



**AGREEMENT BETWEEN BROWARD COUNTY AND _____
 FOR CONTINUING PROFESSIONAL SERVICES FOR CONSTRUCTION ENGINEERING AND
 INSPECTION (CEI) AND DESIGN SERVICES FOR ROADWAY AND TRAFFIC PROJECTS
 (RFP # _____)**

This Agreement (“Agreement”) is made and entered by and between Broward County, a political subdivision of the State of Florida (“County”), and _____, a _____ corporation (“Consultant”) (collectively referred to as the “Parties”).

RECITALS

A. County issued a request for proposals (“RFP”) No. _____ for continuing professional services for Continuing Construction Engineering And Inspection (CEI) and Design Services for Roadway And Traffic Projects.

B. County has met the requirements of Section 287.055, Florida Statutes, the Consultants’ Competitive Negotiation Act, and has selected Consultant to perform the services hereunder.

C. Consultant is experienced in providing professional services set forth in Exhibit A, Scope of Services, for Construction Engineering and Inspection (CEI), Design, Plan Preparation, Studies and Related Services for Roadway and Traffic Projects.

D. County desires to engage Consultant to provide continuing professional services for Construction Engineering and Inspection (CEI), Design, Plan Preparation, Studies and Related Services for Roadway and Traffic Projects.

E. Negotiations pertaining to these services were undertaken between County and Consultant, and this Agreement incorporates the results of such negotiations.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1. DEFINITIONS

1.1 **Board** 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.

1.2 **Charter County and Regional Transportation System Sales Surtax Projects or Surtax Projects** means all projects approved by the Board and authorized to expend Charter County and Regional Transportation System Sales Surtax funding in accordance with Chapter 31½, Article V, of the Broward County Code of Ordinances.

1.3 **Contract Administrator** means the Director of Highway Construction and Engineering Division, the Assistant Director of Highway Construction and Engineering Division, or such other

person designated by same in writing. The Contract Administrator is the representative of County concerning a project.

1.4 **Contractor** means the person, firm, corporation, or other entity who enters into an agreement with County to perform the construction work for a project.

1.5 **County Administrator** means the administrative head of County appointed by the Board.

1.6 **County Attorney** means the chief legal counsel for County appointed by the Board.

1.7 **County Business Enterprise** or **CBE** means a small business certified as meeting the requirements of the Section 1-81, Broward County Code of Ordinances.

1.8 **Direct Expense Cost** means field office expenses reimbursed in accordance with the Consultant or Subconsultants most recent direct expense rate determined in accordance with Federal Acquisition Regulation (“FAR”) guidelines and is audited by an independent Certified Public Accountant. For the purposes of this Agreement, the rates must be audited for fiscal periods of Consultant within eighteen (18) months preceding the execution date of this Agreement. The Direct Expense Cost is calculated by multiplying the number of direct project labor hours worked by an employee assigned to field related tasks within the invoicing period, by the direct expense rate noted in Exhibit B-2, the product of which is then multiplied by the employee’s actual hourly rate, or by the negotiated maximum hourly rate established for the employee’s position title, whichever is lower.

1.9 **Notice to Proceed** means a written authorization to proceed with a project, phase, or task thereof, issued by the Contract Administrator.

1.10 **Purchasing Director** means County’s Director of Purchasing as appointed by the Broward County Administrator.

1.11 **Services** consists of the work and phases set forth in Exhibit A, Scope of Services including all professional engineering, landscape architecture, registered surveying and mapping, and other professional design services, as described in each Work Authorization applicable to a project.

1.12 **Subconsultant** means an entity or individual providing services to County through Consultant for all or any portion of the work under this Agreement. The term “Subconsultant” shall include all subcontractors.

1.13 **Work Authorization** means a document issued by County under this Agreement authorizing Consultant to perform specified professional services and detailing the terms of payment and scope of work for the services authorized.

ARTICLE 2. EXHIBITS

The following exhibits are attached hereto and incorporated into this Agreement:

Exhibit A	Scope of Services
Exhibit B	Payment Schedules
Exhibit C	Minimum Insurance Coverages
Exhibit D	Work Authorization Forms
Exhibit E	CBE Subconsultant Schedule and Letters of Intent
Exhibit F	Schedule of Subconsultants

ARTICLE 3. SCOPE OF SERVICES

3.1 Consultant shall provide all Services as set forth in each Work Authorization, including all necessary, incidental, and related activities required for full and complete performance of this Agreement.

3.2 This Agreement and Work Authorizations may not delineate every detail and minor work task required to be performed by Consultant to complete a project. If Consultant determines that work should be performed to complete a project and, in Consultant’s opinion, that work is outside the level of effort originally anticipated, whether or not the Scope of Services identifies the work items, Consultant shall notify the Contract Administrator in writing in a timely manner before proceeding with the work. If Consultant proceeds with such work without notifying the Contract Administrator, the work shall be deemed to be within the original level of effort, whether or not specifically addressed in the Scope of Services. Notice to the Contract Administrator does not constitute authorization or approval by County to Consultant to perform the work. Any such work that would entail additional compensation to Consultant by County, or additional time for performance, shall require an amendment to this Agreement pursuant to Section 7.1 or a Work Authorization pursuant to Section 7.2. Unless there is an executed amendment or Work Authorization or a dispute as set forth in Section 7.3, any work performed by Consultant outside the originally anticipated level of effort without prior written County approval shall be at no additional cost to County.

3.3 Exhibit A identifies the initial services related to this Agreement. Additional negotiations shall be required for Work Authorizations and other phases or additional services issued under this Agreement. County may select the type, amount, and timing of services under a Work Authorization executed by Consultant and County in accordance with the provisions of the Broward County Procurement Code, provided that no such selection, when combined with those goods or services required under this Agreement, would result in a payment obligation exceeding the applicable maximum amount stated in Article 6. County and Consultant may negotiate additional services, compensation, time of performance, and other related matters, including for other phases of a project; notwithstanding the foregoing, County shall have the right to terminate negotiations at any time at no cost to County and procure services for other project phases from any other source.

3.4 County shall assist Consultant by placing at Consultant's disposal all information County has available pertinent to a project, including previous reports and any other data relative to a project. 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. County shall review any itemized deliverables and documents required to be submitted by Consultant and respond in writing with any comments within the time set forth in the applicable Work Authorization. County shall give prompt written notice to Consultant whenever County observes or otherwise becomes aware of any material defect in the work of Contractor or Subconsultants, or other material development that affects the scope or timing of Consultant's Services.

ARTICLE 4. WORK AUTHORIZATIONS

4.1 All work to be performed by Consultant under this Agreement must first be authorized in writing by a Work Authorization, in accordance with the requirements of this Article.

4.1.1 Before issuance of any Work Authorization, Consultant shall provide Contract Administrator with a written estimate for all charges expected to be incurred for the tasks associated with the Work Authorization. Each Work Authorization (and amendments thereto) may be executed on behalf of County as follows: (a) the Contract Administrator may execute any individual Work Authorization for which the cost to County is \$50,000 or less; (b) the Purchasing Director may execute any individual Work Authorization for which the cost to County is within the Purchasing Director's delegated authority (if required under the Procurement Code, any such Work Authorization shall also be executed by the County Administrator); and (c) any individual Work Authorization above the Purchasing Director's delegated authority must be approved by the Board. The sum of all Work Authorizations issued under this Agreement in any annual period must not exceed the applicable annual maximum amount stated in Section 6.1.

4.1.2 After complete execution of a Work Authorization under this Agreement, Contract Administrator will issue a Notice to Proceed for that authorized work. Consultant must not commence such work until receipt of a Notice to Proceed.

4.1.3 Any modifications to a Work Authorization will require an amended Work Authorization approved by Contract Administrator, County's Purchasing Director, or Board in accordance with the aggregate dollar limitations set forth above. Consultant's compensation will not exceed the amount approved in the Work Authorization unless such additional amount received the prior written approval from the appropriate authority.

4.1.4 All Work Authorizations must be delineated in the attached Exhibits D-1, D-2, or D-3, as applicable, or in a form substantially similar, and must contain, at a minimum, the following information and requirements:

4.1.4.1 A description of the work to be undertaken (which description must specify in detail the individual tasks and other activities to be performed by

Consultant), a reference to this Agreement under which the work to be undertaken is authorized, and a statement of the method of compensation.

4.1.4.2 A budget establishing the amount of compensation, which amount will constitute a guaranteed maximum and must not be exceeded unless prior written approval of County is obtained. If County does not approve an increase in the guaranteed maximum amount, and the need for such action is not the fault of Consultant, the authorization will be terminated, and Consultant will be paid in full for all work completed to that point, but said amount will in no case exceed the guaranteed maximum amount. The information contained in the budget shall be in sufficient detail to identify the various elements of costs.

4.1.4.3 A time established for completion of the Services undertaken by Consultant or for the submission to County of documents, reports, and other information under this Agreement.

4.1.4.4 Any other additional instructions or provision relating to the work authorized under this Agreement.

4.1.4.5 Work Authorizations must be dated, serially numbered, and signed.

ARTICLE 5. TIME FOR PERFORMANCE; CONTRACTOR DAMAGES; LIQUIDATED DAMAGES

5.1 The initial term of this Agreement is for a period of three (3) years starting from the Effective Date and ending at 11:59 p.m. on the day preceding the third anniversary of that date (the "Initial Term"). Beyond the Initial Term, County shall have the option, through County's Purchasing Director, to renew this Agreement, under the same terms and conditions, for up to two (2) consecutive one (1) year terms; County's Purchasing Director may exercise this renewal option by sending notice of renewal to Consultant at least thirty (30) days prior to the expiration of the then-current term. Any renewal by County's Purchasing Director shall not result in a substantive change to the Agreement's terms. Consultant shall perform the Services within the time periods specified in the Work Authorization commencing from the date of the applicable Notice to Proceed.

5.2 Consultant must receive a Notice to Proceed from the Contract Administrator prior to commencement of Services or any phase thereof under this Agreement and any operative Work Authorization. Prior to granting approval for Consultant to proceed to any phase, the Contract Administrator may, at the Contract Administrator's sole option, require Consultant to submit the itemized deliverables and documents identified in the Work Authorization for the Contract Administrator's review.

5.3 If the Contract Administrator determines that Consultant is unable to complete Services under any Work Authorization because of delays resulting from untimely review by County or other governmental agencies having jurisdiction over a project and such delays are not the fault of Consultant, or because of delays 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 Contract Administrator in writing whenever a delay in approval by a governmental agency is anticipated or experienced, and whenever a delay has been caused by factors outside of Consultant's control, and to inform the Contract Administrator of all facts and details related to the delay. Consultant must provide such written notice to the Contract Administrator within three (3) business days after the occurrence of the event causing the delay.

5.4 For any construction phase services authorized by a Work Authorization, if (a) Contractor fails to substantially complete a project on or before the substantial completion date specified in its agreement with County, or (b) if 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, then Consultant shall be compensated in accordance with Article 6 for all Services rendered by Consultant beyond the substantial completion date.

5.5 If Contractor fails to substantially complete a 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 Consultant, then Consultant shall pay to County its proportional share of any claim for damages to Contractor arising out of the delay. The provisions for the computation of delay costs, damages, or any other amounts, whether direct or indirect, in the agreement between the Contractor and County are incorporated herein. This section shall not affect the indemnification rights or obligations of either party otherwise set forth in this Agreement.

5.6 If Consultant is performing Services under a Work Authorization scheduled to be completed after the expiration of this Agreement, Consultant agrees to continue those Services until completion under the same terms and conditions as stated in the existing Work Authorization.

ARTICLE 6. COMPENSATION AND METHOD OF PAYMENT

6.1 Amount and Method of Compensation. The total annual cumulative amount authorized for all non-Surtax Project Work Authorizations issued under this Agreement shall not exceed One Million Dollars (\$1,000,000). When Surtax Project funding is also utilized for Work Authorizations, the total amount for all Work Authorizations may be increased, but shall not exceed Three Million Dollars (\$3,000,000). The method of compensation to be paid under each individual Work Authorization will be under one or a combination of the following methods as specified in the operative Work Authorization and based upon the Salary Costs described in Exhibit B.

6.1.1 Maximum Amount Not-To-Exceed Compensation. For Services identified in the Work Authorization as payable on a "Maximum Amount Not-To-Exceed" basis, compensation to Consultant shall be based upon the Salary Costs as described in Exhibit B up to a maximum not-to-exceed amount specified in the Work Authorization.

6.1.2 Lump Sum Compensation. For Services identified in the Work Authorization as payable on a "Lump Sum" basis, compensation to Consultant shall not be more than the

total lump sum specified in the Work Authorization.

6.1.3 Optional Services. County may procure Optional Services up to a maximum not-to-exceed amount specified in the Work Authorization and in accordance with Article 7. Unused amounts of these Optional Services monies shall be retained by County.

6.1.4 Reimbursable Expenses. County will reimburse authorized Reimbursable Expenses as defined in Section 6.3 up to the maximum not-to-exceed amount specified in the Work Authorization. Unused amounts of those monies shall be retained by County.

6.1.5 Salary Costs. The maximum billing rates (“Maximum Billing Rates”) payable by County for each of Consultant’s employee categories are shown on Exhibit B and are further described in Section 6.2.

6.1.6 Subconsultant Fees. Consultant shall bill County for Subconsultant fees using the employee categories for Salary Costs on Exhibit B as defined in Section 6.2 and Reimbursable Expenses defined in Section 6.3. Consultant shall bill Subconsultant fees with no mark-up and within any applicable maximum not to exceed amount.

6.1.7 Phased Amounts. Payments for Services shall be paid out in accordance with the project’s phasing specified in the Work Authorization and shall not exceed the amount set forth in the Work Authorization. The invoiced fee amount for each phase will be subject to retainage as set forth in Section 6.5.

6.2 Salary Costs. The term Salary Costs as used herein means the hourly rate actually paid to all personnel engaged directly on tasks under a Work Authorization issued under this Agreement, as adjusted by an overall multiplier that consists of the following: 1) a fringe benefits factor; 2) an overhead factor; and 3) an operating margin. Said Salary Costs are to be used only for time directly attributable to those tasks. The fringe benefit and overhead rates shall be Consultant’s most recent and actual rates determined in accordance with Federal Acquisition Regulation (“FAR”) guidelines and audited by an independent Certified Public Accountant. For the purposes of this Agreement, the rates must be audited for fiscal periods of Consultant within eighteen (18) months preceding the execution date of this Agreement. These rates shall remain in effect for the term of this Agreement except as provided for in this Section 6.2 inclusive of the subsections below.

6.2.1 Consultant shall require all of its Subconsultants to comply with the requirements of Section 6.2.

6.2.2 Salary Costs for Consultant and Subconsultants as shown in Exhibit B are the Maximum Billing Rates, which 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 Consultant or any Subconsultant, Consultant shall reimburse County based upon the actual costs determined by the audit. County may withhold the amount Consultant is required to reimburse County from any payment due Consultant.

6.2.3 Unless otherwise noted, the Salary Costs stated above are based upon Consultant's "home office" rates. Should it become appropriate during the course of this Agreement that a "field office" rate be applied, then it is incumbent upon Consultant to submit a supplemental Exhibit B, labeled as "Exhibit B-1," reflective of such rates for approval by Contract Administrator and, upon such County approval, invoice County accordingly. All CEI services to be provided by Consultant pursuant to a Work Authorization shall be compensated at a field office rate.

6.2.4 The total hours payable by County for any "exempt" or "nonexempt" personnel shall not exceed forty (40) hours per employee in any week. If the work requires Consultant's or Subconsultant's personnel to work in excess of forty (40) hours per week, any additional hours must be authorized in advance, in writing, by the Contract Administrator. If approved, Salary Costs for additional hours of service provided by nonexempt (hourly) employees or exempt (salaried) employees shall be invoiced at no more than one and one-half of the employee's hourly rate and in a manner consistent with Consultant's or Subconsultant's applicable certified FAR audit and all other provisions of Section 6.2. If a "Safe Harbor" rate is elected for use by Consultant or Subconsultant, then the additional hours are payable at no more than the employee's regular rate.

6.2.5 Consultant and any of its Subconsultants may alternatively use a "Safe Harbor" combined fringe benefit and overhead rate of 110% in lieu of providing fringe benefit and overhead cost factors certified by an independent Certified Public Accountant in accordance with the FAR guidelines. In the event the Consultant or any of its Subconsultants are unable to provide either a home or field office overhead rate in their respective certified FAR audits, then Consultant and any of its Subconsultants must use the Safe Harbor rate. The Safe Harbor rate, once elected, shall remain in place for the entire term of this Agreement and shall not be subject to audit under this Agreement. All other provisions of Section 6.2 remain in place.

6.2.6 The maximum hourly rates shown in Exhibit B are subject to change annually beginning on the first anniversary of the Effective Date, and for each year of this Agreement thereafter. Consultant may submit a written request for change of maximum hourly rates to Contract Administrator thirty (30) days in advance of each annual anniversary date and such request will be subject to approval by Contract Administrator. Any increase in maximum hourly rates will be limited to the lesser of the change in cost of living or three percent (3%). The increase in the cost of living shall be based on the Consumer Price Index (CPI) and shall be calculated as follows: the difference of the CPI for the current period, less the CPI for the previous period, divided by the CPI for the previous period, multiplied by 100. The CPI for the current period means the most recently published monthly index preceding the then-current anniversary date of this Agreement. The CPI for the previous period means the CPI for the same month of the prior year. All CPI indices must be obtained from the U.S. Department of Labor Table for Consumer Price Index – All Urban Consumers (Series ID CUURA320SA0) for the areas of Miami- Fort Lauderdale, FL (All Items), with a based period of 1982-84=100. If there is no change in the CPI, there shall not be an increase in the rate. Any changes to the hourly

rates must be set forth on an amended Exhibit B executed by Contract Administrator and the Consultant.

6.3 Reimbursable Expenses. For reimbursement of any travel costs, travel-related expenses, or other direct non-salary expenses directly attributable to any Work Authorization permitted under this Agreement, Consultant agrees to adhere to Section 112.061, Florida Statutes, except to the extent otherwise stated herein. County shall not be liable for any such expenses that have not been approved in advance and in writing in a Work Authorization. Reimbursable Subconsultant expenses must also comply with the requirements of this section.

6.3.1 For reimbursement of any Direct Expense Cost, Consultant shall use the applicable direct expense rate identified in Exhibit B-2. The direct expense rate shall remain in place for the entire term of this Agreement and any applicable Work Authorization, which will bar the recovery of a reimbursable expense that the direct expense rate already covers. If any Subconsultants elect to use the direct expense rate, it shall be in accordance with the foregoing. If Consultant or any Subconsultants elect or are required to use the Safe Harbor rate pursuant to Section 6.2.5, then such entities cannot bill pursuant to the direct expense rate. However, under the Safe Harbor rate, Consultant or any Subconsultants may negotiate direct expenses as reimbursable expenses in accordance with Section 6.3 of this Agreement and Section 112.061, Florida Statutes. Moreover, Consultant or any of its Subconsultants cannot bill a home office expense utilizing a home office direct expense rate as a Direct Expense Cost. County shall not be liable for any Direct Expense Cost that has not been approved in advance and in writing in a Work Authorization.

6.4 Method of Billing.

6.4.1 For Maximum Amount Not-To-Exceed Compensation. Consultant shall submit billings that are identified by the specific project number on a monthly basis in a timely manner for all Salary Costs and Reimbursable Expenses attributable to the Work Authorization. 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 Reimbursable Expenses by category and identify 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 Reimbursable Expenses, a copy of said approval shall accompany the billing for such reimbursable. Billings shall also indicate the cumulative amount of CBE participation to date. The statement shall show a summary of Salary Costs and Reimbursable Expenses with accrual of the total and credits for portions paid previously. External Reimbursable Expenses and Subconsultant fees must be documented by copies of invoices or receipts that describe the nature of the expenses and contain a project number or other identifier that clearly indicates the expense is identifiable to the Services authorized by the operative Work Authorization. Subsequent addition of the identifier to the invoice or receipt by 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. When requested, Consultant shall provide backup for

past and current invoices that records hours and Salary Costs by employee category, Reimbursable Expenses by category, and Subconsultant fees on a task basis, so that total hours and costs by task may be determined.

6.4.2 For Lump Sum Compensation. Consultant shall submit billings that 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. Billings shall also indicate the cumulative amount of CBE participation to date. The statement shall show a summary of fees with accrual of the total and credits for portions paid previously. When requested, Consultant shall provide backup for past and current invoices that record hours, salary costs, and expense costs on a task basis, so that total hours and costs by task may be determined.

6.5 Payment Procedure.

6.5.1 County shall pay Consultant within thirty (30) days after receipt of Consultant's proper invoice, as defined by County's Prompt Payment Ordinance, minus any applicable retainage or other deductions permitted by this Agreement.

6.5.2 Unless otherwise provided in this section, retainage in the amount of ten percent (10%) of each invoice shall be retained by County until satisfactory completion of the applicable phase. When the Services to be performed on all phases under a Work Authorization are fifty percent (50%) complete, upon written request by Consultant and written approval by the Contract Administrator that the Services are progressing in a satisfactory manner, the Contract Administrator, in the Contract Administrator's sole discretion, may authorize the reduction of retainage to five percent (5%) of each invoice for subsequent payments. No amount shall be withheld from payments for Reimbursable Expenses or for Services performed during the construction phase, if applicable.

6.5.3 Upon Consultant's completion of each phase to the satisfaction of the Contract Administrator, County shall remit to Consultant any amounts withheld as retainage for that phase. Final payment under each Work Authorization must be approved by the Purchasing Director.

6.5.4 Payment will be made to Consultant at the following address:
_____.

6.6 Fiscal Year. The continuation of this Agreement beyond the end of any County fiscal year (October 1 through September 30) is subject to both the appropriation and the availability of transportation surtax funds in accordance with Chapter 129, Florida Statutes.

6.7 Consultant shall pay Subconsultants and suppliers providing Services under any Work Authorization issued in accordance with this Agreement within fifteen (15) days following receipt of payment from County for such subcontracted work or supplies. If Consultant withholds an amount as retainage from a Subconsultant or supplier, Consultant shall release such retainage and pay same within fifteen (15) days following receipt of payment of retained amounts from

County. The Contract Administrator may, at its option, increase allowable retainage or withhold progress payments unless and until Consultant demonstrates timely payments of sums due to all Subconsultants and suppliers. Consultant shall include requirements substantially similar to those set forth in this section in its contracts with Subconsultants and suppliers.

[DELETE IF NOT APPLICABLE]

6.8 Foreign Entity Tax Withholding. Amounts due to certain foreign persons or entities may be subject to backup withholding taxes under federal law. If Consultant is a foreign person or entity that is required to complete Internal Revenue Service (“IRS”) Form W-8ECI, Consultant shall provide County a copy of Consultant’s current Form W-8ECI prior to issuance of any invoice or payment under this Agreement. If Consultant fails to timely provide a completed, current Form W-8ECI, County will withhold all backup withholding taxes from the amounts due Consultant, remit such sums to the IRS, and pay Consultant only the remainder. County makes no representation regarding the tax treatment of amounts due to Consultant, and Consultant releases and holds County harmless from any claims or damages in any way relating to or arising from any tax withholding by County pursuant to this section.

**ARTICLE 7. OPTIONAL AND ADDITIONAL SERVICES;
CHANGES IN SCOPE OF SERVICES**

7.1 County or Consultant may request changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under an operative Work Authorization. Unless otherwise expressly permitted herein, 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, with the same formality and of equal dignity herewith.

7.2 Consultant may, in Contract Administrator's sole discretion, be authorized to perform Optional Services as described in Exhibit A, Scope of Services, and up to the maximum fee amount established in the operative Work Authorization for those Optional Services. Any Optional Services to be performed by Consultant under this Agreement must first be authorized by Contract Administrator in each Work Authorization and in accordance with Article 4 and must not exceed the cumulative amount authorized in the Work Authorization for those Optional Services. A Work Authorization for Optional Services shall specify the method of compensation applicable to that Work Authorization and the required completion date for those Optional Services.

7.3 If a dispute between the Contract Administrator and Consultant arises over whether any work requested by County is within the scope of contracted Services and such dispute cannot be resolved by the Contract Administrator and Consultant, such dispute shall be promptly presented to County Administrator or the County Administrator’s designee for resolution, whose decision shall be in writing and shall be final and binding on the Parties. During the pendency of any dispute, Consultant shall promptly perform the disputed work.

ARTICLE 8. REPRESENTATIONS AND WARRANTIES

8.1 Representation of Authority. Consultant represents and warrants that this Agreement constitutes the legal, valid, binding, and enforceable obligation of Consultant, and that neither the execution nor performance of this Agreement constitutes a breach of any agreement that Consultant has with any third party or violates any law, rule, regulation, or duty arising in law or equity applicable to Consultant. Consultant further represents and warrants that execution of this Agreement is within Consultant's legal powers, and each individual executing this Agreement on behalf of Consultant is duly authorized by all necessary and appropriate action to do so on behalf of Consultant and does so with full legal authority.

8.2 Solicitation Representations. Consultant represents and warrants that all statements and representations made in Consultant's proposal, bid, or other supporting documents submitted to County in connection with the solicitation, negotiation, or award of this Agreement, including during the procurement or evaluation process, were true and correct when made and are true and correct as of the date Consultant executes this Agreement, unless otherwise expressly disclosed in writing by Consultant.

8.3 Contingency Fee. Consultant represents that it has not paid or agreed to pay any person or entity, 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. If this Agreement is subject to Section 287.055, Florida Statutes, the Parties agree and stipulate that the statutory language stated in Section 287.055(6)(a) is deemed included and fully incorporated herein.

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

8.5 Public Entity Crime Act. Consultant represents that it is familiar with the requirements and prohibitions under the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that its entry into this Agreement will not violate that Act. Consultant further represents that there has been no determination that it committed a "public entity crime" as defined by Section 287.133, Florida Statutes, 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.

8.6 Discriminatory Vendor and Scrutinized Companies Lists. Consultant represents that it has not been placed on the discriminatory vendor list as provided in Section 287.134, Florida Statutes. Consultant further represents that it is not ineligible to contract with County on any of the grounds stated in Section 287.135, Florida Statutes.

8.7 Verification of Employment Eligibility. Consultant represents that Consultant and each Subconsultant has registered with and uses the E-Verify system maintained by the United States Department of Homeland Security to verify the work authorization status of all newly hired employees in compliance with the requirements of Section 448.095, Florida Statutes, and that entry into this Agreement will not violate that statute. If Consultant violates this section, County may immediately terminate this Agreement for cause and Consultant shall be liable for all costs incurred by County due to the termination.

8.8 Warranty of Performance. Consultant represents and warrants that it possesses the knowledge, skill, experience, and financial capability required to perform and provide all required and optional Services under this Agreement, and that each person and entity that will provide Services under this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and is sufficiently experienced and skilled in the area(s) for which such person or entity will render Services. Consultant represents and warrants that the Services under this Agreement shall be performed in a skillful and respectful manner, and that the quality of all such services shall equal or exceed prevailing industry standards for the provision of such services.

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

8.10 Breach of Representations. In entering into this Agreement, Consultant acknowledges that County is materially relying on the representations and warranties of Consultant stated in this article. County shall be entitled to recover any damages it incurs to the extent any such representation or warranty is untrue. In addition, if any such representation or warranty is false, County shall have the right, at its sole discretion, to terminate this Agreement without any further liability to Consultant, to deduct from the compensation due Consultant under this Agreement the full amount of any value paid in violation of a representation or warranty, or to recover all sums paid to Consultant under this Agreement. Furthermore, a false representation may result in debarment from County's competitive procurement activities.

ARTICLE 9. TERMINATION

9.1 Termination. This Agreement or any Work Authorization issued under this Agreement may be terminated for cause by the aggrieved party if the party in breach has not corrected the breach within ten (10) days after receipt of written notice from the aggrieved party identifying the breach. This Agreement may also be terminated for convenience by the Board. Termination for convenience by the Board shall be effective on the termination date stated in written notice provided by County, which termination date shall be not less than thirty (30) days after the date of such written notice. If this Agreement or any Work Authorization was approved by Board action, termination for cause by County of the Agreement or Work Authorization, as applicable, must be by action of the Board or the County Administrator; in all other instances termination

for cause may be effected by the County Administrator, the County representative expressly authorized under this Agreement, or the County representative (including any successor) who executed the Agreement or the Work Authorization, as applicable, on behalf of County. This Agreement may also be terminated by the County Administrator upon such notice as the County Administrator deems appropriate under the circumstances if the County Administrator determines that termination is necessary to protect the public health, safety, or welfare. If County erroneously, improperly, or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience and shall be effective thirty (30) days after such notice of termination for cause is provided.

9.2 This Agreement or any Work Authorization issued under this Agreement, may be terminated for cause by County for reasons including, but not limited to, any of the following:

9.2.1 Consultant's failure to suitably perform the work, failure to continuously perform the Services in a manner calculated to meet or accomplish the objectives in this Agreement or Work Authorization, or repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices;

9.2.2 If Consultant is a "scrutinized company" pursuant to Section 215.473, Florida Statutes, if Consultant is placed on a "discriminatory vendor list" pursuant to Section 287.134, Florida Statutes, or if Consultant provides a false certification submitted pursuant to Section 287.135, Florida Statutes;

9.2.3 By the Contract Administrator or the Director of Office of Economic and Small Business Development ("OESBD") for any fraud, misrepresentation, or material misstatement by Consultant in the award or performance of this Agreement or that otherwise violates any applicable requirement of Section 1-81, Broward County Code of Ordinances; or

9.2.4 By the Director of the OESBD upon the disqualification of Consultant as a CBE if Consultant's status as a CBE was a factor in the award of this Agreement and such status was misrepresented by Consultant, or upon the disqualification of one or more of Consultant's CBE participants by County's Director of the OESBD if any such participant's status as a CBE firm was a factor in the award of this Agreement and such status was misrepresented by Consultant during the procurement or the performance of this Agreement.

9.3 Notice of termination shall be provided in accordance with the "Notices" section of this Agreement except that notice of termination by the County Administrator to protect the public health, safety, or welfare may be oral notice that shall be promptly confirmed in writing.

9.4 If this Agreement or any Work Authorization issued under this Agreement is terminated for convenience, Consultant shall be paid for any Services properly performed under this Agreement or operative Work Authorization through the termination date specified in the written notice of termination, subject to any right of County to retain any sums otherwise due and payable. Consultant acknowledges and agrees that it has received good, valuable, and

sufficient consideration from County, the receipt and adequacy of which are acknowledged by Consultant, for County's right to terminate this Agreement for convenience.

9.5 In addition to any right of termination stated in this Agreement, County shall be entitled to seek any and all available remedies, whether stated in this Agreement or otherwise available at law or in equity.

ARTICLE 10. INSURANCE

10.1 For the duration of the Agreement, Consultant shall, at its sole expense, maintain the minimum insurance coverages stated in Exhibit C in accordance with the terms and conditions of this article. Consultant shall maintain insurance coverage against claims relating to any act or omission by Consultant, its agents, representatives, employees, or Subconsultants in connection with this Agreement. County reserves the right at any time to review and adjust the limits and types of coverage required under this article.

10.2 Consultant shall ensure that "Broward County" is listed and endorsed as an additional insured as stated in Exhibit C on all policies required under this article.

10.3 On or before the date this Agreement is fully executed or at least fifteen (15) days prior to commencement of Services, Consultant shall provide County with a copy of all Certificates of Insurance or other documentation sufficient to demonstrate the insurance coverage required in this article. If and to the extent requested by County, Consultant shall provide complete, certified copies of all required insurance policies and all required endorsements within thirty (30) days after County's request.

10.4 Consultant shall ensure that all insurance coverages required by this article shall remain in full force and effect for the duration of this Agreement and until all performance required by Consultant has been completed, as determined by Contract Administrator. Consultant or its insurer shall provide notice to County of any cancellation or modification of any required policy at least thirty (30) days prior to the effective date of cancellation or modification, and at least ten (10) days prior to the effective date of any cancellation due to nonpayment, and shall concurrently provide County with a copy of its updated Certificates of Insurance evidencing continuation of the required coverage(s). Consultant shall ensure that there is no lapse of coverage at any time during the time period for which coverage is required by this article.

10.5 Consultant shall ensure that all required insurance policies are issued by insurers: (1) assigned an A. M. Best rating of at least "A-" with a Financial Size Category of at least Class VII; (2) authorized to transact insurance in the State of Florida; or (3) a qualified eligible surplus lines insurer pursuant to Section 626.917 or 626.918, Florida Statutes, with approval by County's Risk Management Division.

10.6 If Consultant maintains broader coverage or higher limits than the minimum insurance requirements stated in Exhibit C, County shall be entitled to any such broader coverage and higher limits maintained by Consultant. All required insurance coverages under this article shall provide primary coverage and shall not require contribution from any County insurance, self-

insurance or otherwise, which shall be in excess of and shall not contribute to the insurance required and provided by Consultant.

10.7 Consultant shall declare in writing any self-insured retentions or deductibles over the limit(s) prescribed in Exhibit C and submit to County for approval at least fifteen (15) days prior to the date this Agreement is fully executed or commencement of Services. Consultant shall be solely responsible for and shall pay any deductible or self-insured retention applicable to any claim against County. County may, at any time, require Consultant to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. Consultant agrees that any deductible or self-insured retention may be satisfied by either the named insured or County, if so elected by County, and Consultant agrees to obtain same in endorsements to the required policies.

10.8 Unless prohibited by the applicable policy, Consultant waives any right to subrogation that any of Consultant's insurer may acquire against County, and agrees to obtain same in an endorsement of Consultant's insurance policies.

10.9 Consultant shall require that each Subconsultant maintains insurance coverage that adequately covers the Services provided by that Subconsultant on substantially the same insurance terms and conditions required of Consultant under this article. Consultant shall ensure that all such Subconsultants comply with these requirements and that "Broward County" is named as an additional insured under the Subconsultants' applicable insurance policies.

10.10 If Consultant or any Subconsultant fails to maintain the insurance required by this Agreement, County may pay any costs of premiums necessary to maintain the required coverage and deduct such costs from any payment otherwise due to Consultant. Consultant shall not permit any Subconsultant to provide Services under this Agreement unless and until the requirements of this article are satisfied. If requested by County, Consultant shall provide, within one (1) business day, evidence of each Subconsultant's compliance with this section.

10.11 If any of the policies required under this article provide claims-made coverage: (1) any retroactive date must be prior to the date this Agreement is fully executed; (2) the required coverage must be maintained after termination or expiration of the Agreement for at least the duration stated in Exhibit C, and (3) if coverage is canceled or nonrenewed and is not replaced with another claims-made policy form with a retroactive date prior to the date this Agreement is fully executed, Consultant must obtain and maintain "extended reporting" coverage that applies after termination or expiration of the Agreement for at least the duration stated in Exhibit C.

ARTICLE 11. EQUAL EMPLOYMENT OPPORTUNITY AND CBE COMPLIANCE

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

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

11.3 Consultant will meet the required CBE goal by utilizing the CBE firms listed in Exhibit E (or a CBE firm substituted for a listed firm, if permitted) for ____ percent (___%) of total Services under this Agreement (the "Commitment").

11.4 In performing the Services, Consultant shall utilize the CBE firms listed in Exhibit E for the scope of work and the percentage of work amounts identified on each Letter of Intent. Promptly upon execution of this Agreement by County, Consultant shall enter into formal contracts with the CBE firms listed in Exhibit E and, upon request, shall provide copies of the contracts to the Contract Administrator and OESBD.

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

11.6 The Parties stipulate that if Consultant fails to meet the Commitment, the damages to County arising from such failure are not readily ascertainable at the time of contracting. If Consultant fails to meet the Commitment and County determines, in the sole discretion of the OESBD Program Director, that Consultant failed to make Good Faith Efforts (as defined in Section 1-81, Broward County Code of Ordinances) to meet the Commitment, Consultant shall pay County liquidated damages in an amount equal to fifty percent (50%) of the actual dollar amount by which Consultant failed to achieve the Commitment, up to a maximum amount of ten percent (10%) of the total contract amount, excluding costs and reimbursable expenses. An example of this calculation is stated in Section 1-81.7, Broward County Code of Ordinances. As elected by County, such liquidated damages amount shall be either credited against any amounts due from County, or must be paid to County within thirty (30) days after written demand. These liquidated damages shall be County's sole contractual remedy for Consultant's breach of the Commitment, but shall not affect the availability of administrative remedies under Section 1-81. Any failure to meet the Commitment attributable solely to force majeure, changes to the scope of work by County, or inability to substitute a CBE Subconsultant where the OESBD Program

Director has determined that such inability is due to no fault of Consultant, shall not be deemed a failure by Consultant to meet the Commitment.

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

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

11.9 Consultant shall provide written monthly reports to the Contract Administrator attesting to Consultant's compliance with the CBE goal stated in this article. In addition, Consultant shall allow County to engage in onsite reviews to monitor Consultant's progress in achieving and maintaining Consultant's contractual and CBE obligations. The Contract Administrator in conjunction with OESBD shall perform such review and monitoring, unless otherwise determined by the County Administrator.

11.10 The presence of a "pay when paid" provision in a Consultant's contract with a CBE firm shall not preclude County or its representatives from inquiring into allegations of nonpayment or exercising any right under this Agreement.

ARTICLE 12. MISCELLANEOUS

12.1 Contract Administrator Authority. The Contract Administrator is authorized to coordinate and communicate with Consultant to manage and supervise the performance of this Agreement. Unless expressly stated otherwise in this Agreement or otherwise set forth in an applicable provision of the Broward County Procurement Code, Broward County Code of Ordinances, or Broward County Administrative Code, the Contract Administrator may exercise any ministerial authority under this Agreement in connection with the day-to-day management of this Agreement provided that such instructions and determinations do not change the Scope of Services. The Contract Administrator may designate one or more County employees with authority pertaining to day-to-day project management or activities for each Work Authorization. Consultant shall notify Contract Administrator in writing of Consultant's representative(s) to whom matters involving the Work Authorization shall be addressed.

12.2 Rights in Documents and Work. Any and all reports, photographs, surveys, and documents created by Consultant in connection with performing Services under this Agreement

or any Work Authorization shall be owned by County and shall be deemed works for hire by Consultant and its agents; if the Services are determined not to be a work for hire, Consultant hereby assigns all right, title, and interest, including any copyright or other intellectual property rights in or to the work, to County. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents created by Consultant, whether finished or unfinished, shall become the property of County and shall be delivered by Consultant to the Contract Administrator within seven (7) days after termination of this Agreement. Any compensation due to Consultant may be withheld until all documents are received as provided in this Agreement. Consultant shall ensure that the requirements of this section are included in all agreements with its Subconsultant(s).

12.3 Ownership of Documents. All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, specifications and reports prepared or provided by Consultant in connection with this Agreement shall become the property of County, whether the Work Authorization for which they are made is completed or not, and shall be delivered by Consultant to Contract Administrator within fifteen (15) days of the receipt of the written notice of termination. If applicable, County may withhold any payments then due to Consultant until Consultant complies with the provisions of this section.

12.4 Public Records. To the extent Consultant is acting on behalf of County as stated in Section 119.0701, Florida Statutes, Consultant shall:

12.4.1 Keep and maintain public records required by County to perform the services under this Agreement;

12.4.2 Upon request from County, provide County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

12.4.3 Ensure that public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion or termination of this Agreement if the records are not transferred to County; and

12.4.4 Upon completion or termination of this Agreement, transfer to County, at no cost, all public records in possession of Consultant or keep and maintain public records required by County to perform the services. If Consultant transfers the records to County, Consultant shall destroy any duplicate public records that are exempt or confidential and exempt. If Consultant keeps and maintains the public records, Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to County upon request in a format that is compatible with the information technology systems of County.

A request for public records regarding this Agreement must be made directly to County, who will be responsible for responding to any such public records requests. Consultant will provide any requested records to County to enable County to respond to the public records request.

Any material submitted to County that Consultant contends constitutes or contains trade secrets or is otherwise exempt from production under Florida public records laws (including Chapter 119, Florida Statutes) (“Trade Secret Materials”) must be separately submitted and conspicuously labeled “EXEMPT FROM PUBLIC RECORD PRODUCTION – TRADE SECRET.” In addition, Consultant must, simultaneous with the submission of any Trade Secret Materials, provide a sworn affidavit from a person with personal knowledge attesting that the Trade Secret Materials constitute trade secrets under Section 812.081, Florida Statutes, and stating the factual basis for same. If a third party submits a request to County for records designated by Consultant as Trade Secret Materials, County shall refrain from disclosing the Trade Secret Materials, unless otherwise ordered by a court of competent jurisdiction or authorized in writing by Consultant. Consultant shall indemnify and defend County and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments, and liabilities of any kind, including attorneys’ fees, litigation expenses, and court costs, relating to the nondisclosure of any Trade Secret Materials in response to a records request by a third party.

IF CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONSULTANT’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (954) 577-4566, rtornese@BROWARD.ORG, 1 N. UNIVERSITY DRIVE, SUITE B3200, PLANTATION, FLORIDA 33324.

12.5 Audit Rights and Retention of Records. Consultant shall preserve all Contract Records (as defined below) for a minimum period of three (3) years after expiration or termination of this Agreement, any Work Authorization, or until resolution of any audit findings, whichever is longer. Contract Records shall, upon reasonable notice, be open to County inspection and subject to audit and reproduction during normal business hours. County audits and inspections pursuant to this section may be performed by any County representative (including any outside representative engaged by County). County may conduct audits or inspections at any time during the term of this Agreement and for a period of three (3) years after the expiration or termination of this Agreement (or longer if required by law). County may, without limitation, verify information, payroll distribution, and amounts through interviews, written affirmations, and on-site inspection with Consultant’s employees, Subconsultants, vendors, or other labor.

Contract Records include any and all information, materials and data of every kind and character, including, without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, drawings, receipts, vouchers, memoranda, and any and all other documents that pertain to rights, duties, obligations, or performance under this Agreement. Contract Records include hard copy and electronic records, written policies and procedures, time sheets, payroll records and registers, cancelled payroll checks, estimating work sheets, correspondence, invoices and related payment documentation, general ledgers, insurance rebates and dividends, and any other records pertaining to rights, duties, obligations or performance under this Agreement, whether by Consultant or Subconsultants.

County shall have the right to audit, review, examine, inspect, analyze, and make copies of all Contract Records at a location within Broward County. Consultant hereby grants County the right to conduct such audit or review at Consultant's place of business, if deemed appropriate by County, with seventy-two (72) hours' advance notice. Consultant agrees to provide adequate and appropriate work space. Consultant shall provide County with reasonable access to Consultant's facilities, and County shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Agreement.

Consultant shall, by written contract, require its Subconsultants to agree to the requirements and obligations of this section.

Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for County's disallowance and recovery of any payment upon such entry. If an audit or inspection in accordance with this section discloses overpricing or overcharges to County of any nature by Consultant or its Subconsultants in excess of five percent (5%) of the total contract billings reviewed by County, the reasonable actual cost of County's audit shall be reimbursed to County by Consultant in addition to making adjustments for the overcharges. Any adjustments or payments due as a result of such audit or inspection shall be made within thirty (30) days after presentation of County's findings to Consultant.

12.6 Subconsultants. Consultant shall utilize only the Subconsultants identified in the Schedule of Subconsultants, to provide the Services under this Agreement. Consultant shall obtain written approval of Contract Administrator prior to changing or modifying the Schedule of Subconsultants, which shall be automatically updated upon such written approval. Consultant shall bind in writing 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 Article 10 on Consultant's Subconsultants.

12.7 Assignment. Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered without the written consent of the other party. County shall have the right to terminate this Agreement, effective immediately, if there is an assignment, or attempted assignment, transfer, or encumbrance, of this Agreement or any right or interest herein by Consultant without County's written consent.

12.8 Indemnification of County. 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 or other persons employed or utilized by Consultant in the performance of this Agreement. The provisions of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by Contract Administrator and County Attorney, any sums due Consultant under this Agreement may be retained by County until all of County's claims subject to this indemnification obligation have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by County.

12.9 Prior Agreements Superseded. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein; and the Parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.

12.10 Amendments. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

12.11 Notices. In order for a notice to a party to be effective under this Agreement, notice must be sent via U.S. first-class mail, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via e-mail, to the addresses listed below and shall be effective upon mailing or hand delivery (provided the contemporaneous email is also sent). The addresses for notice shall remain as set forth in this section unless and until changed by providing notice of such change in accordance with the provisions of this section.

FOR COUNTY:

Broward County
Highway Construction and Engineering Division
Attn: Richard C. Tornese, Director
Governmental Center, Box B300
1 N. Drive Plantation, Florida 33324
Email address: rtornese@broward.org

FOR CONSULTANT:

Email address: _____

12.12 Interpretation. The titles and headings contained in this Agreement are for reference purposes only and shall not in any way affect 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. Any reference to “days” means calendar days, unless otherwise expressly stated.

12.13 Consultant’s Staff. Consultant will provide the key staff identified in its proposal for each Work Authorization as long as said key staff are in Consultant’s employment. Consultant will

obtain prior written approval of Contract Administrator to change key staff. Consultant shall provide Contract Administrator with such information as necessary to determine the suitability of proposed new key staff. Contract Administrator will be reasonable in evaluating key staff qualifications. If Contract Administrator desires to request removal of any of Consultant's staff, Contract Administrator shall first meet with Consultant and provide reasonable justification for said removal; upon such reasonable justification, Consultant shall use good faith efforts to remove or reassign the staff at issue.

12.14 Drug-Free Workplace. To the extent required under Section 21.31(a)(2), Broward County Administrative Code, or Section 287.087, Florida Statutes, Consultant certifies that it has a drug-free workplace program and that it will maintain such drug-free workplace program for the duration of this Agreement.

12.15 Independent Contractor. Consultant is an independent contractor under this Agreement, and nothing in this Agreement shall constitute or create a partnership, joint venture, or any other relationship between the Parties. In providing Services under this Agreement, neither Consultant nor its agents shall act as officers, employees, or agents of County, except as authorized by the Contract Administrator for permitting, licensing, or other regulatory requirements. Consultant shall not have the right to bind County to any obligation not expressly undertaken by County under this Agreement.

12.16 Regulatory Capacity. Notwithstanding the fact that County is a political subdivision with certain regulatory authority, County's performance under this Agreement is as a party to this Agreement and in the capacity as owner. If County exercises its regulatory authority, the exercise of such authority and the enforcement of any rules, regulation, laws, and ordinances shall have occurred under County's regulatory authority as a governmental body separate and apart from this Agreement, and shall not be attributable in any manner to County as a party to this Agreement.

12.17 Sovereign Immunity. Except to the extent sovereign immunity may be deemed to be waived by entering into this Agreement, nothing herein is intended to serve as a waiver of sovereign immunity by County nor shall anything included herein be construed as consent by County to be sued by third parties in any matter arising out of this Agreement. County is a political subdivision as defined in Section 768.28, Florida Statutes, and shall be responsible for the negligent or wrongful acts or omissions of its employees pursuant to Section 768.28, Florida Statutes.

12.18 Third-Party Beneficiaries. Neither Consultant nor County intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

12.19 Conflicts. Neither Consultant nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Consultant's loyal and conscientious exercise of judgment and care related to its performance under this Agreement. During the term of this Agreement, none of Consultant's officers or employees shall serve as an expert witness against County in any legal or

administrative proceeding in which he, she, or Consultant is not a party, unless compelled by court process. Further, such persons shall not give sworn testimony or issue a report or writing, as an expression of such person's expert opinion that is adverse or prejudicial to the interests of County in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude Consultant or any persons in any way from representing themselves, including giving expert testimony in support of such representation, in any action or in any administrative or legal proceeding. If Consultant is permitted under this Agreement to utilize Subconsultants to perform any Services required by this Agreement, Consultant shall require such Subconsultants, by written contract, to comply with the provisions of this section to the same extent as Consultant.

12.20 Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth in this Agreement was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth in this Agreement is substantial and important to the formation of this Agreement, and each is, therefore, a material term of this Agreement. County's failure 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. To be effective, any waiver must be in writing signed by an authorized signatory of the waiving party.

12.21 Compliance with Laws. Consultant and the Services must comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations including, without limitation, American with Disabilities Act, 42 U.S.C. § 12101, Section 504 of the Rehabilitation Act of 1973, and any related federal, state, or local laws, rules, and regulations.

12.22 Severability. If any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.

12.23 Joint Preparation. This Agreement has been jointly prepared by the Parties, and shall not be construed more strictly against either party.

12.24 Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached to, referenced by, or incorporated in this Agreement and any provision of Articles 1 through 12 of this Agreement, the provisions contained in Articles 1 through 12 shall prevail and be given effect.

12.25 Law, Jurisdiction, 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. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, CONSULTANT AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.

12.26 Reuse of Deliverables. County may, at its option, reuse (in whole or in part) the resulting end-product or deliverables resulting from Consultant's Services (including, but not limited to, drawings, specifications, other documents, and services as described herein and in Exhibit A or any Work Authorizations); and Consultant agrees to such reuse in accordance with this provision. If the Contract Administrator elects to reuse the services, drawings, specifications, and other documents, in whole or in part, prepared for any services rendered under this Agreement for other projects on other sites, Consultant will be paid a reuse fee to be negotiated between Consultant and County, subject to approval by the proper awarding authority. Each reuse shall include all Services and modifications to the drawings, specifications, and other documents normally required to adapt the design documents to a new site. This reuse 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 reuse assignments, the design documents shall be revised to comply with building codes and other jurisdictional requirements current at the time of reuse for the new site location. The terms and conditions of this Agreement shall remain in force for each reuse project, unless otherwise agreed by the Parties in writing.

12.27 Payable Interest.

12.27.1 Payment of Interest. County shall not be liable to pay any interest to Consultant for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Consultant waives, rejects, disclaims, and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim arising from, related to, or in connection with this Agreement. This subsection shall not apply to any claim for interest, including for post-judgment interest, if such application would be contrary to applicable law.

12.27.2 Rate of Interest. If the preceding subsection is inapplicable or is determined to be invalid or unenforceable by a court of competent jurisdiction, the annual rate of interest payable by County under this Agreement, whether as prejudgment interest or for any other purpose, shall be, to the full extent permissible under applicable law, one quarter of one percent (0.25%) simple interest (uncompounded).

12.28 Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated in this Agreement by reference. The attached Exhibits are incorporated into and made a part of this Agreement.

12.29 Counterparts and Multiple Originals. This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

12.30 The Public Art and Design Program, Section 1-88, Broward County Code of Ordinances, is not an eligible expense under Section 212.055, Florida Statutes, and is not applicable to this project to the extent that a Work Authorization is paid with Surtax Project funding.

[DELETE IF NOT APPLICABLE]

12.31 Public Art and Design. To the extent any Work Authorization includes artwork as defined by Section 1-88 and is paid at least in part by non-Surtax Project funding, Broward County Code of Ordinances, Consultant shall cooperate with the artist for the purpose of properly incorporating the artist's design(s) into the design for a project. Consultant shall notify the artist in writing of all design meetings and shall provide the artist with a schedule of milestone dates. If requested by County, Consultant shall provide work space for the artist during the preliminary design and design phases. The artist's design as properly incorporated into the design for a project shall be permitted as part of the master site or facility plan. Consultant's compensation under this Agreement includes the services to comply with the requirements set forth in this section. Consultant shall ensure that Subconsultants, if any, are informed of Broward County's Public Art and Design Program and any applicable requirement of working with the artist(s).

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: 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 CONSULTANT, signing by and through its _____, duly authorized to execute same.

COUNTY

ATTEST:

Broward County Administrator, as
ex officio Clerk of the Broward County
Board of County Commissioners

BROWARD COUNTY, by and through
its Board of County Commissioners

By: _____
_____ day of _____, 20__

Approved as to form by
Andrew J. Meyers
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600

By: _____
Gavin P. Rynard (Date)
Assistant County Attorney

By: _____
Michael J. Kerr (Date)
Deputy County Attorney

MJK/hb
BCF 202 CS
10/01/2020

AGREEMENT BETWEEN BROWARD COUNTY AND _____
FOR CONTINUING PROFESSIONAL SERVICES FOR CONSTRUCTION ENGINEERING AND
INSPECTION (CEI) AND DESIGN SERVICES FOR ROADWAY AND TRAFFIC
(RFP # _____)

FOR INDIVIDUAL:

Consultant

WITNESSES:

Signature

By _____

Print/Type Name

(Please Type Name)

Signature

____ day of _____, 20__.

Print/Type Name

FOR CORPORATION:

Consultant

ATTEST:

(Typed Name of Consultant/Firm)

Secretary

By _____
President/Vice President

(Typed Name of Secretary)

(Typed Name and Title)

CORPORATE SEAL

____ day of _____, 20__.

EXHIBIT A
Scope of Services

EXHIBIT B
Payment Schedule

The rates specified below shall be in effect for the entire term of the Agreement, including any renewal or extension term(s), unless otherwise expressly stated. Any goods or services required under this Agreement for which no specific fee or cost is expressly stated in this Payment Schedule shall be deemed to be included, at no extra cost, within the costs and fees expressly provided for in this Exhibit B.

MAXIMUM BILLING RATES

Contract No: _____
 Contract Title: Continuing Engineering Services for _____
 Consultant: Consultant Name
 Subconsultant: Subconsultant Name

TITLE	MAXIMUM HOURLY RATE (\$/HR)	X	MULTIPLIER	=	MAXIMUM BILLING RATE (\$/HR)
[Insert staff titles]	\$0.00				\$0.00
	\$0.00				\$0.00
	\$0.00				\$0.00
	\$0.00				\$0.00
	\$0.00				\$0.00
	\$0.00				\$0.00
	\$0.00				\$0.00

Multiplier of X.XX is calculated as follows:

OVERHEAD = X.XX%

FRINGE = X.XX%

OPERATING MARGIN = X.XX%

MULTIPLIER = (1 + OVERHEAD + FRINGE + ((1+ OVERHEAD + FRINGE) X OPERATING MARGIN)) / 1

Add if applicable:

Notes:

Consultant has elected to use "Safe Harbor" combined fringe benefit and overhead rate of 110% in accordance with Section 6.2.5.

EXHIBIT C
Minimum Insurance Requirements

EXHIBIT D
Work Authorization Forms

(Sample – Contract Administrator Approval Level)

EXHIBIT D-1

Work Authorization No. _____

Under
Agreement between Broward County and _____
for

1. This Work Authorization is issued under the Agreement between Broward County ("County") and _____ ("Consultant") for Consultant Services for Continuing Engineering Services for _____ (the "Agreement"), which was approved by the Board of County Commissioners on _____ (Item _____).

2. This Work Authorization permits Consultant to provide the services described in Exhibit A to this Work Authorization.

3. Compensation and Method of Payment.

3.1 Payment for the services authorized or approved by this Work Authorization will be in accordance with Article 4 of the Agreement and the agreed method of compensation is as follows (check those boxes that apply):

3.1.1 Maximum Amount Not-To-Exceed Compensation. For Basic Services identified in Exhibit A to this Work Authorization as payable on a "Maximum Amount Not-To-Exceed" basis, compensation to Consultant shall be based upon the Salary Costs as described in Section 6.2 of the Agreement up to a maximum not-to-exceed amount of \$_____.

3.1.2 Lump Sum Compensation. For Basic Services identified in Exhibit A to this Work Authorization as payable on a "Lump Sum" basis, compensation to Consultant shall be not more than a total lump sum of \$_____.

3.1.3 Reimbursable Expenses. County will reimburse authorized Reimbursable Expenses as defined in Section 6.3 of the Agreement up to a maximum not-to-exceed amount of \$_____. Unused amounts of those monies shall be retained by County.

3.2 Payments for this Work Authorization will be charged against:

Budget No. _____

4. Consultant shall perform the services described in Exhibit A within:

_____ calendar days ("Time for Performance"), or

the time periods specified in the Project Schedule included in Exhibit A to this Work Authorization ("Time for Performance"); said time periods shall commence from the date of the Notice to Proceed for such services.

4.1 If this box is checked, this paragraph is applicable. If Contractor 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 Consultant, then Consultant shall pay to County its proportional share of any claim for damages to Contractor arising out of the delay. The provisions for the computation of delay costs, damages, or any other amounts, whether direct or indirect, in the agreement between the Contractor and County are incorporated herein. This section shall not affect the indemnification rights or obligations of either party otherwise set forth in this Agreement.

4.2 If this box is checked, liquidated damages are applicable. If Consultant fails to complete the services identified in Exhibit A to this Work Authorization on or before the Time for Performance set forth above, then 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 services:

<u>Services</u>	<u>Amount</u>
	\$ TBD
	\$ TBD
	\$ TBD

These amounts are not penalties but are liquidated damages to County for Consultant's inability to prosecute, and complete, the services 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 services within the applicable Time for Performance. This section shall not affect the indemnification rights or obligations of either party otherwise set forth in the Agreement.

5. CBE Goals.

5.1 In an effort to assist County in achieving its overall goal as set forth in the Agreement, Consultant agrees to meet the following CBE participation goals by utilizing the CBE firms for the work and dollar values described in paragraph 5.2 below: _____%.

5.2 In performing services for this Work Authorization, County and Consultant hereby incorporate Consultant's participating CBE firms, addresses, scope of work, and dollar value identified in the Letter of Intent (Exhibit C of the Agreement).

6. The terms and conditions of the Agreement are hereby incorporated into this Work Authorization. Nothing contained in this Work Authorization shall alter, modify, or change in any way the terms and conditions of the Agreement with the County.

[Remainder of This Page Is Intentionally Left Blank.]

IN WITNESS WHEREOF, the parties have made and executed this Work Authorization No. _____: BROWARD COUNTY, by and through its Contract Administrator, as authorized pursuant to the Agreement, and _____, signing by and through its _____, duly authorized to execute same.

County

WITNESS:

BROWARD COUNTY, by and through its Contract Administrator

Witness

By _____

Witness

____ day of _____, 20____.

Consultant

ATTEST:

[Insert Corporate Name]

Corporate Secretary

By _____
President or Vice President

(SEAL)

(Print Name and Title)

____ day of _____, 20____.

(Sample – Director of Purchasing Approval Level)

EXHIBIT D-2

Work Authorization No. _____
Under
Agreement between Broward County and _____
for

1. This Work Authorization is issued under the Agreement between Broward County ("County") and _____ ("Consultant") for Consultant Services for Continuing Engineering Services for _____ (the "Agreement"), which was approved by the Board of County Commissioners on _____ (Item _____).

2. This Work Authorization permits Consultant to provide the services described in Exhibit A to this Work Authorization.

3. Compensation and Method of Payment.

3.1 Payment for the services authorized or approved by this Work Authorization will be in accordance with Article 4 of the Agreement and the agreed method of compensation is as follows (check those boxes that apply):

3.1.1 Maximum Amount Not-To-Exceed Compensation. For Basic Services identified in Exhibit A to this Work Authorization as payable on a "Maximum Amount Not-To-Exceed" basis, compensation to Consultant shall be based upon the Salary Costs as described in Section 6.2 of the Agreement up to a maximum not-to-exceed amount of \$_____.

3.1.2 Lump Sum Compensation. For Basic Services identified in Exhibit A to this Work Authorization as payable on a "Lump Sum" basis, compensation to Consultant shall be not more than a total lump sum of \$_____.

3.1.3 Reimbursable Expenses. County will reimburse authorized Reimbursable Expenses as defined in Section 6.3 of the Agreement up to a maximum not-to-exceed amount of \$_____. Unused amounts of those monies shall be retained by County.

3.2 Payments for this Work Authorization will be charged against:

Budget No. _____

4. Consultant shall perform the services described in Exhibit A within:

_____ calendar days ("Time for Performance"), or

the time periods specified in the Project Schedule included in Exhibit A to this Work Authorization ("Time for Performance"); said time periods shall commence from the date of the Notice to Proceed for such services.

4.1 If this box is checked, this paragraph is applicable. If Contractor 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 Consultant, then Consultant shall pay to County its proportional share of any claim for damages to Contractor arising out of the delay. The provisions for the computation of delay costs, damages, or any other amounts, whether direct or indirect, in the agreement between the Contractor and County are incorporated herein. This section shall not affect the indemnification rights or obligations of either party otherwise set forth in this Agreement.

4.2 If this box is checked, liquidated damages are applicable. If Consultant fails to complete the services identified in Exhibit A to this Work Authorization on or before the Time for Performance set forth above, then 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 services:

<u>Services</u>	<u>Amount</u>
	\$ TBD
	\$ TBD
	\$ TBD

These amounts are not penalties but are liquidated damages to County for Consultant's inability to prosecute, and complete, the services 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 services within the applicable Time for Performance. This section shall not affect the indemnification rights or obligations of either party otherwise set forth in the Agreement.

5. CBE Goals.

5.1 In an effort to assist County in achieving its overall goal as set forth in the Agreement, Consultant agrees to meet the following CBE participation goals by utilizing the CBE firms for the work and dollar values described in paragraph 5.2 below: _____%.

5.2 In performing services for this Work Authorization, County and Consultant hereby incorporate Consultant's participating CBE firms, addresses, scope of work, and dollar value identified in the Letter of Intent (Exhibit C of the Agreement).

6. The terms and conditions of the Agreement are hereby incorporated into this Work Authorization. Nothing contained in this Work Authorization shall alter, modify, or change in any way the terms and conditions of the Agreement with the County.

[Remainder of This Page Is Intentionally Left Blank.]

IN WITNESS WHEREOF, the Parties have made and executed this Work Authorization No. _____ : BROWARD COUNTY, by and through its Director of Purchasing, as authorized pursuant to the Agreement, and _____, signing by and through its _____, duly authorized to execute same.

County

WITNESS:

BROWARD COUNTY, by and through its Director of Purchasing

Signature of Witness

By _____
Director

Print Name of Witness

____ day of _____, 20____.

Signature of Witness

Print Name of Witness

Contract Administrator Date

Consultant

ATTEST:

[Insert Corporate Name]

Corporate Secretary

By _____
President or Vice President

(SEAL)

(Print Name and Title)

____ day of _____, 20____.

(Sample – County Commission Approval Level)

EXHIBIT D-3

Work Authorization No. _____
Under
Agreement between Broward County and _____
for

1. This Work Authorization is issued under the Agreement between Broward County ("County") and _____ ("Consultant") for Consultant Services for Continuing Engineering Services for _____ (the "Agreement"), which was approved by the Board of County Commissioners on _____ (Item _____).

2. This Work Authorization permits Consultant to provide the services described in Exhibit A to this Work Authorization.

3. Compensation and Method of Payment.

3.1 Payment for the services authorized or approved by this Work Authorization will be in accordance with Article 4 of the Agreement and the agreed method of compensation is as follows (check those boxes that apply):

3.1.1 Maximum Amount Not-To-Exceed Compensation. For Basic Services identified in Exhibit A to this Work Authorization as payable on a "Maximum Amount Not-To-Exceed" basis, compensation to Consultant shall be based upon the Salary Costs as described in Section 6.2 of the Agreement up to a maximum not-to-exceed amount of \$_____.

3.1.2 Lump Sum Compensation. For Basic Services identified in Exhibit A to this Work Authorization as payable on a "Lump Sum" basis, compensation to Consultant shall be not more than a total lump sum of \$_____.

3.1.3 Reimbursable Expenses. County will reimburse authorized Reimbursable Expenses as defined in Section 6.3 of the Agreement up to a maximum not-to-exceed amount of \$_____. Unused amounts of those monies shall be retained by County.

3.2 Payments for this Work Authorization will be charged against:

Budget No. _____

4. Consultant shall perform the services described in Exhibit A within:

_____ calendar days ("Time for Performance"), or

the time periods specified in the Project Schedule included in Exhibit A to this Work Authorization ("Time for Performance"); said time periods shall commence from the date of the Notice to Proceed for such services.

4.1 If this box is checked, this paragraph is applicable. If Contractor 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 Consultant, then Consultant shall pay to County its proportional share of any claim for damages to Contractor arising out of the delay. The provisions for the computation of delay costs, damages, or any other amounts, whether direct or indirect, in the agreement between the Contractor and County are incorporated herein. This section shall not affect the indemnification rights or obligations of either party otherwise set forth in this Agreement.

4.2 If this box is checked, liquidated damages are applicable. If Consultant fails to complete the services identified in Exhibit A to this Work Authorization on or before the Time for Performance set forth above, then 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 services:

<u>Services</u>	<u>Amount</u>
	\$ TBD
	\$ TBD
	\$ TBD

These amounts are not penalties but are liquidated damages to County for Consultant's inability to prosecute, and complete, the services 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 services within the applicable Time for Performance. This section shall not affect the indemnification rights or obligations of either party otherwise set forth in the Agreement.

5. CBE Goals.

5.1 In an effort to assist County in achieving its overall goal as set forth in the Agreement, Consultant agrees to meet the following CBE participation goals by utilizing the CBE firms for the work and dollar values described in paragraph 5.2 below: _____%.

5.2 In performing services for this Work Authorization, County and Consultant hereby incorporate Consultant's participating CBE firms, addresses, scope of work, and dollar value identified in the Letter of Intent (Exhibit C of the Agreement).

6. The terms and conditions of the Agreement are hereby incorporated into this Work Authorization. Nothing contained in this Work Authorization shall alter, modify, or change in any way the terms and conditions of the Agreement with the County.

[Remainder of This Page Is Intentionally Left Blank.]

IN WITNESS WHEREOF, the parties have made and executed this Work Authorization No. _____ : BROWARD COUNTY, by and 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.

County

ATTEST:

BROWARD COUNTY, by and through its Board of County Commissioners

Broward County Administrator, as ex officio Clerk of the Broward County Board of County Commissioners

By _____
Mayor

_____ day of _____, 20__

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

Insurance requirements
Approved by Broward County
Risk Management Division

By _____
Signature (Date)

By _____
Maya A. Moore (Date)
Assistant County Attorney

Print Name and Title above

Michael J. Kerr (Date)
Deputy County Attorney

Consultant

ATTEST:

[Insert Corporate Name]

Corporate Secretary

By _____
President or Vice President

(SEAL)

(Print Name and Title)

____ day of _____, 20__.

The following exhibits shall be incorporated into the Work Authorization:

- Exhibit A** **Scope of Services for Work Authorization**
- Exhibit B** **Payment Schedule for Work Authorization**
- Exhibit C** **Letters of Intent for Work Authorization**

EXHIBIT E
CBE Subconsultant Schedule and Letters of Intent

EXHIBIT F
Schedule of Subconsultants