

A G R E E M E N T

between

BROWARD COUNTY

and

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for

CONSULTANT SERVICES FOR

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IN BROWARD COUNTY, FLORIDA

RLI # \_\_\_\_\_

**Note: [Bold, bracketed language to be added if appropriate]**

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AGREEMENT

between

BROWARD COUNTY

and

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for

CONSULTANT SERVICES FOR

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IN BROWARD COUNTY, FLORIDA

This is an Agreement between: BROWARD COUNTY, a political subdivision of the State of Florida, its successors and assigns, hereinafter referred to as "County," acting by and through its Board of County Commissioners,

AND

\_\_\_\_\_, a \_\_\_\_\_ corporation, its successors and assigns, hereinafter referred to as "Consultant."

IN CONSIDERATION of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, County and Consultant agree as follows:

ARTICLE 1  
DEFINITIONS AND IDENTIFICATIONS

For the purposes of this Agreement and the various covenants, conditions, terms and provisions which follow, the definitions and identifications set forth below are assumed to be true and correct and are agreed upon by the parties.

- 1.1 Agreement: means this document, Articles 1 through 10, inclusive. Other terms and conditions are included in the exhibits and documents that are expressly incorporated by reference.
- 1.2 Airport: means the Fort Lauderdale-Hollywood International, Broward County, Florida, as described in the Master Plan Update, including such additional property that may be acquired to implement development as described therein.
- 1.3 Aviation Department: means the Broward County Aviation Department, or any successor agency.
- 1.4 Board or Commission: means the Board of County Commissioners of Broward County, Florida, which is the governing body of the Broward County government created by the Broward County Charter.
- 1.5 Consultant: means \_\_\_\_\_, its approved successors and assigns.
- 1.6 Contract Administrator: means the Director of the Broward County Aviation Department, or his or her designee, pursuant to written delegation by the Director of the Broward County Aviation Department, or some other employee expressly designated as Contract Administrator in writing by the County Administrator. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the Contract Administrator, provided, however, that such instructions and determinations do not change the Scope of Services.
- 1.7 Contractor: means the person(s), firm(s), corporation(s) or other entity(ies) who enter into agreements with County to perform construction work for the Project.
- 1.8 County: means the Broward County, a body corporate and politic and a political subdivision of the State of Florida.
- 1.9 County Administrator: means the administrative head of the County pursuant to Sections 3.02 and 3.03 of the Broward County Charter.
- 1.10 County Attorney: means the chief legal counsel for County who directs and supervises the Office of the County Attorney pursuant to Section 2.10 of the Broward County Charter.
- 1.11 Lump Sum: When the method of compensation is that of "Lump Sum" such phrase means that Consultant shall perform or cause to be performed the described services for total compensation in the stated amount.

- 1.12 Master Plan Update: means the then current Master Plan Update for the Airport that was developed in accordance with FAA Advisory Circular 150-5070-6B, Airport Master Plans, as it may be amended from time to time.
- 1.13 Maximum Amount Not-To-Exceed: When the method of compensation is that of "Maximum Amount Not-To-Exceed" or "Maximum Not-To-Exceed Amount" such phrase means that Consultant shall perform or cause to be performed all services during the period set forth for total compensation based on actual hours and costs incurred, in the amount of, or less than, the stated amount.
- 1.14 Notice To Proceed: means a written notice to proceed, authorizing the Consultant to commence work under this Agreement, or to proceed with a subsequent phase or task of work under this Agreement. The written Notice to Proceed that authorizes the Consultant to commence work under this Agreement shall be issued by the Contract Administrator. The written Notice(s) to Proceed for subsequent phases or tasks of the Project shall be issued by the Program Manager or Contract Administrator.
- 1.15 Project: The Project consists of the services described in Article 3, and in applicable exhibits to this Agreement.
- 1.16 Scope of Services: means the work and services described in Article 3, and on **Exhibit A**, and other applicable exhibits hereto, or in a Work Authorization, as applicable.
- 1.17 Subconsultant: means a firm, partnership, corporation or combination thereof having a direct contract with the Consultant for all or any portion of the advertised work or who furnishes skills or materials worked into a special design according to the plans and specifications for such work, but not those who merely furnish equipment or materials required by the plans and specifications.

**Use applicable provision below:**

- 1.18 Minority/Women Business Enterprise ("M/WBE") - shall mean a firm duly certified as a small, minority, women-owned or disadvantaged business enterprise by the County under criteria and eligibility requirements of Broward County Ordinance No. 2004-07 (Broward County Business Opportunity Act) (codified in the Broward County Code at Sections 20-275, et seq., as amended). The phrases "Small Business Enterprise (SBE)," "Minority Business Enterprise (MBE)," "Disadvantaged Business Enterprise (DBE)" or "Women Business Enterprise (WBE)" shall be construed by reference to the Broward County Business Opportunity Act.
- 1.18 Disadvantaged Business Enterprise ("DBE") - means as defined in Title 49 CFR Part 26, or other applicable federal or state law in connection with a contract which is funded in whole or in part from state or federal governmental sources.

- [1.19 Program Manager: The Program Manager is URS CORPORATION, a Nevada corporation, or such other person or entity as may be designated in writing by the Contract Administrator. If and to the extent authorized herein, the Program Manager's designated staff may be designated to be the County's representative to the Consultant with respect to the Project. The responsibilities of the Program Manager include coordination and communicate with Consultant and Contract Administrator and to manage and supervise execution and completion of the Scope of Services and the terms and conditions of this Agreement as set forth herein.
- [1.20 Work Authorization: means a document authorizing optional services in accordance with Section 3.9, hereto.]

ARTICLE 2  
PREAMBLE

In order to establish the background, context and frame of reference for this Agreement and to generally express the objectives and intentions of the respective parties hereto, the following statements, representations and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions which follow and may be relied upon by the parties as essential elements of the mutual considerations upon which this Agreement is based.

- 2.1 County has budgeted funds for the Project. The Project is funded with County funds. In addition it is anticipated that the Project may be eligible for federal grant funds, or Passenger Facilities Charges ("PFC's"), or State of Florida grant funds. **Award of this Agreement does not guarantee work will be authorized. A failure by the County to authorize work under this Agreement or to issue a Notice to Proceed shall not be deemed a breach of this Agreement.**
- 2.2 The Board has met the requirements of the Consultants' Competitive Negotiation Act, as set forth in Section 287.055, Florida Statutes, as amended, and has selected Consultant to perform the services hereunder.
- 2.3 Negotiations pertaining to the services to be performed by Consultant were undertaken between Consultant and a committee selected by the Board, and this Agreement incorporates the results of such negotiations.

ARTICLE 3  
SCOPE OF SERVICES

- 3.1 Consultant's services shall consist of the phases and tasks set forth in **Exhibit A**, attached hereto and made a part hereof, and shall include civil, structural, mechanical and electrical engineering, architectural and other design related services, as applicable for the Project. Consultant shall provide all services as set forth in **Exhibit A**, including all necessary, incidental and related activities and services contemplated by the Scope of Services and contemplated in Consultant's level of effort. The parties recognize that additional work may subsequently be identified that falls within the Project due to scheduling or other requirements. If the County determines in its sole and exclusive discretion that such additional work may be included in this Agreement, then subject to negotiation and agreement of the parties as to the terms thereof, any such additional work shall be reflected in an amendment to this Agreement. Consultant acknowledges and agrees that the Contract Administrator and the Program Manager has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement, except as expressly authorized by the Broward County Procurement Code (Chapter 21, Broward County Administrative Code).
- 3.2 Consultant and County acknowledge that the Scope of Services and any Work Authorizations issued pursuant to this Agreement do not delineate every detail and minor work task required to be performed by Consultant to complete the Project. If, during the course of the performance of the services included in this Agreement, Consultant determines that work should be performed to complete the Project or work under any Work Authorization which is in the Consultant's opinion outside the level of effort originally anticipated, whether or not the Scope of Services or Work Authorization identifies the work items, Consultant shall notify **Program Manager or Contract Administrator** in writing in a timely manner before proceeding with the work. If Consultant proceeds with said work without notifying **Program Manager or Contract Administrator**, said work shall be deemed to be within the original level of effort, whether or not specifically addressed in the Scope of Services. Notice to **Program Manager or Contract Administrator** does not constitute authorization or approval by County to perform the work. Performance of work by Consultant outside the originally anticipated level of effort without prior written County approval is at Consultant's sole risk. The Scope of Services and deliverables for each of the tasks and phases of services for the Project are detailed in **Exhibit A**. The Consultant must perform all required services for each phase and task of the Project in accordance with the Scope of Services. The amounts set forth in Article 5 shall not be increased if the actual hours or deliverables required for any phase or task exceed that agreed to by the County and the Consultant, as set forth in Article 5, unless any such work over and above the agreed to hours or deliverables is not due to the fault of Consultant and is due to factors beyond the control of the Consultant.

3.3. County and Consultant acknowledge that **Exhibit A** is for the first portion of services related to the Project and that additional negotiations will be required for subsequent phases or for additional services (except as otherwise provided herein). The County may procure services for subsequent or additional phases from another vendor or consultant or the County may negotiate with the Consultant for additional scopes of services, compensation, time of performance and other related matters for subsequent or additional phases of the Project. County shall have the right at any time to immediately terminate any negotiations with Consultant at no cost to County and procure services for subsequent or additional phases from another source. Nothing in these provisions or this Agreement shall in any way be deemed to obligate the County to procure services for subsequent or additional phases from Consultant. In addition, the County shall have the right, at its sole and exclusive discretion and upon seven (7) calendar days notice in writing, to terminate any one or more tasks or phases of service described in **Exhibit A**, from this Agreement, and to procure services for such phases or tasks from another source. In such event: (i) Consultant shall be paid for services performed through the date of termination, subject to other applicable provisions hereof; and (ii) any phases or tasks not terminated by such written notice shall continue to be covered by this Agreement and Consultant shall perform the services required by such phases or tasks pursuant to the terms and conditions of this Agreement.

3.4 **Codes/Regulations:** Consultant, as it relates to the services required to be performed herein, represents and acknowledges to the County that it and its subconsultants are knowledgeable as to any and all codes, rules and regulations applicable in the jurisdictions in which the Project is located and the funding sources for the Project and any Optional Services, including without limitation, County and local ordinances and codes, Florida laws, rules, regulations and grant requirements, and Federal laws, rules, regulations, advisory circulars and grant requirements, including without limitation, PFC requirements, requirements of the Americans with Disabilities Act, and requirements of the Federal Aviation Administration ("FAA"), and the Federal Transportation Security Administration ("TSA") and the Florida Department of Transportation ("FDOT"). In the performance of services under this Agreement, the Consultant and its subconsultants shall comply with all such laws, codes, rules, regulations, advisory circulars and requirements now in effect and as may be amended or adopted at any time during the term of this Agreement, and shall further take into account in the performance of its services hereunder, all known or publicly announced pending changes to the foregoing. The Consultant and its subconsultants shall provide any and all certifications to the County as to compliance with such laws, codes, rules, regulations, advisory circulars and requirements, as may be required by any governmental body, including FAA, TSA, FDOT and County agencies, or as may be requested by the Aviation Department. The Consultant shall insert all required FAA, TSA and FDOT provisions in the construction contract(s) for the Project. The Consultant will incorporate the provisions of this Section 3.4 without modification into all agreements with its subconsultants.

- 3.5 **Licensing:** Consultant represents that it and its subconsultants are experienced and fully qualified to perform the services contemplated by this Agreement, and that it and its subconsultants are properly licensed pursuant to all applicable laws, rules and regulations to perform such services.
- 3.6 **Knowledge and Skills:** Consultant represents that it and its subconsultants have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services to be provided by such person pursuant to this Agreement and to provide and perform such services to County's satisfaction for the agreed compensation.
- 3.6.1 Consultant shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner, and shall cause its subconsultants to also perform their duties, obligations and services under this Agreement in a skillful and respectable manner.
- 3.6.2 The quality of Consultant's and its subconsultants' performance and all interim and final product(s) provided to or on behalf of County shall be comparable to accepted local practices and national standards.
- 3.6.3 Nothing in this Agreement shall relieve the Consultant of its prime and sole responsibility for the performance of the work under this Agreement. In addition to all other rights and remedies that County may have under this Agreement, Contract Administrator may require the Consultant to correct any deficiencies which result from Consultant's failure to perform in accordance with the above standards.
- 3.7 In order to avoid a duplication of effort or expense, Consultant agrees to utilize any County provided information, including but not limited to, plans, specifications, information, data, reports or analyses that may be prepared or generated by other consultants retained by the County that may be required in connection with Consultant's services hereunder, subject to Consultant's independent review and revalidation, if necessary. In addition, County may provide any plans, specifications or any information, obtained or prepared by Consultant, including, but not limited to data, reports or analyses to other consultants retained by the County or to any other party.
- 3.8 The County shall have the right at any time and in its sole discretion to submit for review to consulting engineers or consulting architects or other consultants engaged by the County, any or all parts of the work performed by the Consultant and the Consultant shall cooperate fully in such review.

### 3.9 Work Authorizations - Optional Services.

3.9.1 **Optional Services:** The Optional Services identified in **Exhibit F**, attached hereto and made part hereof, as Items 2 through \_\_\_ are Maximum Not-To-Exceed amounts or Lump Sum amounts (as specified in **Exhibit F**). Such Optional Services and the identified amounts have been authorized by the Commission and approved by Consultant, subject only to the maximum amount or lump sum amounts set forth respecting each Optional Services item and the completion dates set forth in the Work Authorization. Only the issuance of a Work Authorization by the Contract Administrator in the form of **Exhibit E** shall be required before the services described for any of Items 2 through \_\_\_ may begin. Such services may be authorized by the Contract Administrator, in his or her sole discretion, subject to the maximum amounts established for each item (as may be increased pursuant to the provisions hereof) and the maximum amount set forth in the Work Authorization. With respect to any Maximum Not-To-Exceed Optional Services item, if additional work is required over the amount set forth in the Work Authorization, any additional compensation must be reflected in an amendment to the Work Authorization signed by the Contract Administrator and the Consultant, so long as the maximum amount established pursuant to this Agreement for such item is not exceeded.

3.9.2 **Undefined Tasks.** With respect to any work performed under Item 1, "Undefined Tasks," Work Authorizations must be issued in accordance with the provisions of this subsection. Any such work shall be subject to the approval of the Contract Administrator, Purchasing Director, or Commission, as appropriate, pursuant to the terms of this subsection and Work Authorizations shall be in a format similar to the samples attached in **Exhibits E, E-1 and E-2**.

- (a) Before any work is performed as "Undefined Tasks," the Consultant shall supply the **Contract Administrator** with an estimate for all charges expected to be incurred for such work, which estimate shall be reviewed by the Contract Administrator and the Consultant and a final amount for Consultant's compensation shall be approved in the manner set forth in (b) and (c), below.
- (b) Work Authorizations under "Undefined Tasks" which will cost the County Thirty Thousand Dollars (\$30,000.00) or less, may be approved and signed by the Contract Administrator and the Consultant, using the Work Authorization form attached hereto as **Exhibit E**.
- (c) Work Authorizations under "Undefined Tasks" which will cost the County more than Thirty Thousand Dollars (\$30,000.00), shall be signed by County's Purchasing Director or Board, and Consultant. Work

Authorizations within the Purchasing Director's delegated authority shall be prepared using the Work Authorization form attached hereto as **Exhibit E-1**. Those Work Authorizations that require approval by Board shall be prepared using the Work Authorization form attached hereto as **Exhibit E-2**.

- (d) Any charges in excess of the amount approved in the original Work Authorization under Item 1 will require a modification thereto approved by Contract Administrator, Purchasing Director, or Board as follows: Contract Administrator shall sign in instances where the cumulative total of the modifications (the amount approved in the original Work Authorization plus the modifications thereto) does not exceed Thirty Thousand Dollars (\$30,000.00). County's Purchasing Director shall sign in instances where the cumulative total of the modifications exceeds Thirty Thousand Dollars (\$30,000) but does not exceed the Purchasing Director's approval authority delegated by Board. Board shall sign in those instances where the cumulative total of the modifications exceeds the Purchasing Director's approval authority.

3.9.3 All Work Authorizations shall contain, at a minimum, the following information and requirements:

- (a) A description of the work to be undertaken and the deliverables to be provided, a statement of the Item on **Exhibit F** pursuant to which such work is being performed, a statement of the method of compensation (i.e., Lump Sum or Maximum Amount Not-To-Exceed), and, if payment is to be made upon completion of phases, identification of such stages of completion and the percentage payment applicable to each stage of completion.
- (b) A budget establishing the amount and method of compensation and Reimbursable Expenses to be paid upon the applicable method for calculating the fee. The amount shall be set forth as either a Lump Sum or a Maximum Amount Not-To-Exceed, and shall not be exceeded unless prior written approval of the Contract Administrator, Purchasing Director or Commission (as applicable) is obtained.
- (c) A time established for completion of the work or services undertaken by Consultant or for the submission to County of documents, reports, and other information pursuant to this Agreement.
- (d) Any other additional instructions or provisions relating to the work authorized pursuant to these provisions.

(e) Authorizations shall be dated, serially numbered, and signed by the Contract Administrator, Purchasing Director or the Commission, as required by this Section 4.4.

3.9.4 For any of the Items 1 through \_\_\_ identified in **Exhibit F** that are Maximum-Not-To-Exceed Amounts, the Contract Administrator may transfer an annual aggregate maximum of thirty percent (30%) of the initial value of each category to any other category. Notwithstanding the foregoing, the receiving category may not be increased by an aggregate amount that is greater than the Director of Aviation's change order authority (as provided in Section 21.73(c) of the Administrative Code) unless Board approval is first obtained. Work authorizations utilizing such transferred amounts shall be subject to the limitations and requirements set forth in this Agreement.

3.9.5 Subsequent to County issuing a Work Authorization pursuant to this article, Contract Administrator will issue a Notice to Proceed for those authorized tasks or phases under the Work Authorization. Consultant shall not commence such work or proceed with subsequent tasks or phases until after receipt of the Contract Administrator's Notice to Proceed.

3.9.6 If it appears during the progress of services under a Work Authorization (and in no event later than seventy-five percent (75%) of task completion) that the actual costs, including reimbursable amounts may exceed the amounts established by the Work Authorization, Consultant shall immediately submit to the Contract Administrator a written request for additional compensation and expense amounts, accompanied by substantiation of costs. The Contract Administrator shall determine whether the request is reasonable under the circumstances. The amount set forth in any Work Authorization shall not be exceeded, except pursuant to a written amendment to the Work Authorization. When changes in the services to be provided under a Work Authorization are required by the Contract Administrator or requested by the Consultant, the Consultant shall promptly estimate their effect on the cost of the services and on the schedule for completion, and provide notice thereof in writing to the Contract Administrator.

3.9.7 Notwithstanding anything contained herein, Consultant's compensation shall not exceed the amount approved in the Work Authorization unless such additional amount received the prior written County approval as outlined in this Section 4.2. In the event County does not approve an increase in the amount, and the need for such action is not the fault of Consultant, the authorization shall be terminated, and Consultant shall be paid in full for all work completed to that point, but shall in no case exceed the guaranteed maximum amount. The information contained in the budget shall be in sufficient detail so as to identify the various elements of costs.

3.9.8 At the conclusion of the term of this Agreement, no further Work Authorizations shall be issued, and the Consultant shall complete all services under then outstanding Work Authorizations in accordance with the schedule for completion for each then outstanding Work Authorization. Provided, however, that changes or modifications to outstanding Work Authorizations may be made in accordance with this Section 4.2, for services within the scope of any Work Authorization that is outstanding at the conclusion of the term of this Agreement.

#### ARTICLE 4

#### TIME FOR PERFORMANCE; CONTRACTOR DAMAGES; LIQUIDATED DAMAGES

- 4.1 Consultant shall perform the services described in **Exhibit A** within the time periods specified in the Project Schedule included in **Exhibit A**. Such time periods shall commence from the date of the Notice to Proceed for such services. If this Agreement extends beyond a single fiscal year of County, the continuation of this Agreement beyond the end of any fiscal year shall be subject to the appropriation and availability of funds in accordance with Chapter 129, Florida Statutes, as it may be amended from time to time. This Agreement shall not expire until the expiration of all warranty periods provided for in the construction contract(s) for the Project, unless it is terminated earlier as provided under applicable provisions of this Agreement.
- 4.2 Time of the Essence. Time shall be deemed to be of the essence in performing the duties, obligations and responsibilities required by this Agreement.
- 4.3 Prior to the commencement of any services under this Agreement, Consultant must receive a written Notice to Proceed from the Contract Administrator. Thereafter, Consultant must receive a written Notice to Proceed from **Program Manager or Contract Administrator** prior to beginning the performance of services in any other phases or tasks under this Agreement. Prior to granting approval for Consultant to proceed to a subsequent phase or task, the **Program Manager or Contract Administrator** may, at his or her sole option, require Consultant to submit itemized deliverables/documents for the **Program Manager's and/or** Contract Administrator's review. The Consultant acknowledges and agrees that (1) the Project covered by this Agreement is one of several projects being administered at the Airport; (2) there must be coordination in the scheduling and implementation of all projects being administered at the Airport; and (3) in some circumstances, the commencement of certain phases or tasks associated with one or more of the projects will be tied to the completion of, or the schedules of, one or more phases or tasks of other projects. Accordingly, the Consultant acknowledges and agrees that the **Program Manager and/or** Contract Administrator may refuse to issue a Notice to Proceed with any phase or task of the Project or under a

Work Authorization described by this Agreement, if such is deemed necessary in the coordination of other projects or in the implementation and scheduling of any other project.

- 4.4 In the event Consultant is unable to complete any services because of delays resulting from untimely review by County or other governmental authorities having jurisdiction over the Project, and such delays are not the fault of Consultant, or because of delays which were caused by factors outside the control of Consultant, County shall grant a reasonable extension of time for completion of the services and shall provide reasonable compensation, if appropriate. It shall be the responsibility of Consultant to notify the **Program Manager or Contract Administrator** promptly in writing whenever a delay in approval by a governmental agency is anticipated or experienced, and to inform the **Program Manager or Contract Administrator** of all facts and details related to the delay. In the event that issuance of a Notice to Proceed for specific phases or tasks is delayed by the Aviation Department pursuant to Section 4.3, the Consultant's time to complete services will be adjusted as appropriate, subject to Contract Administrator approval.
- 4.5 In the event the Contractor engaged for the Project fails to substantially complete the Project on or before the substantial completion date specified in its agreement with County or if the Contractor is granted an extension of time beyond said substantial completion date, and Consultant's services are extended beyond the substantial completion date, through no fault of Consultant, County shall grant a reasonable extension of time for completion of the services, and if appropriate, a reasonable increase in compensation. Any additional compensation will be paid in accordance with the rates, fees, and overall multipliers established by this Agreement.
- 4.6 In the event the Contractor engaged for the Project fails to substantially complete the Project on or before the substantial completion date specified in its agreement with County, and the failure to substantially complete is caused in whole or in part by a negligent act, error or omission of Consultant or by Consultant's failure to perform in accordance with this Agreement, then Consultant shall pay to County (or, at the election of the County, to the damaged Contractor) that portion of Contractor's claim attributable to Consultant's failure. By reference hereto, the provisions of the construction contracts between the County and its Contractors pertaining to (i) computation of delay costs/damages (and any amounts included therein, whether direct or indirect) and (ii) resolution of disputes, are incorporated into this Agreement by this reference. Consultant acknowledges receipt of and familiarity with such construction contract provisions and Consultant accepts and agrees to perform the duties of the "Consultant" or "Criteria Engineer" set forth therein, including participation in mediation when required by such construction contracts. The foregoing obligations are in addition to, independent of, and shall not be construed to limit or affect the rights and obligations of either party as set forth in Section 10.9, "INDEMNIFICATION OF COUNTY."

4.7 In the event Consultant fails to complete the phases and tasks of services identified in **Exhibit A** on or before the applicable Time for Performance, Consultant shall pay to County the sum of dollars identified below for each calendar day after the applicable Time for Performance, plus approved time extensions thereof, until completion of the phase or task:

Phase I - TBD	\$ <u>250</u>
Phase II - TBD	\$ <u>250</u>
Phase III - TBD	\$ <u>250</u>
Phase IV - TBD	\$ <u>250</u>

[ ] \*If this box is checked or marked, then this Section 4.7 is **NOT APPLICABLE**.

These amounts are not penalties but are liquidated damages to County for its inability to proceed with, and complete, the Project in a timely manner pursuant to the agreed upon Project Schedule. Liquidated damages are hereby fixed and agreed upon by the parties, recognizing the impossibility of precisely ascertaining the amount of damages that will be sustained by County as a consequence of such delay, and both parties desiring to obviate any question or dispute concerning the amount of said damages and the cost and effect of the failure of Consultant to complete the respective phases or tasks within the applicable Time for Performance. This provision shall not affect the rights and obligations of either party as set forth in Section 10.9, INDEMNIFICATION OF COUNTY.

ARTICLE 5  
COMPENSATION AND METHOD OF PAYMENT

5.1 AMOUNT AND METHOD OF COMPENSATION

5.1.0 Deliverables List and Staff-Hour Calculation

Based upon the Scope of Services described in **Exhibit A**, the Consultant has provided a list of drawings, reports, studies, and other design related deliverables to the **Program Manager or Contract Administrator** and assigned a quantity of staff-hours to each document/task. The staff-hours and deliverables assigned to each document/task has been approved by the **Program Manager or Contract Administrator**, and is the basis for the "Maximum Amount Not-To-Exceed" and "Lump Sum" amount for each phase and/or task. The Maximum Amounts Not-To-Exceed set forth in Section 5.1.2, below, shall not be increased if the actual hours or deliverables required for any phase or task exceed that agreed to by the **Program Manager or Contract Administrator** and the Consultant, unless any such work over and above the agreed to hours or deliverables is not due to the fault of Consultant and is due to factors beyond the control of the Consultant.

5.1.1 Maximum Compensation Payable to Consultant.

County agrees to pay Consultant as compensation for performance of all services as related to **Exhibit A** required under the terms of this Agreement, Salary Costs, as described in Section 5.2, or Lump Sum fees, up to a maximum amount of \$\_\_\_\_\_ (as delineated in Section 5.1.2, below) and to reimburse Consultant for Reimbursables as described in Section 5.3, up to a maximum amount of \$\_\_\_\_\_, and to pay Consultant as compensation for performance of Optional Services, as described in subsection 5.1.3, below, up to a maximum amount of \$\_\_\_\_\_ for a total maximum amount payable to Consultant under this Agreement of \_\_\_\_\_ Dollars (\$\_\_\_\_\_).

5.1.2 Schedule of Values – Phase and Tasks

- (a) All phased and tasked services provided by the Consultant pursuant to the terms of this Agreement shall be authorized by a Notice to Proceed. The Consultant acknowledges and agrees that the **Program Manager and/or** Contract Administrator shall be under no obligation to issue a Notice to Proceed for any phase or task. Fees and costs incurred pursuant to a Notice to Proceed for any phase and task shall not exceed the following total “Maximum Amount Not-To-Exceed” or “Lump Sum” amounts for each phase and task.

<u>Phase or Task</u>	<u>Method</u>	<u>Amount of Compensation</u>
Phase I,	_____	_____
Phase II,	_____	_____
Phase III,	_____	_____
Phase IV,	_____	_____

- (b) The Scope of Services and deliverables for each of the above phases and tasks are detailed in **Exhibit A**. The Consultant must perform all required services for each phase and task, in accordance with the Scope of Services. It is understood that the method of compensation is that of “Maximum Amount Not-To-Exceed” or “Lump Sum,” as specified. For tasks or phases noted as “Maximum-Not-To-Exceed,” Consultant shall perform all services set forth for total compensation in the amount of, or less than, that stated above. For tasks or phases noted “Lump Sum,” Consultant shall

perform all services for the total compensation amount stated for such task or item. The total hourly rates payable by County for each of Consultant's employee categories shall be shown on **Exhibit B**.

- (c) For any phase or task that is identified above as a "Maximum Amount Not-To-Exceed", the **Program Manager, with the written approval of the Contract Administrator**, may transfer an annual aggregate maximum of thirty percent (30%) of the initial value of each category to any other category. Notwithstanding the foregoing, the receiving category may not be increased by an aggregate amount that is greater than the Director of Aviation's change order authority (as provided in Section 21.73(c) of the Administrative Code) unless Board approval is first obtained.

### 5.1.3 Optional Services

The Optional Services identified in **Exhibit F**, attached hereto and made a part hereof, which are in the total not to exceed amount (including services and expenses), of \_\_\_\_\_ Dollars (\$\_\_\_\_\_.00) and identified as Items 1 through \_\_ are Maximum Not-To-Exceed amounts or Lump Sum amounts, as specified. Such services and expenses with respect thereto, may be authorized in the sole discretion of the County, as provided in Section 3.9.

## 5.2 SALARY COSTS

- 5.2.1 The term Salary Costs as used in this Agreement for Consultant and its subconsultants shall mean the hourly rates as shown on **Exhibit B**, attached hereto and made a part hereof, which includes fringe benefits, including, but not limited to: sick leave, vacation, holiday, unemployment, excise and payroll taxes, contributions for social security, unemployment compensation insurance, retirement benefits, and medical and insurance benefits. Such salary costs shall be paid to all personnel engaged directly on the Project including, but not limited to, principals, architects, engineers, draftspersons, CAD operators, administrators, and clerks. Said Salary Costs are to be used only for time directly attributable to the Project or the work and services described in a Work Authorization, as applicable. Total costs comprising the overhead and fringe benefit factors shall be consistent with the guidelines set forth on **Attachment IV**, relating to eligible overhead costs, and shall also be consistent with the Federal Acquisition Regulation (FAR) Guidelines for Cost & Pricing Data. A detailed breakdown of these costs shall be kept current and readily accessible to County. The breakdown of overhead and fringe benefit factors shall be certified by a Certified Public Accountant; provided however, subconsultants of the Consultant may be exempted from this requirement upon application to, and written approval by, the

County Auditor. Said certification shall be dated within ninety (90) calendar days after Consultant's just completed fiscal year. Consultant certifies that the rates and multipliers are consistent with the Federal Acquisition Regulation (FAR) Guidelines for Cost & Pricing Data and with **Attachment IV**.

- 5.2.2 Consultant acknowledges and agrees that (i) the record keeping and audit requirements in this Agreement shall be required in all subconsultant agreements, (ii) the rates in **Exhibit B** for subconsultants are provisional, subject to audit of actual costs, and if the audit discloses that the actual costs are less than the costs set forth on **Exhibit B** for any subconsultant, the County shall make payment to Consultant for any such subconsultant's work based on the actual costs determined by the audit; (iii) the overhead and fringes costs for all subconsultants are to be computed in compliance with FAR standards, (iv) prior to issuance of any Notice to Proceed or Work Authorization, a Statement of Direct Labor, Fringe Benefits & Overhead supporting the billing rates shall be submitted by Consultant, (v) a Project Cost Summary by Staff Classification shall be submitted by Consultant in advance of each Notice to Proceed and Work Authorization and significant changes in the staff classifications assigned from those proposed must be approved in writing by the Contract Administrator in advance.
- 5.2.3 Consultant certifies as of the date of this Agreement that all rates and multipliers set forth herein are within an acceptable range (reflective of inflationary factors) as those rates and multipliers in other contracts that Consultant has either with the County or as a subconsultant under a County contract.

**[INSERT THE FOLLOWING IF APPROPRIATE:]**

- 5.2.4 The rates shown on **Exhibit B** are subject to change annually beginning **January 1, 20\_\_ or October 1, 20\_\_** and will be based upon the cost of living for the year ending the previous June 30. Any change in these rates shall be limited to the lesser of the change in cost of living or three percent (3%). The change in the cost of living shall be determined from the Miami – Ft. Lauderdale Average for urban wage earners and clerical workers for all items as published monthly by the Bureau of Labor Statistics (June 2003=179.6). In any event the maximum hourly rate for any position on **Exhibit B** shall not exceed \$\_\_\_\_\_/hour during the entire term of this Agreement.
- 5.2.5 If the method of compensation between County and Consultant is a "Maximum Amount Not-To-Exceed" and Consultant has "Lump Sum" agreements with any subconsultant(s), then Consultant shall bill all "Lump Sum" subconsultant fees as Salary Costs with no "markup." Consultant shall bill all other subconsultant fees using the employee categories for Salary Costs on **Exhibit B** and Reimbursables defined in Section 5.3. All subconsultant Reimbursables shall be billed in the

actual amount paid by Consultant. Subconsultant Salary Costs shall be billed to County in the actual amount paid by Consultant.

### 5.3 REIMBURSABLES

5.3.1 In accordance with and pursuant to the Broward County Procurement Code, direct nonsalary expenses up to the maximum amount set forth in Section 5.1.1 that are directly attributable to the services to be performed under this Agreement (“Reimbursables”) will be charged at actual cost, shall be in accordance with **Attachment III**, and shall be limited to the following:

- (a) Identifiable transportation expenses in connection with the Project, subject to the limitations of Section 112.061, Florida Statutes. Transportation expenses from locations inside the Dade-Broward-Palm Beach County area to locations inside the Dade-Broward-Palm Beach County area will not be reimbursed. Transportation expenses to locations outside the Dade-Broward-Palm Beach County area or from locations outside the Dade-Broward-Palm Beach County area **will not be reimbursed unless specifically pre-authorized in writing by the Contract Administrator.**
- (b) Identifiable per diem, meals and lodgings, taxi fares and miscellaneous travel-connected expenses for Consultant's personnel, subject to the limitations of Section 112.061 Florida Statutes. Meals for class C travel inside the Tri-County area (Dade-Broward-Palm Beach County) will not be reimbursed. Meals and lodging expenses will not be reimbursed for temporarily relocating Consultant's employees from one of Consultant's offices to another office **if the employee is relocated for more than ten (10) consecutive calendar days.** Lodging will be reimbursed only for room rates equivalent to Holiday Inn, Howard Johnson or Ramada Inn. **Reimbursables covered hereby must have the written approval of the Contract Administrator prior to payment of same.**
- (c) Identifiable communication expenses approved by Contract Administrator, long distance telephone, courier and express mail between the Consultant's various permanent offices and the County. The Consultant's field office at the Project site is not considered a permanent office. **Reimbursables covered hereby must have the written approval of the Contract Administrator prior to payment of same.**
- (d) Cost of printing, reproduction or photography which is required by or of Consultant to deliver services set forth in this Agreement. **Reimbursables covered hereby must have the written approval of the Contract Administrator prior to payment of same.**

- (e) Identifiable geotechnical investigations, utility locations and testing costs **pre-authorized in writing** by Contract Administrator.
- (f) Permit fees paid to regulatory agencies for approvals directly attributable to the Project, **pre-authorized in writing by the Contract Administrator**. These permit fees do not include those permits required for the construction contractor.
- (g) The Reimbursables listed on **Exhibit D**, attached hereto and made a part hereof. Reimbursables described by **Exhibit D** hereby must have the written approval of the Contract Administrator as specified in **Exhibit D**.
- (h) Any other Reimbursables identified as such in a Work Authorization, which must have the written approval of the Contract Administrator, as specified in the Work Authorization.

5.3.2 Reimbursable subconsultant expenses are limited to the items described above when the subconsultant agreement provides for reimbursable expenses.

5.3.3 A detailed statement of expenses must accompany any request for reimbursement. Expenses other than automobile travel must be documented by originals of paid receipts, or other evidence of payment acceptable to the Contract Administrator.

5.3.4 It is acknowledged and agreed by Consultant that the dollar limitation for Reimbursables set forth in Section 5.1.1 is a limitation upon, and describes the maximum extent of, County's obligation to reimburse Consultant for Reimbursables, but does not constitute a limitation, of any sort, upon Consultant's obligation to incur such expenses in the performance of services hereunder. If **County or Contract Administrator or Program Manager** requests Consultant to incur expenses not contemplated in the amount for Reimbursables, Consultant shall notify Contract Administrator in writing before incurring such expenses. Any such expenses shall be reviewed and approved by County prior to incurring such expenses.

5.3.5 Any expense amounts identified on **Exhibit D** may be transferred to any other Reimbursable item by the **Program Manager, with the written approval of the Contract Administrator**, up to an annual aggregate maximum of thirty percent (30%) of the initial value of each category to any other category. Notwithstanding the foregoing, the receiving category may not be increased by an aggregate amount that is greater than the Director of Aviation's change order authority (as

provided in Section 21.73(c) of the Administrative Code) unless Board approval is first obtained.

#### 5.4 METHOD OF BILLING

**[INSERT IF APPLICABLE:]**

**5.4.0 Work Performed Pursuant to Schedule of Units and Hourly Rates.** Consultant shall submit invoices which are identified by the specific item number (from **Exhibit A**) and Work Authorization number once a month, per item, in a timely manner, for all services provided pursuant to the Schedule of Units and Hourly Rates attached hereto as Exhibit \_\_\_. For work identified on the Schedule of Units and Hourly Rates, an invoice for any service shall be submitted only after the service has been completed and acceptable deliverables, as determined by County, are provided. Invoices shall indicate the nature of the work performed and the unit prices and/or hourly rates and total hours of work performed. Billings based on hourly rates shall be supported by timesheets signed by the employees. The timesheets shall indicate the nature of the work or task, number of hours worked and meal breaks. Meal breaks and travel time to and from the jobsite are not billable. Billings shall also indicate the amount of M/WBE **[DBE]** participation for the billing period. Subconsultant fees must be documented by copies of invoices or receipts which describe the nature of the work and contain a project or item number and project title which clearly indicates the work is identifiable to the Work Authorization. County will not accept subsequent additions or modifications to the language identifying the project on the invoice or receipt by the Consultant.

5.4.1 The Consultant shall submit monthly invoices in a format designated by **Program Manager or Contract Administrator** and approved by the appropriate County offices. Consultant may be required to include a submittal of an electronic copy using software specified by the **Program Manager or Contract Administrator** and as approved by the appropriate County offices, as well as the number of hard copies required by the **Program Manager or Contract Administrator**. If required by the **Contract Administrator or Program Manager**, all costs must be classified and sorted based on the work breakdown structure (WBS) (i.e., cost accounting) provided by the **Program Manager or Contract Administrator**. When requested, Consultant shall provide detailed backup for past and current invoices that record actual hours, unit prices, Salary Costs and expense costs on an item basis, and by employee category so that total hours and costs by item may be determined. These records must be made available to the **Contract Administrator and the Program Manager** upon request. For each invoice, the Consultant shall submit an original invoice and at least two copies (with all back-up) to the **Contract Administrator or Program Manager**. When requested, Consultant shall submit certified payroll records for past and current invoices.

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5.4.2 Billings shall also indicate the cumulative amount of **M/WBE [DBE]** participation for the period covered by the billing as well as the cumulative amount to date. Consultant shall also submit with each invoice a Certification of Payments to Subconsultants and Suppliers, using the form attached as **Exhibit C-2** for all subconsultants, including M/WBE **[DBE]** and non-M/WBE **[DBE]**. The certification shall be accompanied by a copy of the notification sent to each subconsultant and supplier listed in item 2 of the form, explaining the good cause why payment has not been made. In addition, the Consultant shall submit with each invoice **Exhibit C-3**, "M/WBE **[DBE]** Utilization Report," and shall submit with the final invoice, **Exhibit C-4**, "Final M/WBE **[DBE]** Utilization Report," listing only those subconsultants certified as M/WBE's **[DBE's]** to show expenditures made to date to achieve compliance with the assigned goals.

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5.4.3 Maximum Amount Not-To-Exceed Compensation

**[INSERT IF APPLICABLE: For Salary Costs and Reimbursables for services that are not identified on a Schedule of Units and Hourly Rates,]** Consultant shall submit billings which are identified by the specific project number on a monthly basis in a timely manner for all Salary Costs and Reimbursables. These billings shall identify the nature of the work performed, the total hours of work performed and the employee category of the individuals performing same. Billings shall itemize and summarize Reimbursables by category and identify same as to the personnel incurring the expense and the nature of the work with which such expense was associated. Where prior written approval by Contract Administrator is required for Reimbursables, a copy of said approval shall accompany the billing for such reimbursable.

The statement shall show a summary of Salary Costs and Reimbursables with accrual of the total and credits for portions paid previously. External Reimbursables and subconsultant fees must be documented by copies of invoices or receipts which describe the nature of the expenses and contain a project number and project title which clearly indicates the expense is identifiable to the Project or Work Authorization. Subsequent addition of the identifier to the invoice or receipt by the Consultant is not acceptable except for meals and travel expenses. Internal expenses must be documented by appropriate Consultant's cost accounting forms with a summary of charges by category.

5.4.4 Lump Sum Compensation

Consultant shall submit billings which are identified by the specific project number on a monthly basis in a timely manner. These billings shall identify the nature of the work performed, the phase of work, and the estimated percent of work

accomplished. Billings for each phase shall not exceed the amounts allocated to said phase. Total billings shall not exceed the total Lump Sum amount.

The statement shall show a summary of fees with accrual of the total and credits for portions paid previously. County shall not pay Consultant any additional sum for reimbursable expenses or additional services, unless a provision in this Agreement or in a Work Authorization makes specific provision for reimbursable expenses in connection with a Lump Sum task.

## 5.5 METHOD OF PAYMENT

5.5.1 County shall pay Consultant within twenty-five (25) business days from receipt of Consultant's proper invoice, as required by County's Prompt Payment Ordinance (Section 1-51.6, Broward County Code of Ordinances, as it may be amended), ninety percent (90%) of the total fees shown to be due on such statement. When the services to be performed on any phase or task of the Project or Work Authorization are fifty percent (50%) complete and upon written request by Consultant, the Contract Administrator shall authorize that subsequent payments for each such phase or task shall be increased to ninety-five percent (95%) of the total fees shown to be due on subsequent statements, unless the County has a good faith dispute regarding the work performed. No amount shall be withheld from payments for Reimbursables or for services performed during the construction phase. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement. In addition to the foregoing, upon written request from the Consultant, the Contract Administrator may authorize release of retainage to a particular subconsultant when the work of that subconsultant is satisfactorily completed. Any reduction in subconsultant retainage shall be at the sole discretion of the Contract Administrator and shall be recommended by the Program Manager.

5.5.2 Upon Consultant's satisfactory completion of any task or phase of the Project or under a Work Authorization, and upon satisfactory completion of each Work Authorization and after the Program Manager's review and recommendation and Contract Administrator's review and approval, and following receipt of all applicable deliverables, to include record drawings, if applicable, County shall remit to Consultant that ten percent (10%) or five percent (5%) portion of the amounts previously withheld from the phase or task or Work Authorization. A task or phase shall not be deemed complete until, at a minimum, all required deliverables for each such task or phase are completed in accordance with **Exhibit A**, and together with all other pertinent information relevant to the work and/or project that one could reasonably deduce are required, are provided to and accepted by the Program Manager and Contract Administrator. Final payment for the Project must be approved by the original award authority for this contract. Final

Payment for any Work Authorization must be approved by the original award authority for this contract, if the Work Authorization is \$200,000 or more.

5.5.3 Notwithstanding any provision of this Agreement to the contrary, the Consultant shall not be entitled to payment of any statement unless the **Program Manager and the Contract Administrator** is satisfied that the statement reflects a level of effort and stage of completion of the respective deliverables that is in accordance with the schedules previously agreed to by the Consultant and the Contract Administrator, as set forth in **Exhibit A**, or in a Work Authorization.

~~5.5.4 [INSERT THIS SECTION IF APPLICABLE] Notwithstanding the foregoing, no payments shall be made for phases or tasks numbered #\_\_\_ through #\_\_\_, generally referred to as "Permitted Contract Documents," until the permits associated with each such phase or task have been issued by all regulatory agencies with permitting jurisdiction of same. In the event County elects not to obtain permits for any of the Permitted Contract Documents phase(s) or task(s), through no fault of Consultant, then County shall pay Consultant the portion of fees earned for such Permitted Contract Documents phase(s) or task(s) in relation to the percentage of the work completed, not to exceed seventy five percent (75%) of the lump sum or maximum amount not to exceed fee for each such phase or task.~~

5.5.5 Payment will be made to Consultant at:

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

5.5.6 Consultant shall pay its subconsultants and suppliers within ten (10) calendar days following receipt of payment from the County for such subconsultants work or supplies. Consultant agrees that if it withholds an amount as retainage from its subconsultants or suppliers, that it will release such retainage and pay same within ten (10) calendar days following receipt of payment of retained amounts from County.

5.5.7 Consultant agrees that nonpayment of any of its subconsultants or suppliers as required by Subsection 5.5.6 shall be a material breach of this Agreement and that County may, at its option, increase allowable retainage or withhold progress payments unless and until Consultant demonstrates timely payments of sums due to such subconsultants or suppliers. Consultant agrees that the presence of a "pay when paid" provision in a subconsultant contract shall not preclude County's inquiry into allegations of nonpayment. The foregoing remedies shall not be

employed when Consultant demonstrates that failure to pay results from a bonafide dispute with its subconsultant or supplier.

5.5.8 Notwithstanding any provision of this Agreement to the contrary, County may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work which has not been remedied or from loss due to fraud or reasonable evidence indicating fraud by Consultant or failure to comply with this Agreement. When the above reasons for withholding payment are removed or resolved in a manner satisfactory to Contract Administrator, payment may be made. The amount withheld shall not be subject to payment of interest by County.

ARTICLE 6  
ADDITIONAL SERVICES AND CHANGES IN SCOPE OF SERVICES

- 6.1 County or Consultant may request changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement. Such changes must be made in accordance with the provisions of the Broward County Procurement Code and must be contained in a written amendment executed by the parties hereto, prior to any deviation from the terms of this Agreement including the initiation of any additional services.
- 6.2 Costs of additional services identified by the Contract Administrator during the life of this agreement and as contained in a written amendment will be compensated on an hourly basis, or an agreed upon lump sum, or as a reimbursable as provided in Article 5. Additional services authorized by the Contract Administrator shall include a required completion for Consultant's performance of those additional services.
- 6.3 In the event a dispute between the **Program Manager or Contract Administrator** and Consultant shall arise over whether requested services constitute additional services and such dispute cannot be resolved by the **Program Manager or Contract Administrator** and Consultant, **such dispute shall be promptly presented to the Contract Administrator for resolution. If the dispute cannot be resolved by the Contract Administrator and Consultant**, such dispute shall be presented to the Aviation Director for resolution. In the event the Consultant does not agree with the Aviation Director's decision, the Consultant shall file a written complaint with the Director of Purchasing, in writing, within seven (7) calendar days from the date of the Aviation Director's decision, which complaint shall be filed in accordance with section 21.22.d of the Broward County Administrative Code. Proceedings regarding such complaint shall be conducted pursuant to section 21.22.d of the Broward County Administrative Code. During the pendency of any dispute, Consultant shall promptly perform the disputed services.
- 6.4 Each proposed contract modification request that, by itself or aggregated with previous

modification requests, increases the contract value by ten percent (10%) or more of the initial contract value, or Fifty Thousand Dollars (\$50,000.00), whichever is less, shall be reviewed by County for opportunities to include or increase M/WBE [DBE] participation. Consultant shall demonstrate good faith efforts to include M/WBE [DBE] participation in change order work and shall report such efforts to the Small Business Development Division.

ARTICLE 7  
COUNTY'S RESPONSIBILITIES

- 7.1 County shall assist Consultant by placing at Consultant's disposal all information County has available that is pertinent to the Project including previous reports and any other data relative to design or construction of the Project. It is understood and agreed that County, in making reports, site information and documents available to the Consultant is in no way certifying as to the accuracy or completeness of such data, including any information provided in the County's Request for Letters of Interest, **RLI #20060222-0-AV-01AA**, and any supporting documentation included therein. Any conclusions or assumptions drawn through examination thereof shall be the sole responsibility of the Consultant and subject to whatever measure it deems necessary to final verification essential to its performance under this Agreement.
- 7.2 County shall arrange for access to, and make all provisions for, Consultant to enter upon public and private property as required for Consultant to perform its services.
- 7.3 County shall review the deliverables/documents identified in **Exhibit A** or in a Work Authorization and respond in writing with any comment within the time set forth on the approved Project Schedule.
- 7.4 County shall give prompt written notice to Consultant whenever County observes or otherwise becomes aware of any development that affects the scope or timing of Consultant's services or any defect in the work of the Contractor.

ARTICLE 8 – EEO AND M/WBE [DBE] COMPLIANCE

- 8.1 NONDISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND AMERICANS WITH DISABILITIES ACT
  - 8.1.1 Consultant shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, age, color, sex or National origin, sexual orientation (including but not limited to Broward County Code, Chapter 16½), marital status, political affiliation, or physical or mental disability if qualified. Consultant shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment without regard to their

race, religion, color, sex or National origin, sexual orientation, marital status, political affiliation, or physical or mental disability. Such actions shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection of training, including apprenticeship. Consultant agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

- 8.1.2 The Consultant shall also require that any contractor selected to perform work on a County project include the foregoing or similar language in its contracts with any subcontractors or subconsultants, except that any project assisted by U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 C.F.R. Parts 23 and 26, as amended. The Subconsultants or Subcontractors, if any, will be made aware of and will comply with this nondiscrimination clause. Failure to comply with above requirements is a material breach of the contract, and may result in the termination of this contract or such other remedy as the County deems appropriate.
- 8.1.3 Consultant shall comply with Title I of the Americans with Disabilities Act regarding nondiscrimination on the basis of disability in employment and further shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability. In addition, Consultant shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.
- 8.1.4 Consultant shall take affirmative action to ensure that applicants are employed and employees are treated without regard to race, age, religion, color, gender, sexual orientation (Broward County Code, Chapter 16½), national origin, marital status, political affiliation, or physical or mental disability during employment. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.
- 8.1.5 Consultant shall not engage in or commit any discriminatory practice in violation of the Broward County Human Rights Act (Broward County Code, Chapter 16½) in performing the Scope of Services or any part of the Scope of Services of this Agreement.

8.1.6 By execution of this Agreement, Consultant represents that it has not been placed on the discriminatory vendor list (as provided in Section 287.134, Florida Statutes). County hereby materially relies on such representation in entering into this Agreement. An untrue representation of the foregoing shall entitle County to terminate this Agreement and recover from Consultant all monies paid by County pursuant to this Agreement, and may result in debarment from County's competitive procurement activities.

8.1.7 Consultant agrees to abide by the nondiscrimination requirements set forth on **Attachment I**, attached hereto and made a part hereof.

**[NOTE 8.2 BELOW IS FOR "M/WBE" NON-FEDERALLY FUNDED AGREEMENTS -- SEE "WAY" BELOW FOR FEDERALLY FUNDED PROGRAM]**

8.2 MINORITY/WOMEN BUSINESS ENTERPRISE ("M/WBE") COMPLIANCE

8.2.1 The Broward County Business Opportunity Act of 2004 (Broward County Ordinance No. 2004-07) ("Business Opportunity Act") establishes the County's policy for participation by small, minority, women-owned, and disadvantaged business enterprises in all County contracts at or above \$250,000 and other selected activities. In completing this Project, Consultant agrees to and shall comply with the Business Opportunity Act. The County shall review each proposed modification to this Agreement that, by itself or aggregated with previous modifications, increase the contract value of this Agreement by ten percent (10%) of the initial contract value, or Fifty Thousand Dollars (\$50,000) whichever is less, for opportunities to include or increase the participation of SBEs, MBEs, or WBEs, already involved on this Agreement.

8.2.2 Participation goals for this Agreement were established in the Request for Letters of Interest (RLI) as follows:

MBE Category	Participation Goal
MBE	%
African-American	%
Hispanic	%
WBE	%
Native American	%
Asian-Pacific Islander	%
Total Goal	%

8.2.3 Consultant has committed to the M/WBE performance delineated on the attached

**Exhibit C-1**, "Schedule of M/WBE Participation" which indicates the names, addresses, scope of work and dollar value or percentage of participation. Consultant understands that each M/WBE firm utilized on the Project to meet County's participation goals must be certified by County.

8.2.4 County and Consultant agree that prime and subcontract awards to M/WBE's are crucial to the achievement of County's participation goals. In an effort to assist County in achieving its established goals for this Project, Consultant agrees to take affirmative actions to meet the current M/WBE participation goals established by County.

8.2.5 Unless the time for submission of same is extended in writing by the Broward County Small Business Development Division, a Letter of Intent to perform as a subcontractor executed by each M/WBE subcontractor listed on the Schedule of MBE Participation must be submitted to the Broward County Small Business Development Division prior to execution of this Agreement. A Letter of Intent form may be obtained at the Broward County Small Business Development Division office. The information contained within the Letter of Intent and the information contained within the Schedule of M/WBE Participation should be the same as to content.

8.2.6 Consultant understands that it is the responsibility of the Contract Administrator and the Broward County Small Business Development Division to monitor compliance with the M/WBE requirements.

8.2.6.1 Consultant shall submit with each invoice a Certification of Payments to subconsultants and suppliers, using the form attached as **Exhibit C-2** for all subconsultants, including M/WBE and non-M/WBE subconsultants. The certification shall be accompanied by a copy of the notification sent to each subconsultant and supplier listed in paragraph 2 of the form, explaining the good cause why payment has not been made. In that regard, Consultant agrees to furnish an updated M/WBE Utilization Report (**Exhibit C-3**) to the **[Program Manager] [Contract Administrator]** with each invoice for payment or upon request of the Contract Administrator or the Broward County Small Business Development Division, showing all expenditures made to achieve compliance with its assigned goals or other contractual conditions agreed to by Consultant pursuant to the Business Opportunity Act. All reports shall include the name, business address, description of the work performed and/or product or service supplied by each SBE, MBE, or WBE; the date and amount of each expenditure; verification of the M/WBE status of any contractor performing any portion of this Agreement; and any other information requested by County which may assist County in determining the Consultant's compliance with its contractual obligations, or

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may assist in the implementation and enforcement of the Business Opportunity Act.

8.2.6.2 The Final M/WBE Utilization Report (**Exhibit C-4**) must be submitted with the final invoice for payment (in lieu of **Exhibit C-3**), listing only those subconsultants certified as M/WBE's, to show expenditures made to date to achieve compliance with the assigned M/WBE goals. The submission of the reports required by this subparagraph shall be a condition of payment to Consultant.

8.2.6.3 All Work Authorizations shall be carefully examined for M/WBE participation to determine whether cumulatively, the assigned M/WBE goal breakdown will be achieved during the term of the Agreement and if good faith efforts are being made toward achieving the assigned M/WBE goal.

8.2.7 In the event of Consultant's noncompliance with its participation commitment to a M/WBE (including without limitation the unexcused reduction of M/WBE participation), the affected M/WBE shall have the right to exercise the following remedies if the noncompliance is or was due to no fault of the M/WBE, and due to the willful action or omission of Consultant:

8.2.7.1 The affected M/WBE shall be entitled to damages pursuant to its agreement with Consultant.

8.2.7.2 If a subcontractor, material supplier, or other similarly-situated person institutes an arbitration proceeding claiming non-compliance with the Business Opportunity Act by Consultant, then only in such event shall the remedies include an undertaking by Consultant to submit any dispute concerning such damages to binding arbitration by an independent arbitrator. However, binding arbitration shall not be available as to any dispute between Consultant and County; nor shall County incur any cost, fee, or liability relative to any arbitration proceedings. An arbitrator may award reasonable attorney's fees and costs against a non-prevailing party.

8.2.7.3 Nothing under this Section 8.2 shall be construed to limit the rights of and remedies available to County, including the right to seek its own damages pursuant to this Agreement.

8.2.8 County shall have access, without limitation, to Consultant's books and records, including payroll records, tax returns and records, and books of account, on five (5) calendar days notice, to allow County to determine Consultant's compliance with its commitment to M/WBE participation goal and the status of any M/WBE

performing any portion of this Agreement.

- 8.2.9 Upon request by the Contract Administrator, Consultant agrees to furnish the County with a copy of its Affirmative Action Policy.
- 8.2.10 The Consultant must inform **Program Manager and** the Broward County Small Business Development Division immediately, in writing, when an M/WBE subconsultant is not able to perform. If the Consultant is unable to substitute the unavailable M/WBE with another certified M/WBE, the actual substitute of a non-M/WBE subconsultant may not occur until the Broward County Small Business Development Division has verified the good faith efforts of the Consultant to substitute the unavailable M/WBE with another certified M/WBE.
- 8.2.11 Consultant shall pay its subconsultants and suppliers within ten (10) calendar days following receipt of payment from the County for such subconsultants work or supplies. Consultant agrees that if it withholds an amount as retainage from its subconsultants or suppliers, that it will release such retainage and pay same within ten (10) calendar days following receipt of payment of retained amounts from County.
- 8.2.12 Consultant agrees that it cannot terminate a M/WBE subcontractor for convenience and then perform the work with its own forces or its affiliate. If a situation arises that a M/WBE subcontractor needs to be replaced or removed from the team, Consultant must submit a written request to the Small Business Development Division with detailed explanation or justification for the submission of such request. If the request is due to a voluntary cessation of the M/WBE firm from the team, documentation supporting the voluntary cessation must accompany the request. Requests for substitution or termination of M/WBE subcontractors will only be approved on a case-by-case basis, provided that reasons cited are properly justified. When a M/WBE subcontractor is terminated, or fails to complete its work, Consultant must make good faith efforts to find another M/WBE subcontractor to substitute for the original M/WBE.
- 8.2.13 Consultant agrees that nonpayment of a M/WBE subcontractor or supplier as required by Section 8.2.11 shall be a material breach of this Agreement and that County's Contract Administrator may, at its option, increase allowable retainage or withhold progress payments unless and until Consultant demonstrates timely payments of sums due to such subcontractors or suppliers. Consultant agrees that the presence of a "pay when paid" provision in a subcontract shall not preclude County or its representatives from inquiring into allegations of nonpayment. The foregoing remedies under this Section 8.2 shall not be employed when Consultant demonstrates that failure to pay results from a bona fide dispute with its subcontractor or supplier.

**[NOTE THE FOLLOWING SECTION IS FOR FEDERALLY FUNDED AGREEMENTS]**

Last revised: 2-05-07

## 8.2 DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

- 8.2.1 The Disadvantaged Business Enterprise (DBE) regulation (49 CFR Part 26) establishes requirements for setting an overall goal for DBE participation in federally-funded contracts. This rule requires recipients of Federal funds to use a methodology based on demonstrable data of relevant market conditions and is designed to reach a goal the recipient would expect DBEs to achieve in the absence of discrimination. Since this project is funded in part using federal funds, it is the policy of Broward County Small Business Development Division to ensure that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26, are afforded maximum opportunity to receive and participate as subcontractors and suppliers on all contracts awarded by the County. Therefore, good-faith efforts must be made to provide DBEs an opportunity to participate in the project in accordance with the DBE Program Plan.
- 8.2.2 The Broward County Business Opportunity Act of 2004 (Broward County Ordinance No. 2004-07) ("Business Opportunity Act") establishes the County's policy for participation by small, minority, women-owned, and disadvantaged business enterprises in all County contracts at or above \$250,000 and other selected activities. In completing this Project, Consultant agrees to and shall comply with the Business Opportunity Act. The County shall review each proposed modification to this Agreement that, by itself or aggregated with previous modifications, increase the contract value of this Agreement by ten percent (10%) of the initial contract value, or Fifty Thousand Dollars (\$50,000) whichever is less, for opportunities to include or increase the participation of DBEs already involved on this Agreement.
- 8.2.3 Participation goals for this Agreement were established in the Request for Letters of Interest (RLI) as follows: **[insert goals ][ race-neutral]**.
- 8.2.4 Consultant shall pay its subcontractors and suppliers within ten (10) calendar days following receipt of payment from the County for such subcontracted work or supplies. Consultant agrees that if it withholds an amount as retainage from its subcontractors or suppliers, that it will release such retainage and pay same within ten (10) calendar days following receipt of payment of retained amounts from County.
- 8.2.5 Consultant agrees that nonpayment of a subcontractor or supplier as required by Section 8.2.4 shall be a material breach of this Agreement and that County may, at its option, increase allowable retainage or withhold progress payments unless and until Consultant demonstrates timely payments of sums' due to such subcontractors or suppliers. Consultant agrees that the presence of a "pay when paid" provision in a subcontract shall not preclude County's inquiry into allegations of nonpayment. The

foregoing remedies shall not be employed when Consultant demonstrates that failure to pay results from a bona fide dispute with its subcontractor or supplier.

8.2.6 Consultant agrees that it cannot terminate a DBE subcontractor for convenience and then perform the work with its own forces or its affiliate. If a situation arises that a DBE subcontractor needs to be replaced or removed from the team, Consultant must submit a written request to the Small Business Development Division with detailed explanation or justification for the submission of such request. If the request is due to a voluntary cessation of the DBE firm from the team, documentation supporting the voluntary cessation must accompany the request. Requests for substitution or termination of DBE subcontractors will only be approved on a case-by-case basis, provided that reasons cited are properly justified. When a DBE subcontractor is terminated, or fails to complete its work, Consultant must make good faith efforts to find another DBE subcontractor to substitute for the original DBE.

#### 8.2.10 CONTRACT COMPLIANCE MONITORING

8.2.10.1 Compliance monitoring is conducted to determine if Consultant and/or subcontractors are complying with the requirements of the DBE Program. Failure of the Consultant to comply with this provision may result in the County imposing penalties or sanctions pursuant to the provisions of the DBE regulation, 49 CFR Part 26.

8.2.10.2 Consultant understands that it is the responsibility of the Contract Administrator and the Broward County Small Business Development Division to monitor compliance with the MBE requirements. Consultant shall submit with each invoice a Certification of Payments to subconsultants and suppliers, using the form attached as **Exhibit C-2** for all subconsultants, including DBE and non-DBE subconsultants. The certification shall be accompanied by a copy of the notification sent to each subconsultant and supplier listed in paragraph 2 of the form, explaining the good cause why payment has not been made. In that regard, Consultant agrees to furnish an updated MBE Utilization Report (**Exhibit C-3**) to the **Program Manager or Contract Administrator** with each invoice for payment or upon request of the Contract Administrator or the Broward County Small Business Development Division, showing all expenditures made to achieve compliance with its assigned goals or other contractual conditions agreed to by Consultant pursuant to the Business Opportunity Act. All reports shall include the name, business address, description of the work performed and/or product or service supplied by each DBE; the date and amount of each expenditure; verification of the DBE status of any contractor performing any portion of this Agreement; and any other information requested by County which may assist County in determining

the Consultant's compliance with its contractual obligations, or may assist in the implementation and enforcement of the Business Opportunity Act.

8.2.10.2.1 The Final DBE Utilization Report (**Exhibit C-4**) must be submitted with the final invoice for payment (in lieu of **Exhibit C-3**), listing only those subconsultants certified as DBE's, to show expenditures made to date to achieve compliance with the assigned DBE goals. The submission of the reports required by this subparagraph shall be a condition of payment to Consultant.

8.2.10.2.2 All Work Authorizations shall be carefully examined for M/WBE participation to determine whether cumulatively, the assigned M/WBE goal breakdown will be achieved during the term of the Agreement and if good faith efforts are being made toward achieving the assigned M/WBE goal.

8.2.10.3 In the event of Consultant's noncompliance with its participation commitment to a DBEE (including without limitation the unexcused reduction of DBE participation), the affected DBE shall have the right to exercise the following remedies if the noncompliance is or was due to no fault of the DBE, and due to the willful action or omission of Consultant:

8.2.10.4 The affected DBE shall be entitled to damages pursuant to its agreement with Consultant.

8.2.10.5 If a subcontractor, material supplier, or other similarly-situated person institutes an arbitration proceeding claiming non-compliance with the Business Opportunity Act by Consultant, then only in such event shall the remedies include an undertaking by Consultant to submit any dispute concerning such damages to binding arbitration by an independent arbitrator. However, binding arbitration shall not be available as to any dispute between Consultant and County; nor shall County incur any cost, fee, or liability relative to any arbitration proceedings. An arbitrator may award reasonable attorney's fees and costs against a non-prevailing party.

8.2.10.6 Nothing under this Section 8.2 shall be construed to limit the rights of and remedies available to County, including the right to seek its own damages pursuant to this Agreement.

8.2.10.7 County shall have access, without limitation, to Consultant's books and records, including payroll records, tax returns and records, and books of account, on five (5) calendar days notice, to allow County to determine Consultant's compliance with its commitment to DBE participation goal and the status of any DBE performing any portion of this Agreement.

8.2.10.8 Upon request by the Contract Administrator, Consultant agrees to furnish the County with a copy of its Affirmative Action Policy.

8.2.10.9 The Consultant must inform **[Program Manager and]** the Broward County Small Business Development Division immediately, in writing, when a DBE subconsultant is not able to perform. If the Consultant is unable to substitute the unavailable DBE with another certified DBE, the actual substitute of a non-DBE subconsultant may not occur until the Broward County Small Business Development Division has verified the good faith efforts of the Consultant to substitute the unavailable DBE with another certified DBE.

**ARTICLE 9  
INSURANCE**

9.1 Consultant shall, at a minimum, provide, pay for, and maintain in force at all times during the term of this Agreement (unless otherwise provided), the insurance coverages set forth in below in accordance with the terms and conditions required by this Article.

9.2 Such policy or policies shall be without any deductible amount unless otherwise noted in this Agreement.

9.3 Such policy or policies shall be issued by approved companies authorized to do business in the State of Florida and having agents upon whom service of process may be made in the State of Florida. Consultant shall specifically protect County and the Broward County Board of County Commissioners **[and Program Manager]** by naming County and the Broward County Board of County Commissioners **[and Program Manager]** as additional insureds under the Comprehensive General or Commercial Liability Insurance policy hereinafter described, **as well as on excess liability.**

9.3.1 Professional Liability Insurance shall be provided with the limits of liability provided by such policy to be no less than See RLI Document Dollars (\$\_\_\_\_\_ ) each claim, with a maximum deductible of \$\_\_\_\_\_.

**Consultant shall notify County and Program Manager in writing within thirty (30) calendar days of any claims filed or made against the Professional Liability Insurance Policy.**

9.3.2 Workers' Compensation Insurance shall be provided to apply for all employees in compliance with Chapter 440, Florida Statutes, as amended, the "Workers' Compensation Law" of the State of Florida and all applicable federal laws.

9.3.3 Comprehensive General or Commercial Liability Insurance with minimum limits of Five Million Dollars (\$5,000,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:

- Premises and/or Operations.
- Independent Contractors.
- Broad Form Property Damage.
- Broad Form Contractual Coverage applicable to this specific Agreement.
- Personal Injury Coverage with Employee and Contractual Exclusions removed with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.

9.3.4 Business Automobile Liability Insurance shall be provided with minimum limits of Five Million Dollars (\$5,000,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office and must include:

- Owned vehicles.
- Hired and non-owned vehicles.
- Employers' non-ownership.

9.4 Consultant shall provide to County certificate(s) of insurance for all insurance policies required by this Article including any subsection thereunder. County reserves the right to require a certified copy of such policies upon request. All certificates and endorsements required herein shall state that County shall be given at least thirty (30) calendar days notice prior to expiration, cancellation or restriction of the policy. If any of the insurance coverages will expire prior to the completion of the work, copies of renewal certificates shall be furnished at least thirty (30) days prior to the date of their expiration. Any insurance coverage that is written on a claims made basis must remain in force for two (2) years after the acceptance of the Project by the County.

**INSERT IF NEEDED:**

**9.5 Prior to the entrance into the airside area of the Airport by Consultant, its subconsultants and/or their employees, the limit of liability for automobile and commercial or comprehensive general liability requirement will be increased to \$5,000,000.00 each occurrence bodily injury and property damage combined single limit.**

ARTICLE 10  
MISCELLANEOUS

10.1 OWNERSHIP OF DOCUMENTS

All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared or provided by Consultant in connection with this Agreement are and shall become the property of County, whether the Project for which they are made is completed or not, and shall be delivered by Consultant to County in the requested form or format within seven (7) calendar days of the earlier to occur of: (i) written request from the Contract Administrator, or (ii) the termination of this Agreement by either party.

The Consultant shall provide County with "as built" plans and specifications for the Project, including one set of reproducible, stamped "record as built" and one set of machine readable disks containing electronic data in an AUTOCAD format, that meets the Aviation Department's graphic standards, of the "as-constructed" or "record" plans for such improvements. Consultant shall provide periodic updates as required by **Exhibit A**.

If any funding for this Agreement is provided by the Federal Aviation Administration (FAA) or any other federal agency, then all rights to inventions and materials generated under this contract are subject to regulations issued by the FAA or any such other federal agency, and the sponsor of any grant under which this contract is executed. Information regarding these rights is available from the FAA and the sponsor.

County may withhold any payments then due to Consultant until Consultant complies with the provisions of this Section.

Tangible items of non-consumed equipment, materials, supplies and furnishings purchased by the Consultant and its subconsultants, the costs of which have been reimbursed to the Consultant as a direct cost, shall be turned over to the County at completion or earlier termination of this Agreement, or disposed of as directed by the Contract Administrator, and the proceeds of any such disposal shall be credited to, or paid to, the County.

10.2 TERMINATION

10.2.1 This Agreement may be terminated for cause by action of Board or by Consultant if the party in breach has not corrected the breach within five (5) calendar days' written notice from the aggrieved party identifying the breach, or for convenience by action of Board upon not less than fourteen (14) calendar days' written notice by Contract Administrator. This Agreement may also be terminated by County Administrator upon such notice as County Administrator deems appropriate under

the circumstances in the event County Administrator determines that termination is necessary to protect the public health, safety, or welfare.

- 10.2.2 Termination of this Agreement for cause shall include, but not be limited to, negligent, intentional, or repeated submission for payment of false or incorrect bills or invoices, failure to suitably perform the work, failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement, or multiple breach of this Agreement which has a material adverse effect on the efficient administration of the Project, notwithstanding whether any such breach was previously waived or cured.
- 10.2.3 Notice of termination shall be provided in accordance with the NOTICES section of this Agreement except that notice of termination by Contract Administrator which Contract Administrator deems necessary to protect the public health, safety, or welfare may be verbal notice which shall be promptly confirmed in writing in accordance with the NOTICES section of this Agreement.
- 10.2.4 In the event this Agreement is terminated for convenience, Consultant shall be paid for any services properly performed to the date the Agreement is terminated. Compensation shall be withheld until all documents specified in Section 10.1 of this Agreement are provided to the County. Upon being notified of County's election to terminate, Consultant shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. Under no circumstances shall County make payment of profit for services which have not been performed. Consultant acknowledges and agrees that ten dollars (\$10.00) of the compensation to be paid by County, the receipt and adequacy of which is hereby acknowledged by Consultant, is given as specific consideration to Consultant for County's right to terminate this Agreement for convenience.
- 10.2.5 In addition, the County shall have the right, at its sole and exclusive discretion and upon seven (7) calendar days notice in writing, to terminate any one or more phases or tasks described in **Exhibit A**, from this Agreement or a Work Authorization, or any phases or tasks described in a Work Authorization, and to procure services for such phases or tasks from another source. In such event: (i) Consultant shall be paid for services performed through the date of termination (including all Reimbursables then due or incurred to termination date); and (ii) any phases or tasks not terminated by such written notice shall continue to be covered by this Agreement and Consultant shall perform the services required by such phases and tasks pursuant to the terms and conditions hereof. However, Consultant shall refrain from performing further services or incurring any additional expenses under any terminated phases and tasks.

10.2.6 If the term of this Agreement extends beyond a single fiscal year of County, the continuation of this Agreement beyond the end of any fiscal year shall be subject to the availability of funds from County in accordance with Chapter 129, Florida Statutes, as it may be amended.

10.2.7 In the event of any termination (whether a termination of the entire Agreement or any phase or task of the Agreement) Consultant shall deliver all documents and records, including without limitation, all data, studies, surveys, drawings, maps, models, photographs and reports prepared or provided by Consultant in connection with this Agreement (in whatever state they may be in at the date of termination) to the County within seven (7) calendar days following receipt of the written notice of termination. Any compensation due Consultant shall be withheld until all documents and records are received by County as provided herein.

10.2.8 This Agreement may also be terminated by the Board:

10.2.8.1 Upon the disqualification by County's Director of Small Business Development Division of Consultant as a M/WBE **[DBE]** if Consultant's status as M/WBE **[DBE]** was a factor in the award of this Agreement and such status was misrepresented by Consultant;

10.2.8.2 Upon the disqualification by County's Director of Small Business Development Division of Consultant if Consultant obtained this Agreement or attempted to meet its M/WBE **[DBE]** contractual obligations through fraud, misrepresentation, or material misstatement;

10.2.8.3 Upon the disqualification by County's Director of Small Business Development Division of one or more of Consultant's M/WBE **[DBE]** participants if any such participant's status as a M/WBE **[DBE]** was a factor in the award of this Agreement and such status was misrepresented by Consultant or such participant;

10.2.8.4 Upon the disqualification by County's Director of Small Business Development Division of one or more of Consultant's M/WBE **[DBE]** participants if such M/WBE **[DBE]** participant attempted to meet its M/WBE **[DBE]** contractual obligations through fraud, misrepresentation, or material misstatement;

10.2.8.5 If Consultant is determined by County's Director of Small Business Development Division to have been knowingly involved in any fraud, misrepresentation, or material misstatement concerning the M/WBE **[DBE]** status of its disqualified M/WBE **[DBE]** participant. If so determined, Consultant shall not be awarded M/WBE **[DBE]**

participation credit;

### 10.3 AUDIT RIGHT AND RETENTION OF RECORDS

County shall have the right to audit the books, records, and accounts of Consultant and its subconsultants that are related to the Project and this Agreement. Consultant shall keep such books, records and accounts and shall require any and all subconsultants to keep such books, records and accounts as may be necessary in order to record complete and correct entries related to the Project and this Agreement, including without limitation, entries as to personnel hours charged to the Project and any Work Authorization and any expenses for which Consultant expects to be reimbursed. All books, records and accounts of Consultant shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, Consultant shall make same available at no cost to County in written form. Incomplete or incorrect entries in such books and records and accounts will be grounds for County's disallowance and recovery of any fees or expenses based upon such entries.

Consultant and its subconsultants shall preserve and make available, at reasonable times for examination and audit by County, all books, records and accounts relating to the Project and this Agreement, including without limitation, financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement or the Project, all of which shall be preserved for the required "Retention Period" (as hereinafter defined). The "Retention Period" is defined as the greater of: (i) the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), or if any audit has been initiated and audit findings have not been resolved at the end of such period, the books, records and accounts shall be retained until resolution of the audit findings, or (ii) for a period of three (3) years after final payment and the completion of all work to be performed pursuant to this Agreement, or if any audit has been initiated and audit findings have not been resolved at the end of the three years, the books, records and accounts shall be retained until resolution of the audit findings, or (iii) if this Project is subject to Florida Department of Transportation grants, for a period of five (5) years after final payment and the completion of all work to be performed pursuant to this Agreement, or if any audit has been initiated and audit findings have not been resolved at the end of the five years, the books, records and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by County to be applicable to Consultant's records, Consultant shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by Consultant.

### 10.4 PUBLIC ENTITY CRIMES ACT

Consultant represents that the execution of this Agreement will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a

person or affiliate who is a contractor, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to County, may not submit a bid on a contract with County for the construction or repair of a public building or public work, may not submit bids on leases of real property to County, may not be awarded or perform work as a contractor, supplier, subcontractor, subconsultant or consultant under a contract with County, and may not transact any business with County in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid by County pursuant to this Agreement, and may result in debarment from County's competitive procurement activities.

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

#### 10.5 NO CONTINGENT FEE

Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Consultant any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, County shall have the right to terminate the Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

#### 10.6 SUBCONSULTANTS

10.6.1 Consultant shall utilize the subconsultants identified in the proposal that was a material part of the selection of Consultant to provide the services for the Project. The list of subconsultants submitted is set forth on **Exhibit C and the Salary Costs are set forth on Exhibit B**. Consultant shall obtain written approval of Contract Administrator prior to changing or modifying the list of subconsultants submitted by Consultant. Where Consultant's failure to use a subconsultant results in Consultant's noncompliance with M/WBE **[DBE]** participation goals, such failure shall entitle the affected M/WBE **[DBE]** subconsultant to damages available under local and state law.

- 10.6.2 Invoices for any services performed by any subconsultants shall be passed through to County without additional charge by the Consultant. All such work shall be itemized on invoices from such subconsultants, showing work performed and charges incurred.
- 10.6.3 ~~All rates, multipliers and any other fees charged by any subconsultants under this Agreement shall be not more than those rates, multipliers and other fees in any contracts that any such subconsultants may have with the County as of the effective date of this Agreement, either directly or as subconsultant under some other County agreement.~~ Consultant shall cause subconsultants to submit a completed **Exhibit B**, in the form attached hereto, detailing such rates for authorization prior to utilizing such subconsultant. Should any subconsultant fail to submit a completed **Exhibit B**, in the form attached hereto, or fail to submit a properly completed **Exhibit B**, as determined by the County Auditor, the Consultant shall notify the Broward County Small Business Development Division ("SBDD") of any such event, and until the failure is cured the Consultant may withhold payment of any sums due the subconsultant. In addition, the Consultant may make written request to the Contract Administrator (with a copy to the County Auditor and the SBDD) to replace such subconsultant with a subconsultant that is in compliance with the provisions hereof. **If the Contract Administrator approves any change or modification of subconsultants pursuant to Section 10.6.1, then Exhibits C and B shall be updated accordingly and attached to this Agreement by the Contract Administrator.**
- 10.6.4 Consultant shall bind each and every approved subconsultant to the terms stated in this Agreement, provided that this provision shall not, in and of itself, impose the insurance requirements set forth in Section 10.12 on Consultant's subconsultants. Consultant shall be responsible for recommending to the Broward County Risk Management Division the insurance coverages it will require of each of its subconsultants, after taking into consideration the services to be provided by each of its subconsultants. The Broward County Risk Management Division may either (i) accept the recommendation(s) of the Consultant or (ii) require any coverages that the Risk Management Division determines are necessary to protect the County's interests. Consultant shall require the proper licensing of each of its subconsultants.
- 10.6.5 If any of the services outlined in this Agreement are furnished by Consultant by obtaining the services of subconsultants, Consultant shall provide County with proposals and contracts between the subconsultants and Consultant outlining the services to be performed and the charges for same, together with any other documentation required by County.

## 10.7 CONSULTANT CERTIFICATION

The Consultant hereby certifies that this Agreement is made in good faith, and without fraud, collusion of any kind with any other consultant for the same work, and that the Consultant is acting solely on its own behalf without connection with, or obligation to, any undisclosed person or firm.

## 10.8 ASSIGNMENT

Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered by either party without the written consent of the other party. Consultant shall not subcontract any portion of the work required by this Agreement except as authorized pursuant to Section 10.6.

### **BELOW PROVISION IS FOR NON-DESIGN PROFESSIONAL:**

## 10.9 INDEMNIFICATION OF COUNTY

10.9.1 Consultant shall indemnify and hold harmless County, its officers, agents, servants, and employees against any and all claims, losses, liabilities, and expenditures of any kind, including attorney fees, court costs, and expenses, caused by negligent act or omission of Consultant, its employees, agents, subconsultants, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, demands, or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event that any action or proceeding is brought against County by reason of any such claim or demand, Consultant shall, upon written notice from County, resist and defend such action or proceeding by counsel satisfactory to County.

10.9.2 To the extent considered necessary by Contract Administrator and County Attorney, any sums due Consultant under this Agreement may be withheld by County until all of County's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved. Any amount withheld by County shall not be subject to payment of interest by County.

10.9.3 The provisions of this Section 10.9 shall survive the expiration or earlier termination of this Agreement.

**ALTERNATE INDEMNIFICATION LANGUAGE FOR DESIGN PROFESSIONALS:**

10.9 INDEMNIFICATION OF COUNTY

10.9.1 Consultant shall indemnify, and hold harmless County, its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness or intentionally wrongful conduct of Consultant, and other persons employed or utilized by Consultant in the performance of this Agreement. Except as specifically provided herein, this Agreement does not require that Consultant defend, indemnify, or hold harmless the County, its employees, officers, directors, or agents from any liability, damage, loss, claim, action, or proceeding. In the event that any action or proceeding is brought against County by reason of any such claim or demand, Consultant shall, upon written notice from County, resist and defend such action or proceeding by counsel satisfactory to County.

10.9.2 To the extent considered necessary by Contract Administrator and County Attorney, any sums due Consultant under this Agreement may be withheld by County until all of County's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved. Any amount withheld by County shall not be subject to payment of interest by County.

10.9.3 The provisions of this Section 10.9 shall survive the expiration or earlier termination of this Agreement.

10.10 REPRESENTATIVE OF COUNTY AND CONSULTANT

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

10.10.2 Consultant shall inform the Contract Administrator **and Program Manager** in writing of Consultant's representative to whom matters involving the conduct of the Project shall be addressed.

10.11 NO CONFLICTS

10.11.1 The employees and officers of Consultant, its subconsultants, and the subsidiaries of Consultant and its subconsultants shall not, during the term of this Agreement,

serve as an expert witness against County in any legal or administrative proceeding in which he or she or Consultant is not a party, unless compelled by court process. Further, Consultant agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of County or in connection with any such pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding.

- 10.11.2 Consultant, its subconsultants, and the subsidiaries, officers, and personnel of Consultant and its subconsultants shall not acquire any interest in any parcel of land or improvement thereon located within the Airport boundaries, as described in the Master Plan Update, including such additional property that may need to be acquired to implement the development described in the Master Plan Update.
- 10.11.3 Consultant, its subconsultants, and the subsidiaries, officers and personnel of Consultant and its subconsultants shall not perform consulting work or provide legal services that would in any way be in conflict with the Project or detrimental to the Project, for any municipality, developer, tenant or landowner developing or having property within the Airport boundaries, as described in the Master Plan Update, including such additional property that may need to be acquired to implement the development described in the Master Plan Update. At least ten (10) calendar days prior to undertaking any work for any of the listed entities, the Consultant shall provide the Contract Administrator with a written description of the contemplated work and the Contract Administrator shall promptly advise as to whether such work would be detrimental to the Project or in conflict therewith.
- 10.11.4 Consultant, its subconsultants, and the subsidiaries, officers, and personnel of Consultant and its subconsultants shall not have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with such party's loyal and conscientious exercise of judgment and care related to its performance under this Agreement.
- 10.11.5 In the event Consultant is permitted pursuant to this Agreement to utilize subconsultants to perform any services required by this Agreement, Consultant agrees to require such subconsultants, by written contract, to comply with the provisions of this section.

## 10.12 ALL PRIOR AGREEMENTS SUPERSEDED / AMENDMENTS

- 10.12.1 This document incorporates and includes and supersedes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and represents the final and complete understanding of

the parties. The parties agree that there is no commitment, agreement or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement whether oral or written.

10.12.2 No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless set forth in a written document prepared with the same or similar formality as this Agreement and executed by the parties hereto.

#### 10.13 NOTICES

Whenever either party desires to give notice unto the other, such notice must be in writing, sent by certified United States mail, postage prepaid, return receipt requested, or by overnight courier with delivery confirmation, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice:

##### FOR BROWARD COUNTY:

Director of Aviation  
Aviation Department  
100 Aviation Boulevard  
Fort Lauderdale, FL 33315

with a copy to:

[Project Manager or Contract Administrator]  
Aviation Department  
100 Aviation Boulevard  
Fort Lauderdale, FL 33315

FOR CONSULTANT:

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

Insert if applicable: FOR PROGRAM MANAGER:

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

10.14 TRUTH-IN-NEGOTIATION CERTIFICATE

Signature of this Agreement by Consultant shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which County determines the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract adjustments shall be made within one (1) year following the end of this Agreement.

10.15 INTERPRETATION

The language of this Agreement has been agreed to by both parties to express their mutual intent and no rule of strict construction shall be applied against either party hereto. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a Section or Article of this Agreement, such reference is to the Section or Article as a whole, including all of the subsections of such Section, unless the reference is made to a particular subsection or subparagraph of such Section or Article.

10.16 CONSULTANT'S STAFF

Consultant will provide the key staff identified on **Exhibit B-1** for the Project as long as said key staff are in Consultant's employment. Consultant's key staff shall not be changed without the prior written approval of the Contract Administrator as set forth below.

Prior to changing any key staff set forth on **Exhibit B-1**, Consultant shall provide Contract Administrator with such information as necessary to determine the suitability of proposed new key staff. The Contract Administrator will be reasonable in evaluating the qualifications of any proposed key staff.

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

10.17 DRUG-FREE WORKPLACE

It is a requirement of County that it enter into contracts only with firms that certify the establishment of a drug-free work place in accordance with Chapter 21.31(a) of the Broward County Procurement Code. Execution of this Agreement by Consultant shall serve as Consultant's required certification that it either has or that it will establish a drug-free work place in accordance with Chapter 21.31(a) of the Broward County Procurement Code and will continue to maintain same during the term of this Agreement.

10.18 CERTAIN ADDITIONAL PROVISIONS PERTAINING TO AIRPORT PROJECTS

Consultant agrees to abide by the provisions pertaining to Airport Projects set forth on **Attachment II**, attached hereto and made a part hereof.

10.19 PREVAILING WAGE REQUIREMENT

If construction work in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) is required of, or undertaken in connection with the Project or by Consultant as a result of this Agreement, Broward County Ordinance No. 83-72, as may be amended from time to time, shall be deemed to apply to such construction work. Consultant shall fully comply with the requirements of such ordinance and shall satisfy, comply with, and complete the requirements set forth in **Exhibit G** and **Exhibit H** and shall incorporate such requirements into all construction documents and bid packages for construction work that are prepared by Consultant pursuant to this Agreement.

10.20 INDEPENDENT CONTRACTOR; THIRD PARTY BENEFICIARIES; NO JOINT RELATIONSHIP

Consultant is an independent contractor under this Agreement. Services provided by Consultant shall be subject to the supervision of Consultant. In providing the services, Consultant or its agents shall not be acting and shall not be deemed as acting as officers, employees or agents of the County.

The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement. Neither Consultant nor County intend to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or a claim against either of them based upon this Agreement.

This Agreement shall not constitute or make the parties a partnership or joint venture or create any other joint relationship. County does not extend to Consultant or Consultant's agents any authority of any kind to bind County in any respect whatsoever.

#### 10.21 INCORPORATION BY REFERENCE

The truth and accuracy of each Whereas clause set forth above is acknowledged by the parties. The attached **Exhibit A through Exhibit J, and Attachments I, II, III, and IV** are incorporated into and made a part of this Agreement by this reference. In the event of conflict between the terms contained in this Agreement and the terms contained in any of the documents attached or incorporated herein, the terms of this Agreement shall control and shall be given full effect.

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#### 10.22 REPRESENTATION OF AUTHORITY

Each individual executing this Agreement on behalf of a party hereto does hereby represent that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party.

#### 10.23 COMPLIANCE WITH LAWS

Throughout the term of this Agreement, the Consultant shall keep fully informed of all federal, state, County and local laws, ordinances, codes, rules, and regulations, and all orders and decrees of bodies or tribunals having jurisdiction or authority which, in any manner, affect work authorized under the terms of this Agreement, and shall further take into account all known pending changes to the foregoing. The Consultant shall at all times observe and comply with all such laws, ordinances, codes, rules, regulations, orders, and decrees in performing its duties, responsibilities, and obligations related to this Agreement.

#### 10.24 AGREEMENT SEVERABLE; WAIVER OF BREACH AND MATERIALITY

10.24.1 In the event this Agreement or a portion thereof is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective, unless County or Consultant elects to terminate this Agreement. Any election to

terminate this Agreement based upon this provision shall be made within seven (7) calendar days after the finding by the court becomes final.

10.24.2 Failure by County to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

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

## 10.25 PUBLIC ART AND DESIGN

10.25.1 Consultant acknowledges that Broward County adopted Ordinance #95-20 establishing a Public Art and Design Program. The purpose of Ordinance #95-20 is to integrate art into capital projects and to integrate artists' design concepts into the overall Project design. Artist(s) are selected by Broward County through an independent process and artist(s) will be funded by the Public Art and Design Program administered by the Broward County Cultural Division at the direction of the Broward Cultural Council through its Public Art and Design Committee.

10.25.2 Consultant shall cooperate with the artist(s) and include the artist(s) in the preliminary design and design phases of the Project for the purpose of properly incorporating the artist's design(s) into the design of the Project. Consultant shall notify the artist(s), in writing, of all design meetings and shall provide the artist(s) with a schedule of milestone dates. Consultant may be requested to provide work space for the artist(s) during the preliminary design and design phases. The artist's design as properly incorporated into the design of the Project shall be permitted as part of the master site or facility plan.

10.25.3 Consultant's compensation pursuant to this Agreement includes the services to comply with the requirements set forth in this section whether or not the compensation is specifically designated or identified.

10.25.4 Consultant shall ensure that subconsultants, if any, will be made aware of Broward County's Public Art and Design Program and the possible requirement of working with artist(s).

10.25.5 In addition to the foregoing, **Consultant shall, prior to authorizing the incorporation of any of the artist(s)' artwork into the Project, obtain a waiver signed by the artist(s) from the Broward County Cultural Affairs Division,**

**which waiver provides that the artist(s) agrees to allow the artwork to be relocated, if necessary, in the future.**

10.26 JOINT PREPARATION

The parties acknowledge that they have sought and received whatever competent advice and counsel necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.

10.27 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of Articles 1 through 10 of this Agreement, the term, statement, requirement, or provision contained in **Articles 1 through 10** of this Agreement shall prevail and be given effect.

10.28 NO INTEREST

Unless required by the Broward County Prompt Payment Ordinance, any monies which are the subject of a dispute regarding this Agreement and which are not paid by County when claimed to be due shall not be subject to interest. All requirements inconsistent with this provision are hereby waived by Consultant.

10.29 JURISDICTION, APPLICABLE LAW, VENUE, WAIVER OF JURY TRIAL

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the state courts of the Seventeenth Judicial Circuit of Broward County, Florida. Venue for litigation arising out of this Agreement shall be in such state courts. To encourage prompt and equitable resolution of any litigation that may arise hereunder, each party hereby expressly waives any rights it may have to a trial by jury of any civil litigation related to this Agreement.

10.30 RE-USE OF PROJECT, END PRODUCT, OR DELIVERABLES

County may, at its option, re-use (in whole or in part) the resulting end-product or deliverables resulting from Consultant's professional services (including, but not limited

to, drawings, specifications, other documents, and services as described herein and in **Exhibit A**, Scope of Services); and Consultant agrees to such re-use in accordance with this provision.

If the Contract Administrator elects to re-use the services, drawings, specifications, and other documents, in whole or in part, prepared for this Project for other projects on other sites, Consultant will be paid a re-use fee to be negotiated between Consultant and County's Purchasing Negotiator, subject to approval by the proper County award authority.

Each re-use shall include all basic services and modifications to the drawings, specifications, and other documents normally required to adapt the design documents to a new site. This re-use may include preparation of reverse plans, changes to the program, provision for exceptional site conditions, preparation of documents for off-site improvements, provisions for revised solar orientation, provisions for revised vehicular and pedestrian access, and modifications to building elevations, ornament, or other aesthetic features. In all re-use assignments, the design documents shall be revised to comply with building codes and other jurisdictional requirements current at the time of re-use for the new site location.

The terms and conditions of this Agreement shall remain in force for each re-use project, unless otherwise agreed by the parties in writing.

**ADD IF APPLICABLE:**

10.31 LIVING WAGE REQUIREMENT

To the extent Consultant is a "covered employer" within the meaning of Broward County Ordinance No. 2002-45, as may be amended from time to time, Consultant agrees to and shall pay to all of its employees providing "covered services," as defined therein, a living wage as required by such ordinance, and Consultant shall fully comply with the requirements of such ordinance and shall satisfy, comply with, and complete all of the obligations set forth therein. Consultant shall be responsible for and shall ensure that all of its subcontractors that qualify as covered employers fully comply with the requirements of such ordinance and satisfy, comply with, and complete all of the obligations set forth therein.

10.32 MULTIPLE ORIGINALS

This Agreement may be fully executed in up to five (5) counterparts by all parties, each of which, bearing original signatures, shall be deemed to be an original.

**Remainder of This Page Left Intentionally Blank**

**AGREEMENT BETWEEN BROWARD COUNTY AND \_\_\_\_\_ FOR  
CONSULTANT SERVICES FOR \_\_\_\_\_**

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice Mayor, authorized to execute same by Board action on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and \_\_\_\_\_, signing by and through its \_\_\_\_\_ duly authorized to execute same.

FOR INDIVIDUAL:

CONSULTANT

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_  
By \_\_\_\_\_  
\_\_\_\_\_  
(Please Type Name)  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

FOR CORPORATION:

CONSULTANT

ATTEST:

\_\_\_\_\_  
(Please Type Name of Consultant/Firm)  
Secretary  
By \_\_\_\_\_  
\_\_\_\_\_  
(Please Type Name of Secretary) (President/Vice President)  
\_\_\_\_\_  
(Please Type Name of President/  
Vice-President)  
(CORPORATE SEAL)  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

**AGREEMENT BETWEEN BROWARD COUNTY AND \_\_\_\_\_ FOR  
CONSULTANT SERVICES FOR \_\_\_\_\_**

COUNTY

ATTEST:

BROWARD COUNTY, by and through  
its Board of County Commissioners

\_\_\_\_\_  
County Administrator, as Ex-Officio  
Clerk of the Board of County  
Commissioners of Broward County,  
Florida

By \_\_\_\_\_  
Mayor

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Insurance requirements  
approved by Broward County  
Risk Management Division

Approved as to form by  
Office of the County Attorney  
for Broward County, Florida  
JEFFREY J. NEWTON, County Attorney  
Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600  
Telecopier: (954) 357-7641

By \_\_\_\_\_

By \_\_\_\_\_  
(Name of Attorney for County)  
Assistant County Attorney

