.** All other notices, requests, demands, writings, or correspondence, as required by this Agreement, shall be in writing and shall be deemed received, and shall be effective, when: (1) personally delivered, or (2) on the third day after the postmark date when mailed by certified mail, postage prepaid, return receipt requested, or (3) upon actual delivery when sent via national overnight commercial carrier to the Party at the address given below, or at a substitute address previously furnished to the other Party by written notice in accordance herewith.

NOTICE TO CITY shall be sent to:

City Manager
City of Stone Mountain, Georgia
875 Main Street
Stone Mountain, Georgia 30083

NOTICE TO CONSULTANT shall be sent to:

POND and Company
Attn: Andrew Kohr, Principal
3500 Parkway Lane, Suite 500
Peachtree Corners, Georgia 30092
kohra@pondco.com

G. Waiver of Agreement. No failure by City to enforce any right or power granted under this Agreement, or to insist upon strict compliance by Consultant with this Agreement, and no custom or practice of City at variance with the terms and conditions of this Agreement shall constitute a general waiver of any future breach or default or affect City's right to demand exact and strict compliance by Consultant with the terms and conditions of this Agreement. Further, no express waiver shall affect any Term or condition other than the one specified in such waiver, and that one only for the time and manner specifically stated.

H. Survival. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, confidentiality obligations and insurance maintenance requirements.

I. No Third-Party Rights. This Agreement shall be exclusively for the benefit of the Parties and shall not provide any third parties with any remedy, claim, liability, reimbursement, cause of action or other right.

J. Sovereign Immunity; Ratification. Nothing contained in this Agreement shall be construed to be a waiver of City's sovereign immunity or any individual's qualified, good faith or official immunities. Ratification of this Agreement by a majority of the Mayor and City Council shall authorize the Mayor to execute this Agreement on behalf of City.

K. No Personal Liability. Nothing herein shall be construed as creating any individual or personal liability on the part of any of City's elected or appointed officials, officers, boards, commissions, employees, representatives, consultants, servants, agents, attorneys or volunteers. No such individual shall be personally liable to Consultant or any successor in interest in the event of any default or breach by City or for any amount which may become due to Consultant or successor or on any obligation under the terms of this Agreement. Likewise, Consultant's performance of services under this Agreement shall not subject Consultant's individual employees, officers, or directors to any personal contractual liability, except where Consultant is a sole proprietor. The Parties agree that, except where Consultant is a sole proprietor, their sole and exclusive remedy, claim, demand or suit for contractual liability shall be directed and/or asserted only against Consultant or City, respectively, and not against any elected or appointed official, officers, boards, commissions, employees, representatives, consultants, servants, agents, attorneys and volunteers.

L. Counterparts; Agreement Construction and Interpretation. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Consultant represents that

it has reviewed and become familiar with this Agreement and has notified City of any discrepancies, conflicts or errors herein. In the event of a conflict in the terms of this Agreement and/or the exhibits attached hereto, the terms most beneficial to City shall govern. The Parties hereto agree that, if an ambiguity or question of intent or interpretation arises, this Agreement is to be construed as if the Parties had drafted it jointly, as opposed to being construed against a Party because it was responsible for drafting one or more provisions of the Agreement. In the interest of brevity, the Agreement may omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. Words or terms used as nouns in the Agreement shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires contrary meaning.

M. Force Majeure. Neither City nor Consultant shall be liable for its respective non-negligent or non-willful failure to perform or shall be deemed in default with respect to the failure to perform (or cure a failure to perform) any of its respective duties or obligations under this Agreement or for any delay in such performance due to: (i) any cause beyond its respective reasonable control; (ii) any act of God; (iii) any change in applicable governmental rules or regulations rendering the performance of any portion of this Agreement legally impossible; (iv) earthquake, fire, explosion or flood; (v) strike or labor dispute, excluding strikes or labor disputes by employees and/or agents of Consultant; (vi) delay or failure to act by any governmental or military authority; or (vii) any war, hostility, embargo, sabotage, civil disturbance, riot, insurrection or invasion. In such event, the time for performance shall be extended by an amount of time equal to the period of delay caused by such acts, and all other obligations shall remain intact.

N. Material Condition. Each term of this Agreement is material, and Consultant’s breach of any term of this Agreement shall be considered a material breach of the entire Agreement and shall be grounds for termination or exercise of any other remedies available to City at law or in equity. The provisions of the Agreement set out above shall control over any conflicting provision or language included in Consultant’s materials attached at **Exhibit A**.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, City and Consultant have executed this Agreement, effective as of the Effective Date first above.

CONSULTANT:

POND & COMPANY

By: _____
Robert P. Williams, President

Attest:

James McNabb, Corporate Secretary

[affix corporate seal]

CITY OF STONE MOUNTAIN, GEORGIA

By: _____
Beverly Jones, Mayor

Attest:

Shawn Edmondson, City Clerk

[affix city seal]

Approved as to form:

Jeff Strickland, City Attorney

EXHIBIT A

Consultant Proposal / Scope of Work

(Dated April 24, 2024, totaling 10 pages)

April 24, 2024

Ms. Darnetta Tyus
City Manager
City of Stone Mountain
470-590-2930
875 Main Street, Stone Mountain, GA 30083
dtyus@stonemountaincity.org

Dear Ms. Tyus,

Pond & Company (Pond) is pleased to provide the City of Stone Mountain [Client] with a proposal for Connecting Parks, Paths, and Public Spaces Consultancy services. The work outlined in this letter proposal summarizes the scope agreed upon in our RFP response submitted on November 17, 2023. We have included in this letter proposal a scope summary, schedule, and related fees.

POINT OF CONTACT:

Lilian Al Haddad will serve as the Project Manager and main point of contact at Pond, supported by Andrew Kohr, Principal in Charge.

SCOPE OF PROFESSIONAL SERVICES SUMMARY:

Task 1 – Existing Conditions and Technical Analysis

Pond will get to know the details of Stone Mountain: your goals, aspirations, current challenges, and opportunities for the future state of the area and beyond. This stage helps determine the planning vision and principles that guide decision-making throughout the process. Subtasks include:

- 1.1. We will collect existing GIS data and establish base maps to assist in our existing conditions documentation.
- 1.2. We will establish a document template for the final master plan deliverable. These will include transportation network and land use.
- 1.3. We will conduct a review of previously completed plans provided to us by the city.
- 1.4. We will perform a comprehensive data review and technical analysis exercise.
- 1.5. Compile a list of existing public and private art installations within the city.
- 1.6. We will summarize this information in a narrative format supported by graphics. This deliverable will be updated once we complete an on-site analysis.
- 1.7. We will hold a meeting with the Stakeholder Committee to examine the study area, review potential issues, opportunities, project goals and priorities.
- 1.8. We will conduct a SWOT analysis based on feedback from the Project Advisory Group.

Task 1 Meetings: Kick-Off Meeting, two (2) PMT meetings

Task 1 Deliverables: Base data, past plan review, document template, draft existing conditions document, meeting summary.

Task 2 – Public Involvement

In this task, Pond, Nickel Works, and The Collaborative Firm will partner with the PAG committee and the City staff to identify project stakeholders. We will prepare a comprehensive public engagement strategy and plan at project inception that will be shared with the PAG and the PMT for approval. The task will continue throughout the project duration and will include:

- 2.1 We will work with the PMT to compile a list of stakeholders who should have a fundamental role in developing this study and conduct three (3) PAG stakeholder meetings to solicit feedback.
- 2.2 Nickel Works will utilize Google Forms or Microsoft Forms to develop an online survey to solicit feedback from the public.
- 2.3 Nickel Works will lead two (2) public open houses to gather community input, one at the start of the project and one towards the end.
- 2.4 Nickel Works will lead two (2) pop up events as part of community outreach and utilize tools such as VR stations to gather feedback.
- 2.5 The Collaborative Firm will lead stakeholder engagement meetings including elected officials' updates.
- 2.6 The Collaborative Firm will initiate and facilitate four to six in-depth discussions on policies, equity, and partnerships, engaging key stakeholders to ensure the plan is implementable.
- 2.7 The Collaborative Firm will lead the implementation of community planning strategies by organizing and executing eight to ten targeted engagement sessions with local stakeholders.
- 2.8 Pond will conduct two (2) transportation coordination meetings with affected organizations, including GDOT, to discuss potential recommendations and transportation improvements, one will be during the design phase and one at the end of the project.
- 2.9 Pond will lead monthly meetings with the PMT and Pond will provide meeting minutes. For the first three months, we will host bi-weekly meetings as needed to ensure the project is advancing.

Task 2 Meetings: Three (3) PAG Meetings, two (2) public open houses, two (2) pop-up events, two (2) transportation coordination meetings.

Task 2 Deliverables: Public Involvement Plan, public meeting summaries, survey results.

Task 3 – Conceptual Plan and Analysis Report Development

In this task, the team will shift from analyzing context to creating a strategic plan that is implementable and has stakeholder support. Subtasks include:

- 3.1 We will develop an overall trail greenway and connectivity strategy for the study area and define character areas for public space activation and placemaking.
- 3.2 Pond will study a bicycle/ trail network that links the City's parks, trails, landmarks, and downtown and then develop up to schematic design the preferred alternative linking the PATH Trail on Ponce de Leon Avenue with the trail entering Stone Mountain Park.
- 3.3 We will outline the themes for activation along the proposed network and within city parks and will describe the placemaking elements and strategies that will be supported by stakeholders and that will be feasible for the city to implement.
- 3.4 We will identify three catalytic projects/sites and define placemaking elements, including public art, wayfinding and lighting strategies, green infrastructure, and streetscapes a
- 3.5 We will develop typical road cross-sections for the proposed trail network and formulate bicycle and pedestrian safety measures and strategies for the study area.

- 3.6 We will produce up to four (4) Illustrative visualizations that illustrate the wayfinding and creative placemaking within the proposed network.
- 3.7 The Collaborative Firm will draft public and private investment policies so that the City can enhance partnerships to fund the recommended improvements.
- 3.8 Pond will develop a framework plan that identifies a draft prioritized list of recommendations which will inform the action plan.

Task 3 Meetings: Six (6) PMT Meetings

Task 3 Deliverables: Summary of Task 3 Findings Presentation, PATH and Trails Strategy report, diagrams and illustrations supporting the network, bicycle and pedestrian safety measures, 4 x 3D renderings.

Task 4 – Prepare Project Deliverables

In this task the team will develop an implementation strategy for the proposed plan. We will then compile the project deliverables into a graphically rich document that describes the overall process, findings, and recommendations. The document will be easy to read, full of infographics and maps and reflects the vision for Cumberland. Subtasks include:

- 4.1 We will create a draft Action Plan, detailing specific action steps for key partners that will include a phasing program based on the priority and implementation schedule of various project elements, ensuring it is realistic and achievable.
- 4.2 The Collaborative firm will advise on partnerships that will support implementation using the draft action plan as a basis for recommendations.
- 4.3 We will review the draft Action Plan with the client team and select partners for support and buy-in, incorporating feedback to produce a final 100-day plan.
- 4.4 We will prepare a final implementation plan that includes potential funding sources, public and private investment policies, a phasing program for project elements, a 100-day action plan, and summaries of the plan development process.
- 4.1 We will provide a revised list of probable costs based on the advanced plan.
- 4.2 We will develop a Draft Report for review by PMT.
- 4.3 After a 2-week review period, we will make the necessary revisions and present the Final Draft Report to the City staff, followed by submission to the ARC. Once ARC review is complete, one round of edits will be completed, and our team will deliver the Final Plan in electronic and print (1 copy) to the city.

Task 4 Meetings: Two (2) PMT Meetings

Task 4 Deliverables: Draft action plan, implementation plan, phasing program, final action plan, high level cost estimates, draft report, final study report.



The team is proposing a project duration of 10 months including review periods. This schedule assumes a start date in May 2024 and a project closing date in January 2025. This will be discussed further in our Kick-off meeting and can be revised accordingly.

In terms of engagement, we are proposing 3 PAG meetings, 2 public open houses, and 2 pop up events, 2 transportation coordination meetings, in addition to the monthly PMT meetings.

[illegible]

CONDITIONS OF SERVICE:

- The proposal assumes the following:
 - A total of (4) illustrative 3d renders will be developed.
 - Review periods are assumed to be two (2) weeks.
 - Our proposal assumes one (1) round of comments on the draft report submission and two (2) rounds on the final document.
- This proposal excludes the following services:
 - Any meetings that are not included in the attached scope of work.
 - Engineering Design Services such as :
 - Electrical design
 - Architectural design
 - Irrigation design
 - Structural design
 - Roadway and traffic design
 - Civil and stormwater design
 - Detailed traffic analysis
 - Environmental services beyond desktop screenings
- All noted exclusions, while not a part of this proposal, can be provided as an additional service.
- Any revisions requested by the client that significantly change the planning document or scope from that which was approved after acceptance of each submittal milestone will be considered additional services and require a contract revision.

PROPOSED FEES:

The following Lump Sum fee includes professional design services and all project related expenses including travel costs, printing, mileage, and shipping to complete the scope of work outlined above:

TASK	FEES
Task 1- Existing Conditions and Technical Analysis	\$45,000
Task 2- Public Engagement	\$50,000
Task 3- Conceptual Plan and Analysis Report Development	\$70,000
Task 4- Prepare Project Deliverables	\$35,000
TOTAL	\$200,000

Please let us know if you have any questions and thank you again for your trust in our firm.

Sincerely,



Lilian Al Haddad, AP ND
Senior Project Manager | PLACE
641.530.4782
Lilian.alhaddad@pondco.com



Andrew Kohr, PLA, ASLA
Principal
404.556.8758
kohra@pondco.com

TERMS AND CONDITIONS

This Agreement between Darnetta Tyus ("Client") and **Pond & Company** ("POND"), a Georgia corporation with its corporate headquarters located at 3500 Parkway Lane, Suite 500, Peachtree Corners, GA 30092, is effective as of May 7, 2024. The parties agree as follows:

1.0 Services:

POND agrees to perform for Client the professional services ("Services") described in the POND proposal dated

November 17, 20²³ ("Proposal"), attached and incorporated herein. Because of the uncertainties inherent in the Services contemplated, time schedules are only estimated schedules and are subject to revision unless otherwise specifically described in the Proposal. As full consideration for the performance of Services, Client shall pay to POND the compensation provided for in the Proposal.

2.0 Integration:

These Terms and Conditions, the attached documents and those incorporated herein constitute the entire Agreement between the parties and cannot be changed except by a written instrument signed by both parties. If any term or provision hereunder, or any portion hereof, is held to be invalid or unenforceable, it shall not affect any other term or provision hereunder or any part thereof, unless the invalidity or unenforceability of such term(s) or provisions(s) tends to render the Agreement commercially useless to either party, in which case the entire Agreement shall become null and void.

3.0 Access to Site:

Unless otherwise stated, POND will have reasonable access to the site for activities necessary for the performance of the services. If reasonable access is not provided and consequently POND is denied or delayed in performing our services, the associated cost may be viewed as an additional expense.

4.0 Billings/Payment:

Invoices for POND services shall be submitted, at POND'S option, either upon completion of such services, on a project basis or on a monthly basis and are due when rendered. Client shall promptly review all invoices and shall notify POND in writing within ten (10) days of date of invoice, provide reasons for the objection, and promptly pay the undisputed amount. Invoices shall be considered "Past Due" if not paid within 30 days after receipt of invoice for services rendered. If the invoice is not paid within 30 days, POND may, without waiving any claim or right against the Client, and without liability whatsoever to the Client, stop work on the performance of the service. Unpaid accounts shall be subject to a monthly service charge of 1% per month on the unpaid balance at the sole election of POND. In the event any portion or all of an account remains unpaid 90 days after proper billing, the Client shall pay all costs of collection, including reasonable court costs and attorney's fees. Client shall remit payment to POND's corporate headquarters address above.

5.0 Reimbursable Expenses:

Reimbursable expenses will be billed at a multiplier of 1.15 times the cost incurred.

6.0 Additional Services:

Additional services include increase or change in scope of project, major revisions when such revisions are inconsistent with written approvals or instructions previously given, services after award of contract in evaluation of substitutions proposed by the construction contractor, correction of discrepancies between copies of the Contract Documents and the electronic media after the 30-day acceptance period and any other services that are not included within the Proposal. POND will only perform additional services when authorized in writing by the Client or Client's representative.

7.0 Client Furnished Services:

Any services provided by the Client for POND shall be deemed reliable, and POND shall be entitled to rely on the accuracy and completeness of any services and information furnished.

8.0 Indemnification:

The Client shall indemnify and hold harmless POND and all of its personnel from and against any claims, damages, losses and expenses (including reasonable attorney's fees) arising out of or resulting from the negligent performance of the services, provided that any such claim, damage, loss or expense is caused by the negligent act, omission, and/or strict

liability of the Client, anyone directly employed by the Client (except POND), or anyone for whose acts any of them may be liable.

9.0 Risk Allocation:

In recognition of the relative risks, rewards and benefits of the project to both the Client and POND, the risks have been allocated such that the Client agrees that, to the fullest extent permitted by the law, POND's total aggregate liability to the Client for any and all injuries, claims, losses, expenses, damages or claim expenses arising out of this agreement from any cause or causes, shall not exceed total fee. Such causes include, but are not limited to, POND negligence, errors, omissions, strict liability, breach of contract or breach of warranty.

10.0 Dispute Resolution:

Any claims, counterclaims, or disputes between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to and decided by negotiation, mediation or litigation. The parties shall first endeavor to settle the dispute through direct discussions or negotiations. If the parties do not resolve the dispute or claim within thirty (30) days of the first notice thereof, either party may request mediation, which shall take place within thirty (30) days of the date the request is made. If both parties do not agree to mediation within ten (10) days of said request, or if the mediation does not result in a resolution of the dispute, then either party may proceed with litigation. No written or oral representation during any settlement negotiations or mediation shall be deemed as party admissions.

Any litigation arising out of this Agreement or the breach thereof must be filed in the state courts of Gwinnett County, Georgia, which shall be the sole and exclusive venue for all such litigation. The parties to this Agreement consent to jurisdiction in Gwinnett County, Georgia, and waive any objection thereto.

11.0 Standard of Care:

POND shall perform Services for Client with a standard of care ordinarily exercised by other firms providing similar services in accordance with accepted and sound professional practices, and conforms to applicable laws, codes and regulations.

12.0 Exchange of Electronic Media:

When exchange of data by electronic media is required by this agreement, the following shall apply:

12.1 Client to POND

The Client shall deliver to POND electronic files suitable for use in the format, specification, media and hardware platform (production system) agreed upon between the parties. POND shall review the files within a reasonable time period and determine whether electronic files are suitable for POND's use on the project. If the electronic files are unsuitable for use, POND shall notify the Client of the deficiencies. The Client shall make the required corrections and return the electronic files to POND.

12.2 POND to Client or Third Parties

POND shall deliver to the Client electronic files in the format agreed upon between the parties. These files are compatible only with the software and version agreed upon and may not be compatible with future versions of the software. The Client shall review the electronic files received from POND and notify POND of any discrepancies within a reasonable time period, but no longer than 60 days. POND shall make the required corrections and return the electronic files to Client.

POND agrees that it is responsible for the accuracy of the original sealed documents. If at any time there exists a difference between the submitted electronic files and the original sealed documents, the original sealed documents will govern as the official delivered contract documents.

POND will not release electronic files to third parties without a written authorization of the Client.

13.0 Termination of Services:

This Agreement may be terminated by written notice by either the Client or POND, should the other fail to perform its obligations hereunder or for convenience. In the event of termination, the Client shall pay POND for all services appropriately and completely rendered to the date of termination and all associated reasonable reimbursable expenses.

14.0 Ownership of Documents:

All documents, including electronic media, produced by POND under this Agreement shall remain the property of POND and may not be used by the Client for any reason without the written consent of POND; such written consent not to be

unreasonably withheld, conditioned or delayed. Any unauthorized use or distribution shall be at Client's and Recipient's sole risk and without liability to POND. Client further agrees that documents produced by POND pursuant to this Agreement will not be used for any project not expressly provided for in this Agreement without POND's written approval; such written approval not to be unreasonably withheld, conditioned or delayed. The Client will indemnify, defend, and hold

harmless POND for any and all claims, counterclaims, losses, costs, damages, awards or judgments arising from the unauthorized use of the documents.

If Client terminates this Agreement and POND authorizes the use of incomplete documents for Client's future use, POND shall not be liable for any errors or omissions and Client agrees their use of the incomplete documents is at their sole risk.

15.0 Force Majeure:

POND is not responsible for damages and delays caused by factors beyond POND's reasonable control, including but not limited to damages and delays because of strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of any governmental or other regulatory authority to act in a timely manner, failure of the Client to furnish timely information or approve or disapprove of POND's services or work product promptly, or damages and delays caused by faulty performance by the Client or by contractors of any level. When such delays beyond POND's reasonable control occur, the Client agrees POND is not responsible for damages, nor shall POND be deemed to be in default of this Agreement.

16.0 Discovery of Unanticipated Hazardous Materials:

Hazardous materials may exist where there is no reason to believe they could or should be present. POND and the Client agree that the discovery of unanticipated hazardous materials may constitute a changed condition mandating a renegotiation of the scope of work or termination of services at the election of either party. POND and the Client also agree that the discovery of unanticipated hazardous materials may make it necessary for POND to take immediate measures to protect human health and safety, and/or the environment. POND agrees to notify the Client as soon as practically possible should unanticipated hazardous materials or suspected hazardous materials be encountered. The Client encourages POND to take any and all prudent "first aid" measures that in POND's opinion are justified to preserve and protect the health and safety of POND's personnel and the public, and/or the environment, and the Client agrees to compensate POND for reasonable additional cost of such work. The Client waives any claim against POND, and agrees to indemnify, defend and hold POND harmless from any claim or liability for injury or loss arising from POND's encountering unanticipated hazardous materials. The Client also agrees to compensate POND for any time reasonably spent and expenses incurred by POND in defense of any such claim, with such compensation to be based upon POND's prevailing fee schedule and expense reimbursement policy. The Client is fully responsible for and assumes all risks associated with such conditions.

17.0 Site Operations:

POND field personnel will avoid hazards and potentially dangerous exposure to and contact with utilities which are visible to them at the site. The Client recognizes that POND's personnel may not identify all subsurface utility lines and manmade objects, and that the information upon which POND relies may contain errors, may be incomplete, or insufficient. POND is not responsible for any reasonably unforeseeable damage or loss due to undisclosed or unknown surface or subsurface conditions, owned by Client or third parties. Evaluations of existing buildings require that certain assumptions be made regarding existing conditions, many of which are not able to be reviewed by reasonable visual observation. These assumptions cannot be verified without substantial cost or demolition. Where the detailed investigation of such a condition is not authorized, POND shall not be responsible for the condition of the existing structure and utilities. The Client understands that actual field conditions may subsequently be found to vary from design assumptions which in turn may alter or increase the scope of the design and/or construction services.

18.0 Construction Activities:

Unless specifically stated otherwise, the Client and his contractor(s) are fully and solely liable for all means and methods of construction, temporary bracing and shoring, and construction site safety.

19.0 Consequential Damages:

Neither party shall be liable to the other for consequential damages, including, without limitation, loss of use or loss of profits, incurred by one another or their subsidiaries or successors, regardless of whether such damages are caused by breach of contract, willful misconduct, negligent act or omission, or other wrongful act of either of them.

20.0 Governing Law:

This Agreement shall be deemed to be executed in Gwinnett County, Georgia and shall be governed by the laws in the State of Georgia. It is agreed that all actions related to this Agreement shall be submitted to the jurisdiction of the state or federal courts in the State of Georgia and that the venues for same shall be located in Gwinnett County, Georgia.

By signing in the space provided below, I verify that I am an Officer or authorized agent of the Client and agree that I have fully read, understand and accept the Terms and Conditions as stated above.

Client

Pond & Company

Signed (Must be an Officer or Authorized Agent)

Signed (Must be an Officer or Authorized Agent)

Typed Name

Typed Name

Title

Title

Date

Date

EXHIBIT B

Project-Related ARC Subgrant Agreement

(totaling 22 pages)

SUBGRANT AGREEMENT

THIS AGREEMENT, entered into as of this ____ day of ____, 2023, by and between City of Stone Mountain, Georgia (hereinafter referred to as the "Subgrantee") and the ATLANTA REGIONAL COMMISSION (hereinafter referred to as "ARC").

WITNESSETH THAT:

WHEREAS, ARC desires to engage the Subgrantee to render certain services hereinafter described in connection with an undertaking or project (hereinafter referred to as the "Project") which is to be wholly or partially financed by a grant from the United States Department of Transportation, (hereinafter, along with the appropriate auditing agency of the entities making such grant, referred to as "the Concerned Funding Agencies");

WHEREAS, the Subgrantee desires to render such services in connection with the project;

NOW THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter contained, the parties hereto agree as follows:

1. Engagement of the Subgrantee. ARC hereby agrees to engage the Subgrantee and the Subgrantee hereby agrees to perform the services hereinafter set forth in accordance with the terms and conditions herein.
2. Scope of Services. The Subgrantee shall do, perform and carry out in a satisfactory and proper manner, as determined by ARC, the work and services described in Attachment "A" which is attached hereto and made a part hereof.
3. Time of Performance. The services of the Subgrantee are to commence immediately upon execution of this agreement. Work and services shall be undertaken and pursued in such sequence as to assure their expeditious completion and as may be required in Attachment "A." All work and services required hereunder shall be completed on or before October 31, 2025.
4. Compensation. The Subgrantee shall be compensated for the work and services to be performed under this agreement as set forth in Attachment "B" which is attached hereto and made part hereof. Compensation for work and services in the performance of this contract shall not exceed \$160,000.
5. Approval of Subcontracts. None of the work or services to be performed under this agreement by the Subgrantee shall be subcontracted without the prior written approval of ARC's Executive Director or his authorized agent. If such approval is requested, all subcontract documents shall be submitted to ARC's Executive Director or her authorized agent, for her review and approval prior to the execution of such subcontract. Further, if requested by ARC's Executive Director or her authorized agent, the Subgrantee shall provide ARC with such documentation as ARC's Executive Director shall require, regarding

the method the Subgrantee used in selecting its subcontractor. The Subgrantee acknowledges that if work or services to be performed under this agreement is financed solely or partially with federal funds, the selection of subcontractors is governed by regulations requiring competition between potential subcontractors or adequate justification for sole source selection. The Subgrantee agrees to abide by such regulations in its selection procedure.

6. Prompt Payment and Retainage. The prime subgrantee agrees to pay each subcontractor under this prime grant for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime subgrantee receives from ARC. The prime subgrantee agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of ARC. This clause applies to both DBE and non-DBE subcontracts.

Any subgrantee found not to be in compliance with this clause will be considered in breach of contract and any further payments will be withheld until corrective action is taken. If subgrantee does not take corrective action, subgrantee may be subject to contract termination.

7. Assignability. The Subgrantee shall not assign, sublet or transfer all or any portion of its interest in this agreement without the prior written approval of ARC.
8. Amendments. ARC may require changes in this agreement. Except for termination for cause or convenience, such changes, including any increase or decrease in the amount of the Subgrantee's compensation shall be incorporated in written amendments to this agreement. Amendments to this agreement may be executed on behalf of ARC only by ARC's Executive Director and Chairman.
9. Insurance. The Subgrantee will have and maintain insurance coverage that complies with the laws of the state of Georgia, as well as reasonable and prudent business practices. Such insurance shall at least include Worker's Compensation, Public Liability, Property Damage, and Valuable Papers coverage.
10. Indemnification. The Subgrantee shall hold harmless and indemnify ARC, its officers, directors, and employees from and against losses, reasonable attorney's fees and costs, that may be based on any injury to persons or property caused by the negligent performance of services under this agreement by the Subgrantee or any person employed by the Subgrantee.
11. Formal Communication. Formal communications regarding this agreement shall include, but not necessarily be limited to correspondence, progress reports and fiscal reports.

All formal communication regarding this agreement shall be in writing between the person executing this agreement on behalf of the Subgrantee (executor) and ARC's Executive Director. However, the Subgrantee executor and ARC's Executive Director shall each have the right to designate in writing to the other an agent to act in his or her behalf regarding this

agreement. Any restrictions to such designation must be clearly defined in the written designation.

In this regard, ARC's Executive Director hereby designates the Chief Operating Officer as her agent for purposes of this contract only, except for Amendments and Terminations.

12. Reports. The Subgrantee shall furnish ARC with narrative progress reports, in such form and frequency as may be specified by ARC's Executive Director or her authorized agent, outlining the work accomplished by the Subgrantee during the period, including the current status of the Project, and the percentage of work which has been completed.
13. Financial Reports. In addition to other records required by this contract, the Subgrantee agrees to provide to ARC such additional financial reports in such form and frequency as ARC may require in order to meet ARC's requirements for reporting to the Concerned Funding Agencies.
14. Program Fraud and False or Fraudulent Statements or Related Acts. The Subgrantee acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Subgrantee certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the project for which this contract work is being performed. In addition to other penalties that may be applicable, the Subgrantee further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Subgrantee to the extent the Federal Government deems appropriate.
15. Review and Coordination. To ensure adequate assessment of the Subgrantee's project and proper coordination among interested parties, ARC shall be kept fully informed concerning the progress of the work and services to be performed hereunder. The Subgrantee may be required to meet with designated representatives of ARC and the Concerned Funding Agencies from time to time to review the work and services performed. The Subgrantee shall be given reasonable written notice of such meetings.
16. Inspections. Authorized representatives of ARC and the Concerned Funding Agencies may at all reasonable times review and inspect the Project activities and data collected pursuant to this agreement. Except where specifically prohibited by law, all reports, studies, records, and computations prepared by or for the Subgrantee under this agreement shall be made available to authorized representatives of ARC and the Concerned Funding Agencies for inspection and review at all reasonable times in the Subgrantee's office where data is normally accumulated. Approval and acceptance of such material shall not relieve the Subgrantee of its professional obligation to correct, at its expense, any errors found in the work unless such errors can be shown to be caused by inaccurate or incomplete information provided by ARC.

17. Maintenance of Cost Records. The Subgrantee shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred on the Project and shall make such material available at all reasonable times during the period of the agreement, and for three years from the date of final payment under the agreement, for inspection by ARC, the Concerned Funding Agencies, and if the work and services to be performed under this agreement is wholly or partially funded with federal funds, the Comptroller General of the United States, or any of their duly authorized representatives. The Subgrantee shall include the provisions of this paragraph in any subcontract executed in connection with this Project.
18. No Obligation by the Federal Government. ARC and the Subgrantee acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to ARC, the Subgrantee, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
19. Status as Independent Contractors. Nothing contained in this agreement shall be construed to constitute the Subgrantee or any of its employees, servants, agents or subcontractors as a partner, employee, servant, or agent of ARC, nor shall either party to this agreement have any authority to bind the other in any respect, it being intended that each shall remain an independent contractor.
20. Subgrantee's Personnel. The Subgrantee represents that it has, or will secure at its own expense, all personnel required to perform the services under this agreement. Such personnel shall not be employees of ARC, nor shall such personnel have been employees of ARC during any time within the twelve-month period immediately prior to the date of this agreement, except with the express prior written consent of ARC. Further, the Subgrantee agrees that no such former ARC employees shall be involved in any way with the performance of this agreement, without the express prior written approval of ARC.
21. Employees' Rate of Compensation. The rate of compensation for work performed under this project by a staff member or employee of the Subgrantee shall not exceed the compensation of such person that is applicable to his or her other work activities for the Subgrantee. Charges for salaries and wages of individuals shall be supported by time and attendance and payroll distribution records.
22. Interest of Subgrantee. The Subgrantee covenants that neither the Subgrantee, nor anyone controlled by the Subgrantee, controlling the Subgrantee, or under common control with the Subgrantee, nor its agents, employees or Subgrantees, presently has an interest, nor shall acquire an interest, direct or indirect, which would conflict in any manner or degree with the performance of its service hereunder, or which would prevent, or tend to prevent, the satisfactory performance of the Subgrantee's service hereunder in an impartial and unbiased manner. The Subgrantee further covenants that in the performance of this agreement no person having any such interest shall be employed by the Subgrantee as an agent,

Subgrantee or otherwise. If the Subgrantee contemplates taking some action which may constitute a violation of this paragraph, the Subgrantee shall request in writing the advice of ARC, and if ARC notifies the Subgrantee in writing that the Subgrantee's contemplated action will not constitute a violation hereof, then the Subgrantee shall be authorized to take such action without being in violation of this paragraph.

23. Interest of Members of ARC and Others. No officer, member or employee of ARC, and no public official of any local government which is affected in any way by the project, who exercises any function or responsibilities in the review or approval of the project or any component part thereof, shall participate in any decision relating to this agreement which affects his or her personal interests or the interest of any corporation, partnership or association in which he or she is directly, or indirectly, interested; nor shall any such officer, member or employee of ARC, or public official of any local government affected by the project, have an interest, direct or indirect, in this agreement or the proceeds arising therefrom.
24. Officials Not to Benefit. No member of or delegate to the Congress of the United States of America, resident commissioner or employee of the United States Government, shall be admitted to any share or part of this agreement or to any benefits to arise herefrom.
25. Compliance with Requirements of the Concerned Funding Agencies. The Subgrantee shall be bound by the applicable terms and conditions of the Grant Contract between ARC and the Concerned Funding Agencies which said Grant Contract is on file in the offices of ARC and is hereby made a part of this agreement as fully as if the same were attached hereto. ARC will notify the Subgrantee in writing of any applicable changes within a reasonable time after ARC has received appropriate notice of such changes from the Concerned Funding Agencies.
26. Rights in Documents, Materials and Data Produced. For purposes of this agreement, "data" includes, but is not limited to, writings, sound recordings, photographs, films, videotapes or other graphic representations and works of a similar nature. ARC and the Concerned Funding Agencies shall have the right to use same without restriction or limitation and without compensation to the Subgrantee other than as provided in this agreement. The Subgrantee acknowledges that matters regarding rights to inventions and materials generated by or arising out of this agreement may be subject to certain regulations issued by the Concerned Funding Agencies.
27. Data and Software Licensing. During performance of the work covered by this Agreement ARC may provide certain data or software products, such as aerial photography or commercially available planning data and software, to the Subgrantee that have been obtained from various sources under specific licensing agreements. The Subgrantee acknowledges that any data or software that ARC may provide hereunder is provided as a non-exclusive, non-transferable, limited license for the Subgrantee or its Sub-Subgrantees to use the data or software for the work covered by this Agreement only. The Subgrantee shall not redistribute, republish or otherwise make this data or software available to any party not covered by this Agreement. The Subgrantee or any Sub-Subgrantees shall not use this data

or software for any work not covered by this Agreement. The Subgrantee further acknowledges that upon completion of the project covered by this Agreement all data and software provided by ARC will be returned to ARC and all copies of the data or software residing on the Subgrantee's or Sub-Subgrantee's computer systems will be removed.

28. Publicity. Articles, papers, bulletins, reports or other material reporting the plans, progress, analysis or results and findings of the work conducted under this agreement shall not be presented or published without first submitting the same to ARC for review and comment. No such presentation shall be made until comments have been received from ARC regarding such review; provided, however, if such comments have not been received by the Subgrantee within thirty calendar days after such submission, it shall be presumed that ARC has no objection thereto. ARC's comments, objections, reservations or disagreements regarding such material shall be accommodated as ARC shall specify.
29. Assurances. The Subgrantee hereby assures and certifies that it will comply with the appropriate regulations, policies, guidelines and requirements (as applicable), including, but not limited to, 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 48 CFR 31, "Contract Cost Principles and Procedures," Executive Order 12372, "Intergovernmental review of Federal programs," U.S. Office of Management and Budget Circular Nos. A 21, "Cost Principles for Educational Institutions," and A 133, "Audits of States, Local Governments and Non-Profit Organizations," or other requirements imposed by ARC or the Concerned Funding Agencies concerning requirements of law or project matters as expressly made applicable by ARC herein, as they relate to the application, acceptance, use and audit of federal funds for this federally assisted project. For audits of fiscal years beginning on or after December 26, 2014, the provisions of 2 CFR 200.501 supersede OMB circular A133. A nonfederal entity that expends \$750,000 or more in federal awards during its fiscal year must have a single or program-specific audit conducted for that year. Also, the Subgrantee gives assurance and certifies with respect to this agreement that:
 - a. For all agreements:
 - i. It possesses legal authority to apply for this agreement, and, if appropriate, to finance and construct any proposed facilities; and, any required resolution, motion or similar action has been duly adopted or passed as an official act of the Subgrantee's governing body; that proper authorization exists for the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the Subgrantee to act in connection with the application and to provide such additional information as may be required, and, upon ARC approval of its application, that the person identified as the official representative of the Subgrantee is authorized to execute an agreement incorporating the terms of its application.
 - ii. It understands that the phrase "federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect federal assistance.

- iii. It will comply with Title VI of the Civil Right Act of 1964 (P.L. 88-352 and 42 USC 2000d) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of age, handicap, religion, creed or belief, political affiliation, sex, race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any project or activity for which the applicant receives federal financial assistance and will immediately take any measures necessary to effectuate this assurance. The Subgrantee shall take affirmative action to ensure that qualified applicants are employed and qualified subcontractors are selected, and that qualified employees are treated during employment, without regard to their age, handicap, religion, creed or belief, political affiliation, race, color, sex or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; selection for training including apprenticeship, and participation in recreational and educational activities.

The Subgrantee shall in all solicitations or advertisements for subcontractors or employees placed by or on behalf of the Subgrantee, state that all qualified applicants will receive consideration for employment without regard to age, handicap, religion, creed or belief, political affiliation, race, color, sex or national origin. The Subgrantee shall not discriminate against any qualified client or recipient of services provided through this agreement on the basis of age, handicap, religion, creed or belief, political affiliation, race, color, sex or national origin. The Subgrantee shall cause foregoing provisions to be included in all subcontracts for any work covered by this agreement so that such provisions will be binding upon each subcontractor.

The Subgrantee shall keep such records and submit such reports concerning the racial and ethnic origin of applicants for employment and employees as ARC or the Concerned Funding Agencies may require.

The Subgrantee agrees to comply with such rules, regulations or guidelines as ARC or the Concerned Funding Agencies may issue to implement the requirements of this paragraph.

- iv. It will comply with applicable requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of federal and federally assisted projects.
- v. It will comply with the applicable provisions of the Hatch Act which limits the political activity of employees.
- vi. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain

for themselves or others, particularly those with whom they have family, business, or other ties.

- vii. It will cooperate with ARC in assisting the Concerned Funding Agencies in this compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.) by (a) consulting, through ARC, with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.8) by the activity, and notifying, through ARC, the Concerned Funding Agencies of the existence of any such properties, and by (b) complying with all requirements established by ARC or the Concerned Funding Agencies to avoid or mitigate adverse effects upon such properties.
- viii. For agreements not involving federal financial assistance for construction, it will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the Project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Concerned Funding Agencies, through ARC, of the receipt of any communication from the Director of the EPA Office of Federal Activities indicting that a facility to be used in the project is under consideration for listing by EPA.
- ix. It will comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in U.S. Department of Labor regulations (41 CFR Part 60).
- x. The Subgrantee agrees that throughout the performance of this contract it will remain in full compliance with all federal and state immigration laws, including but not limited to provisions 8 USC 1324a and O.C.G.A. § 13-10-91 regarding the unlawful employment of unauthorized aliens and verification of lawful presence in the United States. Thereunder, Subgrantee will ensure that only persons who are citizens or nationals of the United States or non-citizens authorized under federal immigration laws are employed to perform services under this contract or any subcontract hereunder.
- xi. The Subgrantee agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

The Subgrantee further agrees to include the provisions contained in the forgoing paragraph in each subcontract for services hereunder.

The Subgrantee shall not retaliate or take any adverse action against any employee or any subcontractor for reporting, or attempting to report a violation(s) regarding applicable immigration laws.

- b. For agreements involving either full or partial federal financial assistance for construction projects(s):
 - i. It will comply with the provisions of Executive Order 11296, relating to evaluation of flood hazards, and Executive Order 11288, relating to the prevention, control, and abatement of water pollution.
 - ii. It will require the facility to be designed to comply with the "American Standard Specifications for Making Buildings and Facilities Accessible to and Usable by, the Physically Handicapped," Number A117 1-1961, as modified (41 CFR 101 - 17.703). The Subgrantee will be responsible for conducting inspections to ensure compliance by the Subgrantee with these specifications.
- c. For agreements exceeding \$100,000.00 in federal financial assistance:
 - i. It will comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).

30. Certifications.

- a. Prohibition Against Use of Funds to Influence Legislation (Lobbying). No part of any funds under this agreement shall be used to pay the salary or expenses of any Subgrantee, or agent acting for the Subgrantee, to engage in any activity designed to influence legislation or appropriations pending before the Congress as stated in 49 CFR 20.
- b. Debarment and Suspension. The Subgrantee agrees to comply with the nonprocurement debarment and suspension rules in 49 CFR 29.
- c. Drug-Free Workplace. The Subgrantee agrees and certifies that it will comply with the requirements for a Drug-Free Workplace, as described in Section 50-24-3 of the Official Code of Georgia, including passing through this requirement to lower tier Subgrantees.
- d. The Subgrantee agrees and hereby certifies that it will comply with the Georgia Security and Immigration Compliance requirements of O.C.G.A. § 13-10-91.

31. Other Requirements. In addition to other requirements of this agreement, the Subgrantee agrees to comply with, and shall be bound by, the applicable terms and conditions of all state and federal laws or regulations governing and defining resources, project administration, allowable costs and associated procurement standards, and the ARC Disadvantaged Business Enterprise Plan (in compliance with 49 CFR Part 26), as appropriate. In addition, the Subgrantee further agrees to comply with the DBE Utilization

Plan submitted to ARC as part of its proposal. All such documents are hereby made part of this agreement fully as if the same were attached hereto.

The Subgrantee shall not discriminate on the basis of race, color, national origin, or sex in the performance of this agreement. The Subgrantee shall carry out applicable requirements of 49 CFR 26 in the award and administration of DOT assisted agreements. Failure by the Subgrantee to carry out these requirements is a material breach of this agreement, which may result in the termination of this agreement or such other remedy as the recipient deems appropriate.

The Subgrantee agrees to pay each subcontractor under this prime agreement for satisfactory performance of its agreement no later than ten business days from the receipt of each payment that said prime Subgrantee receives from ARC. The prime Subgrantee agrees further to return retainage payments to each subcontractor within ten business days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of ARC. This clause applies to both Disadvantaged Business Enterprises and non-Disadvantaged Business Enterprises.

32. Termination for Mutual Convenience. ARC or the Subgrantee may terminate this agreement in whole or in part when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall, through formal written amendment, agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated. The Subgrantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. ARC shall evaluate each noncancelable obligation to determine its eligibility for inclusion in project costs. Settlement will be made in accordance with the terms and conditions of this agreement. ARC shall allow full credit to the Subgrantee for the ARC share of the non-cancelable obligations, properly incurred by the Subgrantee prior to termination.
33. Termination for Convenience. ARC may terminate this agreement, in whole or in part, at any time by giving written notice to the Subgrantee of such termination and specifying the effective date thereof, at least fifteen days before the effective date of such termination. In that event, all information and material produced or collected under this agreement and/or used in the performance of the scope of services shall, at the option of ARC, become its property. If this agreement is terminated by ARC as provided in this paragraph, the Subgrantee will be reimbursed for the otherwise allowable actual expenses incurred by the Subgrantee up to and including the effective date of such termination, as authorized in Attachment "B." The Subgrantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. ARC shall evaluate each noncancelable obligation to determine its eligibility for inclusion in project costs.
34. Termination of the Agreement for Cause. If the Subgrantee, due to its action or failure to act, shall fail to fulfill in a timely and proper manner its obligations under this agreement, or

if the Subgrantee has or shall violate any of the covenants, agreements, representations or stipulations of this agreement, ARC shall thereupon have the right to terminate this agreement by giving written notice to the Subgrantee of such termination and specifying the effective date thereof, at least five days before the effective date of such termination. In such event, all information and materials collected or produced under this agreement and/or used in the performance of the scope of services shall, at the option of ARC, become its property. The Subgrantee shall be entitled to receive just and equitable compensation for any satisfactory work completed under the Scope of Service up to and including the effective date of termination as authorized in Attachment "B." Notwithstanding the foregoing to the extent provided by law, the Subgrantee shall not be relieved of liability to ARC for damages sustained by ARC by virtue of any breach of this agreement by the Subgrantee and ARC may withhold any payments to the Subgrantee for the purpose of set-off for damages caused by the Subgrantee's breach, until such time as the exact amount of damages to ARC from the Subgrantee is determined.

35. Termination Due to Non-Availability of Funds. Notwithstanding any other provision of this agreement, in the event that any of the funds for carrying out the functions to which this agreement relates do not become available, then, upon written notice to the Subgrantee, this agreement may be immediately terminated without further obligation of ARC.
36. Suspension Due to Non-Availability of Funds. The Concerned Funding Agencies have the right to suspend financial assistance for this project. Consequently, ARC reserves the same right regarding this agreement. Such suspension would cause the withholding of further payments and/or prohibiting the Subgrantee from incurring additional obligations during the suspension period. However, unless notified in writing to the contrary, such suspension would not invalidate obligations otherwise properly incurred by the Subgrantee prior to the date of suspension to the extent that they are noncancelable.
37. Disputes and Appeals Any dispute concerning a question of fact arising either from a Subgrantee or subgrant selection decision, or under a Subgrantee or subgrant contract, once executed, shall be decided by ARC's Chief Operating Officer who, after advisory consultation with all appropriate ARC officials (e.g., General Counsel, etc.), shall promptly reduce such decision concerning the question of fact to writing and mail, or otherwise furnish a copy thereof, to the disputing party (i.e., as appropriate, either: the unsuccessful proposer; or the Subgrantee or subgrantee). The Chief Operating Officer shall concurrently fully advise the disputing party, in writing, of the provisions outlined herein below concerning the disputing party's right to appeal the decision to the ARC Executive Director. A copy of all such documents shall also be furnished to the ARC Office of General Counsel.

The decision of the Chief Operating Officer shall be final and conclusive unless, within ten (10) calendar days of receipt of such written decision, the disputing party mails or otherwise furnishes a written appeal concerning the question of fact to the ARC Executive Director, who shall arrange a formal hearing within twenty (20) calendar days after receipt of such appeal. Both the appealing party and the Chief Operating Officer shall be notified no less than five (5) calendar days in advance of the hearing and shall have the right to present witnesses and give evidence concerning the question of fact at such time. Within twenty

(20) calendar days after the hearing, the Executive Director shall make a decision concerning the question of fact in writing to the appealing party and to the Chief Operating Officer. A copy of the decision shall also be furnished to the ARC Office of General Counsel.

The decision of the Executive Director concerning the question of fact shall be final and conclusive unless determined by the cognizant grantor agency or agencies, or the Comptroller General of the United States, or a court of competent jurisdiction to have been arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law.

Pending final decision of an appeal to the Executive Director under a Subgrantee or subgrant contract already executed, the Subgrantee or subgrantee shall proceed diligently with the performance of the contract and in accordance with the Chief Operating Officer's decision.

Nothing in the foregoing shall be construed as making final the decisions of the Chief Operating Officer or the Executive Director as such decision relate to question of law.

38. Force Majeure. In no event shall either Party be responsible or liable for any failure or delay in the performance of its obligations hereunder upon the occurrence of any circumstance beyond the control of either party, such as acts of God, war, acts of terrorism, government regulations, disaster, strikes, work stoppages, accidents, mandatory quarantines, pandemics, curfews, or other restrictions of movements, or civil disorder, to the extent that such circumstances make it illegal or impossible for either Party to fulfill the terms of this Agreement. Any termination or delay in the performance of this Agreement without liability is conditioned upon delivery of written notice to the other party setting forth the basis for such termination as soon as reasonably practical, but in no event longer than ten (10) days, after learning of such basis. It is understood that both Parties shall use reasonable efforts which are consistent with industry standard to fulfill the performance of this agreement to the extent feasible.
39. Applicable Law. This agreement shall be deemed to have been executed and performed in the State of Georgia. All questions of interpretation and construction shall be construed by the laws of Georgia.

IN WITNESS WHEREOF, the Subgrantee and ARC have executed this agreement as of the day first above written.

ATTEST:

CITY OF STONE MOUNTAIN

By: _____

Title: _____

ATTEST:

ATLANTA REGIONAL COMMISSION

ARC Assistant Secretary

By: _____
Executive Director

By: _____
Chairman

ATTACHMENT A

Scope of Work

I. General: The work to be accomplished is in support of the following Atlanta Regional Commission (ARC) subelement:

302CAS - Livable Centers Initiative Investment Policy Studies (LCI)

II. Area covered: All the necessary services provided in this subgrant contract will support the study of LCI-related programs and projects within and adjacent to a portion of the Stone Mountain LCI Area as proposed in Exhibit A-1. The study area may extend beyond these limits if needed for logical termini purposes.

III. LCI Goal: Portions of the Atlanta Metropolitan Transportation Planning Area are in maintenance for both ozone and PM2.5 standards under the Clean Air Act Amendments of 1990. Because of this designation, the region must look toward better development practices that support increased use of transportation modes other than single occupant vehicles (SOV) to help reduce emissions and meet air quality requirements. The LCI Program seeks to increase the use of alternatives to driving alone by developing transportation projects and other programs to improve accessibility, expand mixed-uses, utilize transit, and support further development in the study area. Evaluation of the existing structure and development of likely scenarios should produce recommendations for future investment that support ARC's Livable Centers Initiative Program. Improving safety and walkability will result in the increases in the alternatives to driving alone.

IV. Work Tasks:

The City of Stone Mountain (subgrantee) will develop the "Connecting Parks, PATHs and Public Spaces" Study. The purpose of this study is to develop a plan to connect multiple outdoor and public spaces and resources in downtown Stone Mountain in a pedestrian- and bicycle-friendly manner. Specific resources include but are not limited to the two PATH trail segments that enter the city (the Stone Mountain Trail near the Five Points intersection and the Stone Mountain Park Trail near the Visitor Center and City Hall) and the half-mile gap between them; as well as Leila Mason Park, Randolph Medlock Park, Vets Park, McCurdy Park, and the City Cemetery.

The subgrantee and ARC anticipate the following outcomes from the study to be:

- A clear plan and implementation strategy that reflect current and future conditions.
- A prioritized list of implementation actions.
- A program of transportation investments that provide for the safe movement of pedestrians and bicyclists in, through, and around the LCI area.

The work to be accomplished under this contract is divided into the following tasks:

Task 1 – Existing Conditions & Technical Analysis:

The focus of the analysis will include the following:

- An examination of the community resources to be linked (see Paragraph 1 under “IV. Work Tasks” on page A-1), including but not limited to their locations, characteristics, existing and potential uses and user groups, and existing connections between them.
- A review of proposed connecting path locations identified in previous plans, including but not limited to the 2013 Stone Mountain LCI Plan Update, the 2020 Village Forward Master Plan, and the 2021 City of Stone Mountain Comprehensive Plan.
- A survey of existing conditions at the above-mentioned proposed connecting path locations, including significant old growth trees, streams, topography, right-of-way dimensions, road crossings, traffic conditions, and the state of repair of infrastructure.
- Identification of physical constraints, including but not limited to topography, lack of right-of-way, impacts to potentially historic properties, environmental features, and locations of utilities.

The key deliverable for this task will be an existing conditions and technical analysis summary.

Task 2 – Public Engagement:

The goal of this task is to develop a local planning outreach process that promotes the involvement of all stakeholders in the study area, with efforts and accommodations made to engage traditional underrepresented groups such as low to moderate income, minority, youth, and elderly or disabled community members. The subgrantee will conduct an outreach process that promotes the involvement of all stakeholders in the study area.

The subgrantee must comply with the following:

- The ARC Project Manager shall be notified of all meetings taking place.
- Project information shall be uploaded to the subgrantee’s website to provide basic project information to the public, along with project materials and meeting summaries.
- A Project Management Team shall be formed with representatives from the subgrantee and consultant team, the ARC Project Manager, and any other relevant representatives of ARC.
- The subgrantee and consultant team shall seek input and comments from a Project Advisory Group of major stakeholders.

The subgrantee will schedule at least three (3) public open engagement opportunities in a format determined by the Project Management Team. The following topics/milestones, at a minimum, should be covered by the public engagement activities:

- Provide an overview of the study process, goals of the study, key dates, and opportunities for public input.
- Solicit feedback on goals and objectives of the study; community needs; and strengths, weaknesses, opportunities, and threats related to the potential path locations in the LCI area.

- Seek input and consensus on preferred concepts, typical sections, and improvements.
- Seek approval of final plan documents and concepts.

Virtual meetings and/or digital engagement activities may be used to meet the above activities.

The key deliverable for this task will be a public engagement summary.

Final Plan Review and Transportation Coordination Meetings

A transportation project coordination meeting is required to be conducted prior to finalizing the LCI plan recommendations. To ensure the transportation projects are feasible, the coordination meeting should include all affected organizations (GDOT, DeKalb County, PATH Foundation, etc.) to discuss potential projects prior to the transportation improvement list being finalized.

The final plan review is to occur at the ARC offices to discuss the plan process, issues, or unique activities that occurred, and future projects that are needed to implement the plan once the plan is complete.

Task 3 – Conceptual Plan and Analysis Report Development:

Prepare a concept layout, typical sections and cost estimates based on the existing conditions and technical analysis developed in Task 1 and public input gleaned in Task 2. Specific elements shall include but not be limited to:

- Alternative alignments and typical sections for the paths and connections.
- Crossing plans for roadways, with concepts and costs.
- Concepts for public space placemaking elements/strategies and key related infrastructure, including but not limited to public art, wayfinding, safety, landscaping/streetscaping, lighting, bicycle parking, and park and civic space amenities.
- Analysis of alternatives, which includes potential environmental impacts, transportation impacts, right-of-way and utility conflicts, and overall cost estimates.
- Opportunities for the incorporation of green infrastructure within the transportation elements.
- Conceptual renderings of the paths, connections, and crossings.
- Temporary and interim transportation improvement recommendations.

The key deliverable for this task will be a report detailing the conceptual plan(s) and alternatives analysis as described above.

Task 4 – Prepare Project Deliverables

The goal of this task is to compile the results of the overall work effort, the study process, relevant findings, and recommendations into a final study/plan document. The document will

serve as the key deliverable for this final task. The final study document shall include the following (not necessarily in this order):

- **Summaries of the plan development process:**
 - A description of the study process and methodology, data gathering techniques and findings, and general outcomes.
 - A description of the public participation process used to achieve a community-supported program of improvements.
- **Draft Concept Plans and thematic concept(s):**
 - An area plan map outlining elements to be installed and strategies to be implemented at recommended locations, with summaries of these elements and strategies written in a cohesive, user-friendly format.
 - A preferred layout and typical section of the connecting paths and related infrastructure and facilities.
 - Conceptual renderings that illustrate street level improvements, green infrastructure, and placemaking elements.
- **Implementation Strategy:**
 - A 100-day Action Plan, to include no-cost or very low-cost actions and organizational steps needed to maintain project momentum, keep stakeholders involved, and share responsibility for the plan's success. This action plan should identify short-term creative placemaking measures and temporary transportation installations that the City of Stone Mountain can undertake to test out concepts in a "lighter, cheaper, faster" manner.
 - Necessary modifications to applicable City of Stone Mountain ordinances and guidelines for code adherence and, if necessary, other recommendations for regulatory reform to implement the plan.
 - A work program to implement the plan's recommendations. The work program must include a phasing plan, based on the priority and implementation schedule of the various project elements to be undertaken in the project area; cost estimates for all project components; and key sources of funding for the implementation of all project components.

Format of Deliverables

- PDF file of the document, any appendices, concept plans, and typical sections.
- Electronic files in their original formats with supporting graphics and GIS or other data files (Excel, InDesign, etc.).

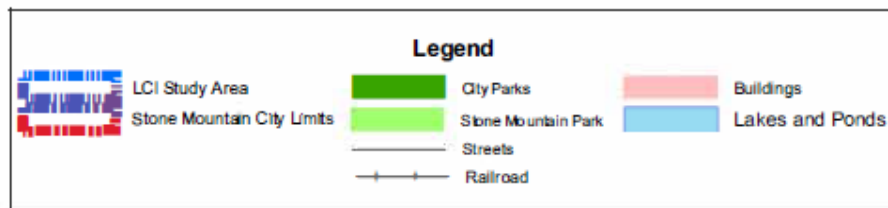
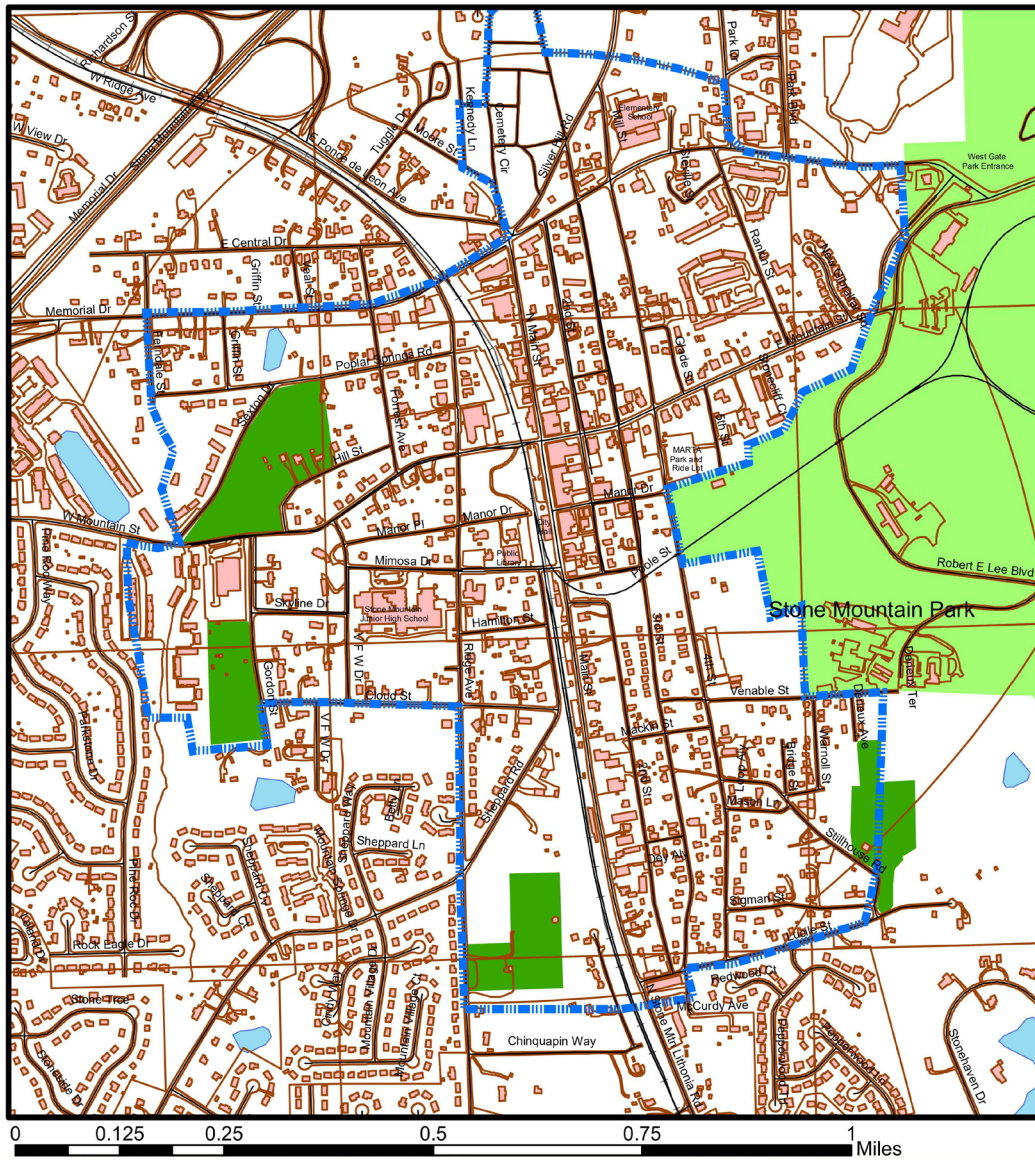
Key Dates

The following are key dates by which significant tasks are required to be completed in order to ensure the LCI study is completed on time. ARC staff will assist the LCI recipients as needed to meet these dates.

- RFP Advertised - September 2023
- Consultant Selected - November 2023
- Consultant Contract Submitted to ARC – December 2023

- Study Complete - July 2025
- Final Invoice and Study Documents - October 31, 2025

EXHIBIT A-1 LCI Study Area



ATTACHMENT B

Compensation and Method of Payment

I. Compensation: The total cost of the Project (as described in “Attachment A”) is \$200,000. ARC’s compensation to the Subgrantee will not exceed 80 percent of the actual costs incurred. However, in no event will the total compensation and reimbursement, if any, to be paid to the Subgrantee under this contract exceed the sum of \$160,000. All costs in excess of \$160,000 are to be paid by the Subgrantee.

A breakdown of this compensation is shown in Exhibit B-1, “Budget Estimate,” which is attached to and made part of this contract for financial reporting, monitoring, and audit purposes.

II. Method of Payment: The following method of payment replaces that specified in the main body of the contract.

A. Progress Payments: The Subgrantee shall be entitled to receive progress payments on the following basis. As of the last day of each month during the existence of this contract, the Subgrantee shall prepare an invoice for payment documenting work completed and costs incurred during the invoice period. This invoice shall be submitted to ARC along with the monthly report by the 10th of the following month. Any work for which reimbursement is requested may be disallowed at ARC’s discretion if not properly documented, as determined by ARC, in the required monthly narrative progress report.

Upon the basis of its audit and review of such invoice and its review and approval of the monthly reports called for in the paragraph concerning “Reports” in the main body of the contract, ARC will, at the request of the Subgrantee, make payments to the Subgrantee as the work progresses but not more often than once a month. Invoices shall reflect 100% of the allowable actual costs incurred, be numbered consecutively, and submitted each month until the project is completed. Reimbursement payments from ARC shall be at 80% of the approved invoiced costs.

Subgrantee’s monthly invoices and monthly narrative progress reports are to be submitted to the ARC Executive Director or her authorized agent and must be received by her no later than the 10th day of the following month. ARC may, at its discretion, disallow payment of all or part of an invoice received after this deadline.

B. Final Payment: Final payment shall only be made upon determination by ARC that all requirements hereunder have been completed. Upon such determination and upon submittal of a final invoice, ARC shall pay all compensation due to the Subgrantee, less the total of all previous progress payments made.

Subgrantee’s final invoice and documents as described in “Attachment A, Task 4 – Prepare Project Deliverables” must be received by ARC no later than one month after the project completion date specified in Paragraph 3 of the contract. ARC may, at its discretion, disallow payment of all or part of a final invoice received after this deadline.

III. Completion of Project: It is agreed that in no event will the maximum compensation and reimbursement, if any, to be paid to the Subgrantee under this contract exceed \$160,000 and that the Subgrantee expressly agrees that they shall do, perform, and carry out in a satisfactory and proper manner, as determined by ARC, all of the work and services described in Attachment A.

IV. Access to Records: The Subgrantee agrees that ARC, the Concerned Funding Agency, or Agencies and, if appropriate, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Subgrantee which are directly pertinent to the project for the purpose of making audit, examination, excerpts, and transcriptions.

The Subgrantee agrees that failure to carry out the requirements set forth above shall constitute a breach of contract and may result in termination of this agreement by ARC or such remedy as ARC deems appropriate.

V. ARC's Designated Agent: In accordance with Paragraph 5 of the main body of this contract, ARC's Executive Director hereby designates ARC's Chief Operating Officer as her agent for purposes of this contract only, except for executing amendments hereto.

EXHIBIT B-1

Budget Estimate

Task 1 – Existing Conditions Assessment	\$25,000
Task 2 – Public Involvement	\$25,000
Task 3 – Conceptual Plan and Analysis Report Development	\$100,000
Task 4 – Prepare Deliverables	<u>\$50,000</u>
Total Cost	\$200,000
ARC Share (80%)	\$160,000
Local Share (20%)	\$40,000

* Note: The estimates listed above are preliminary and actual costs by task may vary so long as the total contract value does not increase. Any change to the budget estimates shown above must be requested in writing and approved by ARC's Chief Operating Officer.

EXHIBIT C

**STATE OF GEORGIA
COUNTY OF DEKALB**

CONTRACTOR AFFIDAVIT AND AGREEMENT

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm, or corporation which is engaged in the physical performance of services on behalf of the City of Stone Mountain, Georgia, has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned contractor will continue to use the federal work authorization program throughout the contract period and the undersigned contractor will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the contractor with the information required by O.C.G.A. § 13-10-91(b).

Contractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User Identification
Number

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, 2024, in
_____ (city), _____ (state).

Date of Authorization

Signature of Authorized Officer or Agent

POND & COMPANY

Name of Contractor

Printed Name and Title of Authorized Officer or
Agent

Connecting Parks, Paths, and Public Spaces
Consultancy Services (LCI Project – 2024)

Name of Project

SUBSCRIBED AND SWORN BEFORE ME
ON THIS THE _____ DAY OF
_____, 2024.

City of Stone Mountain, Georgia

Name of Public Employer

NOTARY PUBLIC

My Commission Expires: _____

[NOTARY SEAL]

EXHIBIT D

**STATE OF GEORGIA
COUNTY OF DEKALB**

SUBCONTRACTOR AFFIDAVIT

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract with **Pond & Company** on behalf of the City of Stone Mountain, Georgia has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned subcontractor will continue to use the federal work authorization program throughout the contract period, and the undersigned subcontractor will contract for the physical performance of services in satisfaction of such contract only with sub-subcontractors who present an affidavit to the subcontractor with the information required by O.C.G.A. § 13-10-91(b). Additionally, the undersigned subcontractor will forward notice of the receipt of an affidavit from a sub-subcontractor to the contractor within five (5) business days of receipt. If the undersigned subcontractor receives notice that a sub-subcontractor has received an affidavit from any other contracted sub-subcontractor, the undersigned subcontractor must forward, within five (5) business days of receipt, a copy of the notice to the contractor.

Subcontractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User Identification
Number

Date of Authorization

Name of Contractor

**Connecting Parks, Paths, and Public Spaces
Consultancy Services (LCI Project – 2024)**

Name of Project

City of Stone Mountain, Georgia

Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, 20__ in
_____ (city), _____ (state).

Signature of Authorized Officer or Agent

Printed Name and Title of Authorized Officer or
Agent

SUBSCRIBED AND SWORN BEFORE ME
ON THIS THE _____ DAY OF
_____, 20__.

NOTARY PUBLIC

My Commission Expires: _____

[NOTARY SEAL]