



**CITY OF MIAMI  
OFFICE OF CAPITAL IMPROVEMENTS  
PROFESSIONAL SERVICES AGREEMENT**

<b>Service Category</b>	Construction Engineering and Inspection Services for Overtown Greenway at NW 11 <sup>th</sup> Street (from NW 7 <sup>th</sup> Ave to NW 12 <sup>th</sup> Ave) Project B-173648 (RFQ No. 17-18-049)
<b>Contract Type</b>	Project Specific
<b>Consultant</b>	

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<b>Service Category</b>	Construction Engineering and Inspection Services for Overtown Greenway at NW 11 <sup>th</sup> Street (from NW 7 <sup>th</sup> Ave to NW 12 <sup>th</sup> Ave) - Project B-173648 (RFQ No. 17-18-049)
<b>Contract Type</b>	Project Specific
<b>Consultant</b>	
<b>Consultant Office Location</b>	
<b>City Authorization</b>	Section 18-87, City of Miami Code
<b>Agreement Number</b>	

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This Professional Services Agreement ("Agreement") made this \_\_\_ day of \_\_\_\_\_ in the year 2019 ("Agreement") by and between the City of Miami, Florida, hereinafter called the "City," and \_\_\_\_\_, hereinafter called the "Consultant."

**RECITAL**

A. The City issued a Request for Qualifications ("RFQ") No. 17-18-049 on April 18, 2019 for the provision of Construction Engineering and Inspection Services for Overtown Greenway at NW 11<sup>th</sup> Street (from NW 7<sup>th</sup> Ave to NW 12<sup>th</sup> Ave) ("Services") and Consultant's proposal ("Proposal"), in response thereto, was selected as one of the most qualified for the provision of said Services. The RFQ and the Proposal are sometimes referred to herein, collectively, as the Solicitation Documents, and are by this reference expressly incorporated into and made a part of this Agreement as if set forth in full.

B. WHEREAS, the City, through action of the City Manager and/or the City Commission, as applicable, has selected the Consultant in accordance with Section 287.055, Florida Statutes, (Consultants' Competitive Negotiation Act, hereafter referred to as "CCNA"), and the applicable provisions of the City Procurement Ordinance, to provide the professional services as described herein.

WITNESSETH, that the City and the Consultant, for the considerations herein set forth, agree as follows:

**ARTICLE 1 DEFINITIONS**

**1.01 Additional Services** means any Work defined as such in a Work Order, secured in compliance with Florida Statutes and City Code.

**1.02 Attachments** mean the Attachments to this Agreement which are expressly incorporated by reference and made a part of this Agreement as if set forth in full.

**1.03 Base Fee** means the amount of compensation mutually agreed upon for the completion of Basic Services.

**1.04 Basic Services** means those services designated as such in a Work Order.

**1.05 City Commission** means the legislative body of the City of Miami.

**1.06 City Manager** means the duly appointed chief administrative officer of the City of Miami.

**1.07 City or Owner** means the City of Miami, Florida, a Florida municipal corporation, the public agency which is a party hereto and for which this Agreement is to be performed. In all respects hereunder, City's performance is pursuant to City's position as the Owner of the Project. In the event the City exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any rules, regulations, codes, laws and ordinances shall be deemed to have occurred pursuant to City's authority as a governmental body and shall not be attributable in any manner to City as a party to this Agreement. The City of Miami shall be referred to herein as "City". For the purposes of this Agreement, "City" without modification shall mean the City Manager.

**1.08 Construction Training/Qualification Program (CTQP)** means the City program for training and qualifying technicians in Aggregates, Concrete, Earth work, and Asphalt. The University of Florida Transportation Research Center (TRC) administers this program. Program information is available at the CTQP website.

**1.09 Commission** means the legislative body of the City of Miami.

**1.10 Consultant** means the individual, partnership, corporation, association, joint venture, or any combination thereof, of properly registered professional architects, or engineers, which has entered into the Agreement to provide professional services to the City.

**1.11 Contractor** means an individual, partnership, corporation, association, joint venture, or any combination thereof, which has entered into a contract with the City for construction of City facilities and incidentals thereto.

**1.12 Construction Project Manager** means the City employee assigned to manage the Construction Engineering and Inspection Services Agreement and represent the City during the performance of the services covered under this Agreement.

**1.13 Department** means or refers to the City of Miami's Office of Capital Improvements ("OCI") formerly known as Capital Improvements and Transportation Program ("CITP").

**1.14 Director** means the Director of the City Department designated herein who has the authority and responsibility for managing the specific project or projects covered under this Agreement. Unless otherwise specified herein or in a Work Order, for the purpose of this Agreement, the Director is the top administrator of the Office of Capital Improvements or designee.

**1.15 Errors** means items in the plans, specifications or other documents prepared by the Consultant that are shown incorrectly, which results in a change to the Services and results in the need for the construction contractor to perform rework or additional work or which causes a delay to the completion of construction.

**1.16 Errors and Omissions** means design defects or deficiencies in the plans, specifications or other documents prepared by the Consultant, which must be corrected in order for the project to function or be built as intended.

**1.17 Inspector** means an employee of the City or of a consulting firm hired by the City and assigned by the City to make inspections of Work performed by a Contractor.

**1.18 Notice to Proceed** means same as "Authorization to Proceed." A duly authorized written letter or directive issued by the Director or Project Manager acknowledging that all conditions precedent have been met and/or directing that Consultant may begin work on the Project.

**1.19 Key Personnel** means Staff positions assigned on a full-time basis to the Program by the Program Coordinator with the Director's approval, to serve as an extension of the City's staff typically working inside the City's Miami Riverside Center (MRC) or other requested City facility.

**1.20 Omissions** means items in the plans, specifications or other documents prepared by the Consultant that are not shown or included which are necessary for the proper and/or safe operation of the Project or required to meet the Scope of Services.

**1.21 Primary Services** mean those Services considered by City to be fundamental to the successful management of the Project as stated in the RFQ, and in Attachment A of this Agreement.

**1.22 Program** means the City's multi-year Capital Plan, prepared on an annual basis that details the planned financial resources and implementation schedule and strategies for the City's capital projects over a five (5) year period.

**1.23 Project Manager** means an employee or representative of the City assigned by the Director to manage and monitor the Services to be performed under this Agreement and the construction of a project as a direct representative of the City.

**1.24 Project** means the construction, alteration and/or repair, and all services and incidentals thereto, of a City facility as contemplated and budgeted by the City. The Project or Projects shall be further defined in the Scope of Services and/or Work Order issued pursuant to this Agreement.

**1.25 Professional Services** means those services within the scope of the practice of architecture, professional engineering, or registered surveying and mapping, as applicable, as defined by the laws of the State of Florida, or those performed by any architect, professional engineer, or registered surveyor or mapper in connection with his or her professional employment or practice. These services may be abbreviated herein as "architectural/ engineering services" or "professional services", as applicable, which are within this definition.

**1.26 Professional Services Agreement ("Agreement" or "PSA")** means this Agreement and all attachments and any authorized amendments thereto. In the event of a conflict between the Request for Qualifications ("RFQ") and the Consultant's response thereto, the RFQ shall control. In the event of any conflict between the Consultant's response to the RFQ and this PSA, this PSA shall control. In the event of any conflict between this PSA and its attachments this PSA shall control.

**1.27 Resolution** means the document constituting the official approval of the City Commission as required for the City Manager to execute this Agreement or increase the Project Budget, among other matters.

**1.28 Risk Administrator** means the City's Risk Management Administrator, or designee, or the individual named by the City Manager to administer matters relating to insurance and risk of loss for the City.

**1.29 Scope of Services or Services** means a comprehensive description of the activities, tasks, design features, objectives, deliverables and milestones required for the completion of Project or an assignment with sufficient detail to allow a reasonably accurate estimation of resources necessary for its completion.

**1.30 Sub-Consultant/Sub-Contractor** means a person or organization of properly registered professional architects, engineers, registered surveyor or mapper, and/or other professional specialty that has entered into a written agreement with the Consultant to furnish specified professional services for a Project or task.

**1.31 Verification Testing and Inspection** means the level of testing and inspection as defined in the latest version of the Florida Department of Transportation (FDOT) Standard Specifications (Red Book) and FDOT's Construction Project Administration Manual (CPAM).

**1.32 Wage Rates** means the effective direct expense to Consultant and/or Sub-Consultant, on an hourly rate basis, for employees in the specified professions and job categories assigned to provide services under

this Agreement that justify and form the basis for professional fees regardless of actual manner of compensation.

**1.33 Work** means all services, materials and equipment provided by, or under this Agreement with the Consultant.

**1.34 Work Order** means a document internal to the City authorizing the performance of specific professional services for a defined Project or Projects.

**1.35 Work Order Proposal** means a document prepared by the Consultant, at the request of the City for Services to be provided by the Consultant on a specific Project or phase of a Project.

## **ARTICLE 2 GENERAL CONDITIONS**

### **2.01 TERM**

The term of this Agreement shall take effect upon the date written above upon its execution by the authorized officers and shall terminate upon satisfaction and completion of all the terms and conditions of the Project by the Consultant.

### **2.02 SCOPE OF SERVICES**

Consultant agrees to provide the Services as specifically described and set forth in Attachment "A – Scope of Services" hereto, which by this reference is incorporated into and made a part of this Agreement.

### **2.03 COMPENSATION**

#### **2.03-1 Compensation Limits**

The amount of compensation payable by the City to the Consultant shall be a not to exceed fee, based on the rates established in **Attachment B, Compensation and Payments**, hereto, which is incorporated into this Agreement; provided, however, that in no event shall the amount of compensation exceed (total value of award) \_\_\_\_\_ as detailed in **Exhibit A, Scope of Work**, attached hereto, for the services as described, in total over the term of the Agreement and any extension(s), unless explicitly approved by action of the City Commission or City Manager as applicable and put into effect by written amendment to this Agreement. The work may never exceed the limitations provided in §287.055 (2)(g), Florida Statutes. The City may, in its sole and absolute discretion use other compensation methodologies.

#### **2.03-2 Payments**

Unless otherwise specifically provided in **Attachment B**, payment shall be made in accordance with Chapter 218, Florida Statutes, Part VII, Local Government Prompt Payment Act, after receipt of Consultant's invoice, which shall be accompanied by sufficient supporting documentation and contain sufficient detail, to allow a proper audit of expenditures, should City require one to be performed. If Consultant is entitled to reimbursement of travel expenses, then all bills for travel expenses shall be submitted in accordance with Section 112.061, Florida Statutes. Consultant shall utilize Attachment "C" for the submission of invoices. Invoicing shall be submitted on a monthly basis, and in accordance with **Article B4, Payments to the Consultant**.

## **ARTICLE 3 PERFORMANCE**

### **3.01 PERFORMANCE AND DELEGATION**

The Services to be performed hereunder shall be performed by the Consultant's own staff, unless otherwise provided in this Agreement, or approved, in writing by the City. Said approval shall not be construed as constituting an agreement between the City and said other person or firm.

### **3.02 REMOVAL OF UNSATISFACTORY PERSONNEL**

Director or designee may make written request to Consultant for the prompt removal and replacement of any personnel employed or retained by the Consultant, or any Sub-Consultants or subcontractors, or any personnel of any such Sub-Consultants or sub-contractors engaged by the Consultant to provide and perform Services pursuant to the requirements of this Agreement. The Consultant shall respond to City within fourteen (14) calendar days of receipt of such request with either the removal and replacement of such personnel or written justification as to why that may not occur. All decisions involving personnel will be made by Consultant. Such request shall solely relate to said employees work under this Agreement.

### **3.03 CONSULTANT KEY STAFF**

The parties acknowledge that Consultant was selected by City, in part, on the basis of qualifications of particular staff identified in Consultant's response to City's solicitation, hereinafter referred to as "Key Staff". Consultant shall ensure that Key Staff are available for Work hereunder as long as said Key Staff is in Consultant's employ. Consultant will obtain prior written acceptance of Director or designee to change Key Staff. Consultant shall provide Director, or designee with such information as necessary to determine the suitability of proposed new Key Staff. Director will act reasonably in evaluating Key Staff qualifications. Such acceptance shall not constitute any responsibility or liability for the individual's ability to perform.

**3.04 TIME FOR PERFORMANCE**

The Consultant agrees to start all Work hereunder upon receipt of a Notice to Proceed issued by the Director and to complete each assignment, task or phase within the time stipulated in the Notice to Proceed. Time is of the essence with respect to performance of this Agreement.

A reasonable extension of the time for completion of various assignments, tasks or phases may be granted by the City should there be a delay on the part of the City in fulfilling its obligations under this Agreement as stated herein. Such extension of time shall not be cause for any claim by the Consultant for extra compensation. Time is of the essence in performance of services under this agreement.

**3.05 STANDARD OF CARE**

Consultant is solely responsible for the technical accuracy and quality of their Services. Consultant shall perform all Services in compliance with Florida Administrative Code Chapter 61G1 and Chapter 471 of the Florida Statutes, as amended. Consultant shall perform due diligence, in accordance with best industry practices, in gathering information and inspecting a Project site prior to the commencement of design. Consultant shall be responsible for the professional quality, technical accuracy and coordination of all design, drawings, specification, and other Services furnished by the Consultant under this Agreement. Consultant shall correct or revise any errors, omissions, and/or deficiencies in its designs, drawings, specifications or other Services without additional compensation. Consultant shall also be liable for claims for delay costs, and any increased costs in construction, including but not limited to additional work, demolition of existing work, rework, etc., resulting from any errors, omissions, and/or deficiencies in its surveys, maps, designs, drawings, specifications or other Services.

**ARTICLE 4 SUB-CONSULTANTS****4.01 GENERAL**

**4.01-1** A Sub-Consultant, as defined in Article 1.30 is a firm that was identified as part of the consulting team in the competitive selection process by which Consultant was chosen to perform the services under this Agreement, and as such, is identified and listed in Schedule A1 attached hereto and incorporated by reference.

**4.02 SUBCONSULTANT RELATIONSHIPS**

**4.02-1** All services provided by the Sub-Consultants shall be performed pursuant to appropriate written agreements between the Consultant and the Sub-Consultants, which shall contain provisions that preserve and protect the rights of the City under this Agreement.

**4.02-2** Nothing contained in this Agreement shall create any contractual or business relationship between the City and the Sub-Consultants. The Consultant acknowledges that Sub-Consultants are entirely under its direction, control, supervision, retention and/or discharge.

**4.03 CHANGES TO SUBCONSULTANTS**

The Consultant shall not add or modify change any Sub-Consultant listed in Schedule A1 without prior written approval by the Director or designee, in response to a written request from the Consultant stating the reasons for any proposed substitution.

**ARTICLE 5 DEFAULT****5.01 GENERAL**

If Consultant fails to comply with any term or condition of this Agreement, or fails to perform any of its obligations hereunder, then Consultant shall be in default. Upon the occurrence of a default hereunder the City, in addition to all remedies available to it by law, may immediately, upon written notice to Consultant, terminate this Agreement whereupon all payments, advances, or other compensation paid by the City to Consultant while Consultant was in default shall be immediately returned to the City. Consultant understands and agrees that termination of this Agreement under this section shall not release Consultant from any obligation accruing prior to the effective date of termination.

In the event of termination due to default, in addition to the foregoing, Consultant shall be liable to the City for all expenses incurred by the City in preparing and negotiating this Agreement, as well as all costs and expenses incurred by the City in the re-procurement of the Services, including consequential and incidental damages. In the event of default, City may also suspend or withhold reimbursements from Consultant until such time as the actions giving rise to default have been cured.

Construction Engineering and Inspection Services  
for Overtown Greenway at NW 11<sup>th</sup> Street

**5.02 CONDITIONS OF DEFAULT**

A finding of default and subsequent termination for cause may include, without limitation, any of the following:

**5.02-1** Consultant fails to obtain or maintain the professional engineering certification/licensure, insurance or bonding herein required.

**5.02-2** Consultant fails to comply, in a substantial or material sense, with any of its duties under this Agreement, with any terms or conditions set forth in this Agreement or in any agreement it has with the City, beyond the specified period allowed to cure such default.

**5.02-3** Consultant fails to commence the Services within the time provided or contemplated herein, or fails to complete the Work in a timely manner as required by this Agreement.

**5.03 TIME TO CURE DEFAULT; FORCE MAJEURE**

The City, through the Director or designee, shall provide written notice to the Consultant as to a finding of Default, and the Consultant shall take all necessary action to cure said Default within the time stipulated in said notice, after which time, the City may terminate the Agreement. The City, at its sole and absolute discretion, may allow additional days to perform any required cure if the Consultant provides written justification deemed reasonably sufficient. If the Default has not been corrected by the Consultant within the time specified, the Agreement may be automatically terminated on the last day of the time stipulated in said notice, without the necessity of any further action by the City.

Should any such failure on the part of the Consultant be due to a condition of Force Majeure as that term is interpreted under Florida law, then the City may allow an extension of time reasonably commensurate with the cause of such failure to perform or cure.

**ARTICLE 6 TERMINATION OF AGREEMENT****6.01 CITY'S RIGHT TO TERMINATE**

The City, including the City Manager, Director, or the Director's authorized designee, has the right to terminate this Agreement for any reason or no reason, upon ten (10) days' written notice. Upon termination of this Agreement, all charts, sketches, studies, drawings, and other documents, including all electronic copies related to Services authorized under this Agreement, whether finished or not, must be turned over to the Director or the Director's authorized designee. The Consultant shall be paid in accordance with provisions of Attachment B, provided that said documentation is turned over to Director or designee within ten (10) business days of termination. Failure to timely deliver the documentation shall be cause to withhold any payments due without recourse by Consultant until all documentation is delivered to the Director or designee.

**6.01-1** Consultant shall have no recourse or remedy from a termination made by the City except to retain the fees earned compensation for the Services that was performed in complete compliance with the Agreement, as full and final settlement of any claim, action, demand, cost, charge or entitlement it may have, or will, have against the City, its officials or employees.

**6.02 CONSULTANT'S RIGHT TO TERMINATE**

The Consultant shall have the right to terminate this agreement, in writing, following breach by the City, if breach of contract has not been corrected within sixty (60) days from the date of the City's receipt of a written statement from Consultant specifying its breach of its duties under this Agreement.

**6.03 TERMINATION DUE TO UNDISCLOSED LOBBYIST OR AGENT**

Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant to solicit or secure this Agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Consultant any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

For the breach or violation of this provision, the City shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

**ARTICLE 7 DOCUMENTS AND RECORDS**

**7.01 OWNERSHIP OF DOCUMENTS**

All tracings, plans, drawings, specifications, maps, computer files, and/or reports prepared or obtained under this Agreement, as well as all data collected, together with summaries and charts derived there from, including all electronic digital copies will be considered works made for hire and will, based on incremental transfer wherein the above shall become the property of the City upon payments made to Consultant or termination of this Agreement without restriction or limitation on their use, and will be made available, on request, to City at any time during the performance of such services and/or upon completion or termination of this Agreement. Consultant shall not copyright any material and products or patent any invention developed under this Agreement. The City shall have the right to visit the site for inspection of the work and the products of Consultant at any time. The Consultant shall be permitted to retain copies, including reproducible copies, solely for information and reference in connection with the City's use and occupancy of the Project

**7.02 DELIVERY UPON REQUEST OR CANCELLATION**

Failure of the Consultant to promptly deliver all such documents, both hard copy and digital, to the Director or designee within ten (10) days of cancellation, or within ten (10) days of request by the City, shall be just cause for the City to withhold payment of any fees due Consultant until Consultant delivers all such documents. Consultant shall have no recourse from these requirements.

**7.03 RE-USE BY CITY**

It is understood that all Consultant agreements and/or Work Orders for new Services will include the provision for the re-use of plans and specifications, including construction drawings, at the City's sole option, and by virtue of signing this Agreement Consultant agrees to such re-use in accordance with this provision without the necessity of further approvals, compensation, fees or documents being required and without recourse for such re-use. The Consultant will not be liable for re-use by the City of plans, documents, studies, or other data for any purpose other than that intended by the terms and conditions of this Agreement.

**7.04 NONDISCLOSURE**

To the extent allowed by law, Consultant agrees not to divulge, furnish or make available to any third person, firm or organization, without Director or designee's prior written consent, or unless incident to the proper performance of the Consultant's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by Consultant hereunder, and Consultant shall require all of its employees, agents, Sub-Consultants and subcontractors to comply with the provisions of this paragraph.

**7.05 MAINTENANCE OF RECORDS; PUBLIC RECORDS**

The Consultant shall keep adequate records and supporting documentation, which concern or reflect its Services hereunder. Records subject to the provisions of the Public Records Law, Florida Statutes Chapter 119, shall be kept in accordance with the applicable statutes. Otherwise, the records and documentation shall be retained by the Consultant for a minimum of five (5) years from the date of termination of this Agreement or the date the Project is completed, whichever is later. The City, or any duly authorized agents or representatives of the City, shall have the right to audit, inspect, and copy all such records and documentation as often as they deem necessary during the period of this Agreement and during the five (5) year period noted above, provided, however, such activity shall be conducted only during normal business hours.

Consultant shall additionally comply with Section 119.0701, Florida Statutes, including without limitation: (1) Keep and maintain public records required by the City to perform the service; (2) upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law; (3) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the City; (4) upon completion of the contract, transfer, at no cost, to the City all public records in possession of the contractor or keep and maintain public records required by the City to perform the service. If the contractor transfers all public records to the City upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records

disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City. Access to records hereunder shall also be available to FDOT and the Federal Highway Administration (FHWA).

**IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE DIVISION OF PUBLIC RECORDS AT (305) 416-1800, VIA EMAIL AT PUBLICRECORDS@MIAMIGOV.COM, OR REGULAR MAIL AT CITY OF MIAMI OFFICE OF THE CITY ATTORNEY, 444 SW 2ND AVENUE, 9TH FL, MIAMI, FL 33130. THE CONSULTANT MAY ALSO CONTACT THE RECORDS CUSTODIAN AT THE CITY OF MIAMI DEPARTMENT WHO IS ADMINISTERING THIS CONTRACT.**

#### **7.06 E- VERIFY**

Consultant shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Consultant during the term of the Contract and shall expressly require any subconsultant performing work or providing services pursuant to the Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the Contract term.

### **ARTICLE 8 INDEMNIFICATION**

To the fullest extent permitted by law, the Consultant shall indemnify, save, defend and hold harmless the City, State of Florida, Florida Department of Transportation, and their respective officers and employees, from all liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, carelessness, negligent act or omission, or intentional wrongful misconduct of the Consultant and persons employed or utilized by the Consultant in the performance of this Agreement.

This indemnification shall survive the termination and/or expiration of this Agreement. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida and the City's sovereign immunity. In the event that any action or proceeding is brought against the City by reason of any such claim or demand, the Consultant shall, upon written notice from the City, resist and defend such action or proceeding by counsel satisfactory to the City. The Consultant expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Consultant shall in no way limit the responsibility to indemnify, keep and save harmless and defend the City or its officers, employees, agents and instrumentalities as herein provided.

The indemnification provided above shall obligate the Consultant to defend, at its own expense, to and through appellate, supplemental or bankruptcy proceeding, or to provide for such defense, at the City's option, any and all claims of liability and all suits and actions of every name and description which may be brought against the City whether performed by the Consultant, or persons employed or utilized by Consultant.

This indemnity will survive the cancellation or expiration of this Agreement. This indemnity will be interpreted under the laws of the State of Florida, including without limitation and interpretation, which conforms to the limitations of §725.06 and/or §725.08, Florida Statutes, as applicable and as applicable.

The Consultant shall require all Subconsultant agreements to include a provision that they will indemnify the City, FDOT, and its officers and employees.

The Consultant agrees and recognizes that the City shall not be held liable or responsible for any claims Construction Engineering and Inspection Services for Overtown Greenway at NW 11<sup>th</sup> Street

which may result from any actions or omissions of the Consultant in which the City participated either through review or concurrence of the Consultant's actions. In reviewing, approving or rejecting any submissions by the Consultant or other acts of the Consultant, the City in no way assumes or shares any responsibility or liability of the Consultant or Sub- Consultant, under this Agreement.

Ten dollars (\$10) of the payments made by the City constitute separate, distinct, and independent consideration for the granting of this Indemnification, the receipt and sufficiency of which is voluntarily and knowingly acknowledged by the Consultant.

## **ARTICLE 9 INSURANCE**

The Consultant shall not start Services under this Agreement until the Consultant has obtained all insurance required hereunder and the City's Risk Manager or his/her authorized designee, has approved such insurance.

### **9.01 COMPANIES PROVIDING COVERAGE**

All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida and satisfactory to the Risk Administrator. All companies shall have a Florida resident agent and be rated at least A(X), in accordance with A.M. Best Company's Key Rating Guide, latest edition.

### **9.02 VERIFICATION OF INSURANCE COVERAGE**

The Consultant shall furnish certificates of insurance to the Risk Administrator for review and approval prior to the execution of this Agreement. The Certificates shall clearly indicate that the Consultant has obtained insurance of the type, amount and classification required by these provisions, in excess of any pending claims at the time of contract award to the Consultant. Consultant shall maintain coverage with equal or better rating as identified herein for the term of this contract. Consultant shall provide written notice to the City's Department of Risk Management of any material change, cancellation and/or notice of non-renewal of the insurance within 30 days of the change.

Consultant shall furnish copies of insurance policies pertaining to this Agreement to Risk Administrator within ten (10) days of written request.

### **9.03 FORMS OF COVERAGE**

#### **9.03-1 COMMERCIAL GENERAL LIABILITY**

The Consultant shall maintain commercial general liability coverage written on a primary and non-contributory basis, with limits of at least \$1,000,000.00 per occurrence, \$2,000,000.00 aggregate for bodily injury and property damage. The coverage shall include Premises and Operations, Contingent and Contractual Liability, and Products and Completed Operations, with additional endorsements as applicable. The coverage shall be written on a primary and non-contributory basis with the City listed as an additional insured as reflected by endorsement CG 2010 11/85 or its equivalence. Notice of cancellation should read (30) days/(10) days for nonpayment.

#### **9.03-2 BUSINESS AUTOMOBILE**

The Consultant shall provide business automobile liability coverage including coverage for all owned, hired and non owned autos with a minimal combined single limit of \$1,000,000.00 naming the City as an additional insured with respect to this coverage. Notice of cancellation should read (30) days/ (10) days for nonpayment.

#### **9.03-3 PROFESSIONAL LIABILITY INSURANCE**

The Consultant shall maintain Professional Liability Insurance including Errors and Omissions coverage in the minimum amount of \$1,000,000.00 per claim, \$1,000,000.00 aggregate providing for all sums which the Consultant shall be legally obligated to pay as damages for claims arising out of the services performed by the Consultant or any person employed by the Consultant in connection with this Agreement. This insurance shall be maintained for at least one year after completion of the construction and acceptance of any project covered by this Agreement.

#### **9.03-4 WORKER'S COMPENSATION INSURANCE**

The Consultant shall maintain Worker's Compensation Insurance in compliance with Florida Statutes, Chapter 440, as amended, and Employee's Liability with a minimum limit of \$500,000.00 each occurrence.

**9.03-5 SUB-CONSULTANT COMPLIANCE**

Consultant shall ensure that all Sub-consultants comply with these same insurance requirements.

**9.04 MODIFICATIONS TO COVERAGE**

The Risk Administrator or his/her authorized designee reserves the right to require modifications, increases, or changes in the required insurance requirements, coverage, deductibles or other insurance obligations by providing a thirty (30) calendar day written notice to the Consultant in accordance with Article 10.06, Notices, herein. The Consultant shall comply with such requests unless the insurance coverage is not then readily available in the national market, and may request additional consideration from the City accompanied by justification.

**ARTICLE 10 MISCELLANEOUS****10.01 AUDIT RIGHTS**

The City reserves the right to audit the Consultant's accounts during the performance of this Agreement and for three (3) years after final payment under this Agreement. The Consultant agrees to furnish copies of any records necessary, in the opinion of the Director, to approve any requests for payment by the Consultant.

**10.02 ENTIRE AGREEMENT**

This Agreement, as it may be amended from time to time, represents the entire and integrated Agreement between the City and the Consultant and supersedes all prior negotiations, representations or agreements, written or oral. This Agreement may not be amended, changed, modified, or otherwise altered in any respect, at any time after the execution hereof, except by a written document executed with the same formality and equal dignity herewith. Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach of any provision of this Agreement.

**10.03 SUCCESSORS AND ASSIGNS**

The performance of this Agreement shall not be transferred, pledged, sold, delegated or assigned, in whole or in part, by the Consultant without the written consent of the City, acting by and through its City Commission. It is understood that a sale of the majority of the stock or partnership shares of the Consultant, a merger or bulk sale, an assignment for the benefit of creditors shall each be deemed transactions that would constitute an assignment or sale hereunder requiring prior City approval.

The Consultant's services are unique in nature and any transference without City Commission approval shall be cause for the City to cancel this Agreement. The Consultant shall have no recourse from such cancellation. The City may require bonding, other security, certified financial statements and tax returns from any proposed Assignee and the execution of an Assignment/ Assumption Agreement in a form satisfactory to the City Attorney as a condition precedent to considering approval of an assignment.

The Consultant and the City each binds one another, their partners, successors, legal representatives and authorized assigns to the other party of this Agreement and to the partners, successors, legal representatives and assigns of such party in respect to all covenants of this Agreement.

**10.04 TRUTH-IN-NEGOTIATION CERTIFICATE**

In compliance with the Consultant's Competitive Negotiation Act, for any Project to be compensated under the Lump Sum method, the Consultant certifies that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of Notice to Proceed. The original Project price and any addition thereto will be adjusted to exclude any significant sums by which the City determines the project price was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs. All such price adjustments will be made within 1 year following the end of the Project.

**10.05 APPLICABLE LAW AND VENUE OF LITIGATION**

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any suit or action brought by any party, concerning this Agreement, or arising out of this Agreement, shall be brought in Miami-Dade County, Florida. Each party shall bear its own attorney's fees except in actions arising out of Consultant's duties to indemnify the City under ARTICLE 8 where Consultant shall pay the City's reasonable attorney's fees.

**10.06 NOTICES**

Construction Engineering and Inspection Services  
for Overtown Greenway at NW 11<sup>th</sup> Street  
RFQ 17-18-049

Whenever either party desires to give notice unto the other, such notice must be in writing, sent by registered United States mail, return receipt requested, addressed to the party for whom it is intended at the place last specified; and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice:

**For City of Miami:**

**Emilio T. González, Ph.D.**

City Manager

Office of the City Manager

City of Miami

444 S.W. 2<sup>nd</sup> Avenue, 10<sup>th</sup> Floor

Miami, Florida 33130-1910

Email: [etgonzalez@miamigov.com](mailto:etgonzalez@miamigov.com)

Phone: 305-416-1025

**Annie Perez, CPPO**

Director

Department of Procurement

City of Miami

444 S.W. 2<sup>nd</sup> Avenue, 6<sup>th</sup> Floor

Miami, Florida 33130-1910

Email: [annieperez@miamigov.com](mailto:annieperez@miamigov.com)

Phone: 305-416-1910

**Victoria Méndez**

City Attorney

Office of the City Attorney

City of Miami

444 S.W. 2<sup>nd</sup> Avenue, 9<sup>th</sup> Floor

Miami, Florida 33130-1910

Email: [victoriamedez@miamigov.com](mailto:victoriamedez@miamigov.com)

Phone: 305-416-1832

**With Copies to:**

**Steven C. Williamson**

Director

Office of Capital Improvements

City of Miami

444 S.W. 2<sup>nd</sup> Avenue, 8<sup>th</sup> Floor

Miami, Florida 33130-1910

Email: [swilliamson@miamigov.com](mailto:swilliamson@miamigov.com)

Phone: 305-416-1225

**For Consultant:**

XXXXXXXXXXXXXXXXXX

President

XXXXXXXXXXXXXXXXXX

XXXXXXXX XXXX

Miami, FL 33XXX

Email: \_\_\_\_\_

Phone: XXXX

**10.07 INTERPRETATION**

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

**10.08 JOINT PREPARATION**

Preparation of this Agreement has been a joint effort of the City and Consultant and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.

**10.09 PRIORITY OF PROVISIONS**

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in this Agreement shall prevail and be given effect. Where state law and federal law are in conflict, the City will follow the most restrictive requirement, except in cases where the state or local requirement is in direct violation of federal requirements.

**10.10 MEDIATION - WAIVER OF JURY TRIAL**

In an effort to engage in a cooperative effort to resolve conflict which may arise during the course of the design and /or construction of the subject project(s), and/or following the completion of the projects(s), the parties to this Agreement agree all disputes between them shall be submitted to non-binding mediation prior to the initiation of litigation, unless otherwise agreed in writing by the parties. A certified Mediator, who the parties find mutually acceptable, will conduct any Mediation Proceedings in Miami-Dade County, State of Florida. The parties will split the costs of a certified mediator on a 50/50 basis. The Consultant agrees to include such similar contract provisions with all Sub-Consultants and/or independent contractors and/or Consultants retained for the project(s), thereby providing for non-binding mediation as the primary mechanism for dispute resolution. Each party shall bear their own attorney's fees.

In an effort to expedite the conclusion of any litigation the parties voluntarily waive their right to jury trial or to file permissive counterclaims in any action arising under this Agreement.

**10.11 TIME IS OF THE ESSENCE**

Time is of the essence in this Agreement. Consultant shall promptly perform its duties under this Agreement and Work Orders pursuant hereto, and will give the Work as much priority as is necessary to cause the Work to be completed on a timely basis in accordance with this Agreement. All Work shall be performed strictly (not substantially) within the time limitations necessary to maintain the critical path and all deadlines established in this Agreement and/or Work Orders pursuant hereto.

**10.12 COMPLIANCE WITH LAWS**

Consultant shall comply with all applicable laws, codes, ordinances, rules, regulations and resolutions including, without limitation, the Americans with Disabilities Act ("ADA"), as amended, and all applicable guidelines and standards in performing its duties, responsibilities, and obligations related to this Agreement. The Consultant represents and warrants that there shall be no unlawful discrimination as provided by law in connection with the performance of this Agreement.

**10.12-1 NON-DISCRIMINATION**

City warrants and represents that it does not and will not engage in discriminatory practices and that there shall be no discrimination in connection with Consultant's performance under this Agreement on account of race, color, sex, religion, age, handicap, marital status or national origin. Consultant further covenants that no otherwise qualified individual shall, solely by reason of his/her race, color, sex, religion, age, handicap, marital status or national origin, be excluded from

participation in, be denied services, or be subject to discrimination under any provision of this Agreement.

#### **10.12-2 OSHA COMPLIANCE**

The Consultant warrants that it will comply with all safety precautions as required by federal, state or local laws, rules, regulations and ordinances. The City reserves the right to refuse Consultant access to City property, including project jobsites, if Consultant employees are not properly equipped with safety gear in accordance with OSHA regulations or if a continuing pattern of non-compliance with safety regulations is exhibited by the Consultant.

#### **10.12-3 ADA COMPLIANCE**

Consultant shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act ("ADA") in the course of providing any work, labor or services funded by the City, including Titles I & II of the ADA (regarding nondiscrimination on the basis of disability) and all applicable regulations, guidelines and standards. Additionally—the Consultant shall take affirmative steps to insure nondiscrimination in employment of disabled persons.

#### **10.13 NO PARTNERSHIP**

Consultant is an independent contractor. This Agreement does not create a joint venture, partnership or other business enterprise between the parties. The Consultant has no authority to bind the City to any promise, debt, default, or undertaking of the Consultant.

#### **10.14 DISCRETION OF DIRECTOR**

Any matter not expressly provided for herein dealing with the City or decisions of the City shall be within the exercise of the reasonable professional discretion of the Director or the Director's authorized designee.

#### **10.15 RESOLUTION OF CONTRACT DISPUTES**

Consultant understands and agrees that all disputes between it and the City based upon an alleged violation of the terms of this Agreement by the City shall be submitted for resolution in the following manner.

The initial step shall be for the Consultant to notify the Project Manager in writing of the dispute and submit a copy to the City of Miami personnel identified in Article 10.06, Notices.

Should the Consultant and the Project Manager fail to resolve the dispute the Consultant shall submit their dispute in writing, with all supporting documentation, to the Assistant Director-Contracts, as identified in Article 10.06, Notices. Upon receipt of said notification the Assistant Director-Contracts shall review the issues relative to the dispute and issue a written finding.

Should the Consultant and the Assistant Director-Contracts fail to resolve the dispute, the Consultant shall submit their dispute in writing within five calendar days to the Director. Failure to submit such appeal of the written finding shall constitute acceptance of the finding by the Consultant. Upon receipt of said notification the Director shall review the issues relative to the dispute and issue a written finding.

Consultant must submit any further appeal in writing within five calendar days to the City Manager. Failure to submit such appeal of the written finding shall constitute acceptance of the finding by the Consultant. Appeal to the City Manager for his/her resolution, is required prior to Consultant being entitled to seek judicial relief in connection therewith. Should the amount of compensation hereunder exceed \$500,000, the City Manager's decision shall be approved or disapproved by the City Commission. Consultant shall not be entitled to seek judicial relief unless:

- (i) it has first received City Manager's written decision, approved by the City Commission if applicable, or
- (ii) a period of sixty (60) days has expired after submitting to the City Manager a detailed statement of the dispute, accompanied by all supporting documentation, or a period of (90) days has expired where City Manager's decision is subject to City Commission approval; or
- (iii) City has waived compliance with the procedure set forth in this section by written instrument(s) signed by the City Manager.

#### **10.16 INDEPENDENT CONTRACTOR:**

Consultant has been procured and is being engaged to provide Services to the City as an independent contractor, and not as an agent or employee of the City. Accordingly, Consultant shall not attain, nor be entitled to, any rights or benefits under the Civil Service or Pension Ordinances of the City, nor any rights generally afforded classified or unclassified employees. Consultant further understands that Florida Workers' Compensation benefits available to employees of the City are not available to Consultant, and agrees to provide workers' compensation insurance for any employee or agent of Consultant rendering services to the City under this Agreement.

**10.17 CONTINGENCY CLAUSE:**

Funding for this Agreement is contingent on the availability of funds and continued authorization for program activities and the Agreement is subject to amendment or termination due to lack of funds, reduction of funds and/or change in regulations, upon thirty (30) days' notice.

**10.18 THIRD PARTY BENEFICIARY**

Consultant and the City agree that it is not intended that any provision of this Agreement establishes a third party beneficiary giving or allowing any claim or right of action whatsoever by any third party under this Agreement.

**10.19 PERFORMANCE EVALUATIONS**

The City shall conduct performance evaluations during and after completion of agreements with Consultants, which are used as a basis for the awarding of future work as well advising the Consultant of their performance.

**10.20 DISADVANTAGE BUSINESS ENTERPRISE (DBE) REPORTING**

If applicable, the Consultant shall complete the Anticipated DBE Participation Statement through the Equal Opportunity Compliance system within three business days after the pre-construction or pre-work conference for all federal and state funded projects. Consultant shall assist FDOT in tracking and reporting planned or estimated DBE utilization. FDOT currently have a race neutral program with a 10.65% race neutral goal as certified under the Florida Unified Certification Program. During the term of the Agreement, the Consultant shall be required to report payments to DBE and MBE Sub-consultants through the web-based Equal Opportunity Compliance (EOC) system.

Note: The Consultant must report DBE utilization or the lack thereof. All DBE payment must be reported whether or not you initially planned to utilize the firm. All questions regarding DBE reporting should be directed to [EOOHelp@dot.state.fl.us](mailto:EOOHelp@dot.state.fl.us).

**10.21 BID OPPORTUNITY LIST REPORTING**

The Federal DBE Program requires States to maintain a database of all firms that are participating or attempting to participate on FDOT-assisted contracts. The list must include all firms that bid on prime contracts, or bid or quote sub-consultants on FDOT-assisted projects, including DBE's and non-DBEs.

Consultant shall complete the Bidders Opportunity List through the Equal Opportunity Compliance system within three business days of submission of the proposal for ALL Subconsultants who quote to you for specific services for this solicitation. FDOT Form #375-040-62 – Bid Opportunity List for Professional Consultant Services, and Commodities & Contractual Services is included in the RFQ Document at page 81.

The web address to the Equal Opportunity Compliance system is listed below:

<https://www.fdot.gov/equalopportunity/eoc.shtm>

**10.22 DRUG FREE WORKPLACE CERTIFICATION**

The Consultant hereby certifies that it will provide a drug-free workplace program by:

- a. Publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Consultant's workplace, and specifying the actions that will be taken against employees for violations of such prohibition.

- b. Establishing a continuing drug-free awareness program to inform its employees about:
  - (i) The dangers of drug abuse in the workplace;
  - (ii) The Consultant's policy of maintaining a drug-free workplace;
  - (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and,
  - (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
- c. Giving all employees engaged in performance of the Agreement a copy of the statement required by subparagraph (a);
- d. Notifying all employees, in writing, of the statement required by subparagraph (1), that as a condition of employment on a covered Contract, the employee shall:
  - (i) Abide by the terms of the statement; and,
  - (ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than five (5) calendar days after such conviction;
- e. Notifying the City in writing within ten (10) calendar days after receiving notice under subdivision (4) (ii) above, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;
- f. Within thirty (30) calendar days after receiving notice under subparagraph (4) of a conviction, taking one of the following actions with respect to an employee who is convicted of a drug abuse violation occurring in the workplace:
  - (i) Taking appropriate personnel action against such employee, up to and including termination; or
  - (ii) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency; and,
- g. Making a good faith effort to maintain a drug-free workplace program through implementation of subparagraphs(a) through (f).



IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

WITNESS/ATTEST:

XXXXXXXXXXXXXXXXXX, a Florida corporation

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Print Name, Title*

\_\_\_\_\_  
*Print Name, Title of Authorized Officer or Official*

ATTEST:

(Corporate Seal)

Consultant Secretary  
(Affirm Consultant Seal, if available)

ATTEST:

**CITY OF MIAMI**, a municipal corporation of the  
State of Florida

\_\_\_\_\_  
Todd B. Hannon, City Clerk

\_\_\_\_\_  
Emilio T. González, Ph.D., City Manager

APPROVED AS TO INSURANCE  
REQUIREMENTS:

APPROVED AS TO LEGAL FORM AND  
CORRECTNESS:

\_\_\_\_\_  
Ann Marie Sharpe, Director  
Risk Management Department

\_\_\_\_\_  
Victoria Méndez, City Attorney

**CERTIFICATE OF AUTHORITY  
(IF CORPORATION OR LLC)**

I HEREBY CERTIFY that at a meeting of the Board of Directors of \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, held on the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, a resolution was duly passed and adopted authorizing (Name) \_\_\_\_\_ as (Title) \_\_\_\_\_ of the corporation to execute agreements on behalf of the corporation and providing that his/her execution thereof, attested by the secretary of the corporation, shall be the official act and deed of the corporation.

I further certify that said resolution remains in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_, day of \_\_\_\_\_, 20\_\_\_\_.

Secretary: \_\_\_\_\_

Print: \_\_\_\_\_

**CERTIFICATE OF AUTHORITY  
(IF PARTNERSHIP)**

I HEREBY CERTIFY that at a meeting of the Board of Directors of \_\_\_\_\_, a partnership organized and existing under the laws of the State of \_\_\_\_\_, held on the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, a resolution was duly passed and adopted authorizing (Name) \_\_\_\_\_ as (Title) \_\_\_\_\_ of the partnership to execute agreements on behalf of the partnership and provides that his/her execution thereof, attested by a partner, shall be the official act and deed of the partnership.

I further certify that said partnership agreement remains in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_, day of \_\_\_\_\_, 20\_\_\_\_.

Partner: \_\_\_\_\_

Print: \_\_\_\_\_

Names and addresses of partners:

Name	Street Address	City	State	Zip

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**CERTIFICATE OF AUTHORITY  
(IF INDIVIDUAL)**

I HEREBY CERTIFY that, I (Name) \_\_\_\_\_, individually and doing business as (d/b/a) \_\_\_\_\_ (If Applicable) have executed and am bound by the terms of the Agreement to which this attestation is attached.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Signed: \_\_\_\_\_

Print: \_\_\_\_\_

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**NOTARIZATION**

STATE OF \_\_\_\_\_ )

) SS:

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, who is personally known to me or who has produced \_\_\_\_\_ as identification and who (did / did not) take an oath.

\_\_\_\_\_  
SIGNATURE OF NOTARY PUBLIC  
STATE OF FLORIDA

\_\_\_\_\_  
PRINTED, STAMPED OR TYPED  
NAME OF NOTARY PUBLIC

# **ATTACHMENT A - SCOPE OF WORK**

## **RFQ 17-18-049**

### **ARTICLE A1 GENERAL**

The Consultant shall provide Construction Engineering and Inspection (CEI) services during the construction and completion of the Overtown Greenway at NW 11<sup>th</sup> Street (from NW 7<sup>th</sup> Ave to NW 12<sup>th</sup> Ave) project (City Project No.: B-173648). Consultant shall provide said services in accordance with Section §287.055 Florida Statutes, as amended, Consultants' Competitive Negotiations Act ("CCNA").

#### **A1.01 SCOPE OF SERVICES**

The Consultant agrees to provide comprehensive professional services in accordance with all applicable laws and building regulations, including the Florida Building Code the City of Miami, Florida Code of Ordinances, as set forth in this Agreement and further enumerated in any Work Orders, and the Florida Department of Transportation's (FDOT) latest version of the Construction Project Administration Manual (CPAM). Consultant shall furnish, as Basic Services, comprehensive professional services for the Projects including, but not limited to those describes in Article A2, "Basic Services."

### **ARTICLE A2 BASIC SERVICES**

Consultant agrees to provide complete specified services as set forth in the Agreement, in accordance with the Florida Building Code, latest edition, all federal, state, county and City of Miami, laws, codes and ordinances. Consultant shall maintain an adequate staff of qualified personnel on the Services at all times to ensure its performance as specified in the Agreement.

Consultant agrees to management of compliance and reporting requirements of federal funded projects. This includes, but is not limited to:

- (i) Educating contractor and ensuring contractor compliance with FDOT requirements, Equal Employment Opportunity (EEO) requirements, Disadvantaged Business Enterprise requirements, Davis-Bacon requirements, On the Job Training (OJT) requirements, and ARRA reporting requirements (See Exhibit A).
- (ii) Gathering and managing submission of all required reports to various agencies as required by ARRA, other federal requirements, and FDOT requirements.
- (iii) Creating reimbursement requests for federal reimbursement, including all required reports and forms per FDOT and federal requirements.
- (iv) Scheduling and supervising pre-construction meeting, OJT Post Pre-Construction Training Evaluation Meeting, EEO meetings, and any other ARRA, federal, or FDOT required meetings for all applicable projects.
- (v) Performing required Labor/EEO Compliance Interviews and OJT Trainee Interviews as required.

#### **A2.01 CONSTRUCTION ENGINEERING AND INSPECTION SERVICES**

The Consultant shall be fully responsible for carrying out all functions necessary to provide CEI Services on Projects. The Consultant will be the City's representative during the construction phase of Projects and all communications to the Contractor will be given through the Consultant. The Consultant shall immediately advise the Project Manager of any omissions, substitutions, defects, and deficiencies noted in the work of the Contractor and the corrective action taken.

#### **A2.02 COORDINATION**

The Consultant shall coordinate all activities, correspondence, reports, and other communication related to the Services with the Project Manager. Upon request this information shall be made available to the Construction Program Manager. All activities and decisions of the Consultant relating to the projects shall be subject to review by the Program Manager.

#### **A2.03 GENERAL REQUIREMENTS**

General Requirements and responsibilities of the Consultant are provided in Article A1 General. Requirements and activities to be undertaken by Consultant shall be as detailed in each Work Order Proposal accepted and

pursuant to the terms and conditions of this Agreement. The City may direct the Contractor to utilize a Contractor Quality Control program as defined in the latest version of FDOT's Standard Specifications for Road and Bridge Projects. The Consultant shall provide verification testing and inspection for all assigned Projects, as specified in FDOT's standard specifications, unless otherwise directed.

#### **A2.04 CONSTRUCTION ENGINEERING AND INSPECTION DUTIES**

The Consultant shall perform all services necessary to properly coordinate the activities of all parties involved in completing the Project. These include maintaining complete and accurate records of all activities and events relating to the Project; properly documenting all significant Project changes; interpreting plans, specifications, and construction contract provisions; making recommendations to the City to resolve disputes; and maintaining an adequate level of surveillance of Contractor activities.

All documentation will comply with standard City procedures, formats, and content. The Consultant shall obtain the Construction Project Manager's approval for all procedures and processes.

Services include, but are not limited to, the following:

**(i) Meetings**

Schedule and attend, within ten (10) days after the Notice to Proceed, pre-construction meeting for the Project in accordance with City procedures. The Consultant shall provide appropriate staff to attend and participate in the pre-construction meeting.

The Consultant shall record a complete and concise record of the pre-construction meeting and distribute copies of the meeting minutes to the all participants and other required parties within five (5) calendar days.

**(ii) Contractor Monitoring**

Monitor Contractor's work and assure that the Contractor is conducting inspections, preparing reports and monitoring all Stormwater pollution prevention measures associated with the project. For each project that requires the use of the NPDES General Permit, provide at least one staff person who has successfully completed the "Florida Stormwater, Erosion, and Sedimentation Control Training and Certification Program for Inspectors and Contractors." The Consultant's inspector will be familiar with the requirements set forth in the FEDERAL REGISTER, Vol. 57, No. 187, Friday, September 5, 1992, pages 4412 to 4435 "Final NPDES General Permits for Stormwater Discharges from Construction Sites" and guidelines developed by the City.

**(iii) Schedule Review**

Review the Contractor's baseline schedule and any subsequent revisions for compliance with contract requirements.

**(iv) Problem Resolution**

Analyze problems that arise on a project and proposals submitted by the Contractor, prepare and submit recommendations to the Construction Project Manager, and process the necessary paperwork.

**(v) Payment Review**

Produce reports; verify quantity calculations, and field measure for payment purposes as required.

**(vi) Traffic Control**

Responsible for review of Work Zone traffic control plan design, implementation, and inspection of maintenance of traffic schemes and devices in work zones to assure they are in accordance with the City's requirements.

**(vii) Public Information**

Provide public information services as required to support the City and assist in managing inquiries from the public, public officials, and the news media. Prepare fact sheets for internal distribution as requested. The Construction Project Manager shall approve all notices, newsletters, brochures, responses to news media, etc., prior to release.

**(viii) Project Journal**

Maintain both a detailed electronic and hard copy diary with accurate records of the Contractor's operations, quantities, testing data, and of significant events that affect the work. Submit to the

Construction Project Manager a daily construction report utilizing the City's MPCS and provide electronic copies on a monthly basis.

#### **A2.05 VERIFICATION SAMPLING AND TESTING**

The Consultant shall perform sampling and testing in accordance with the requirements defined in the applicable project specifications and standards, such as Verification Sampling and Testing as defined in the latest versions of the Florida Department of Transportation (FDOT) Standard Specifications for Road and Bridge Construction and FDOT's Construction Project Administration Manual (CPAM).

##### **A2.05-1 PLANT INSPECTION & MATERIAL SAMPLING**

The Consultant and/or the Consultant's lab will perform plant inspection and sampling of materials and components at remote locations (from the vicinity of the project) in accordance with the applicable requirements.

##### **A2.05-2 JOB CONTROL SAMPLES**

The Consultant shall be specifically responsible for job control samples determining the acceptability of all materials and completed work items on the basis of either test results or verification of a certification, certified mill analysis, FDOT label, FDOT stamp, etc.

##### **A2.05-3 SAMPLE TRANSPORT**

The Consultant shall be responsible for transporting samples, cylinders, beams, etc. to an approved laboratory for testing. The laboratory shall not be the same laboratory the contractor is using for their acceptance testing.

##### **A2.05-4 DOCUMENTATION**

Documentation reports on sampling and testing shall be submitted to responsible parties during the same week that the construction work is done. The Consultant will input verification testing information and data into the City's MPCS, using PDA's on a daily basis, or as otherwise directed by the Construction Project Manager. Designated Consultant personnel will be provided instructions for performing this task.

#### **A2.06 VERIFICATION INSPECTION SERVICES**

The Consultant shall monitor the Contractor's on-site construction activities and inspect materials as required to assure that the work is completed in reasonable conformity with the plans, specifications, and other Construction Contract provisions. Unless otherwise directed by City, all verification inspections shall be in accordance with the requirements of the latest versions of the Florida Department of Transportation (FDOT) Standard Specifications (Red Book) and FDOT's Construction Project Administration Manual (CPAM).

The Consultant shall observe, record and report the Contractor's work progress to determine that the Work is in general conformance with the requirements of the Contract Documents. This shall include, without limitation, documenting activity observed and making note of deficiencies and issues requiring resolution; noting construction deficiencies and punch list items; making photograph or video records of construction as deemed necessary, and labeling and logging photos and videotapes.

##### **A2.06-1 SITE CONDITIONS REVIEW**

Review site conditions during construction to determine that the Contractor is maintaining site-related items in accordance with the Contract Documents. Document any deficiencies and notify the Contractor and the Construction Project

##### **A2.06-2 SOILS TESTING**

Coordinate the Engineering and Inspection of backfill, compaction and perform all required testing. Monitor reports of compaction densities for trench backfill, and general site backfill to ascertain that minimum specified densities are achieved. Review all test results submitted to verify compliance with specified requirements, and maintain project log. Verify that areas of failing compaction are corrected to specified criteria.

##### **A2.06-3 CONCRETE TESTING**

Coordinate and perform sampling and testing of concrete and monitor concrete test reports to ascertain specified strengths are achieved. Follow up non-passing tests and evaluate to determine structural implications for the affected construction.

##### **A2.06-4 PROJECT MEETINGS**

Administer weekly project meetings with appropriate team members in attendance. Prepare and distribute meeting minutes to attendees. Note changes and/or corrections and insure all attendees approve minutes at subsequent weekly meetings.

**A2.06-5 STORED MATERIAL/EQUIPMENT REVIEW**

Review stored materials and/or equipment for quantity and quality verification for Contractor payment and to verify that equipment and/or materials are adequately protected until installed. Coordinate with Contractor to facilitate review of major items prior to unloading and storage. Regularly review Contractor's storage areas to determine compliance with the Contract Documents. Notify the Contractor of any damaged or improperly stored materials. Adjust payments properly for damaged or improperly stored equipment.

**A2.06-6 PROJECT PHOTO AND VIDEO DOCUMENTATION**

Utilize project video and still photo camera equipment to document construction, video meetings, and record operation and maintenance training session. Develop and maintain a log to enable easy retrieval of visual information. Coordinate taping of operator training sessions, major meetings and major construction events.

**A2.06-7 RECORD DRAWING REVIEW**

Throughout the course of the project, review as-recorded drawings to verify the Contract Drawings are noted to reflect actual construction. Review monthly status of as-recorded drawings and verify for monthly pay applications. Refer to Field Order and Change Proposal Request (CPR) logs to identify areas of construction revision. Notify Contractor in a timely fashion of deficiencies noted. Provide follow up to verify Contractor brings as-recorded drawing status up-to-date.

**A2.06-8 DEVELOP A PROGRESSIVE LIST OF ITEMS REQUIRING CORRECTION**

Develop and provide to Contractor an on-going list of items requiring correction to encourage the timely correction of noted construction deficiencies. Monitor construction throughout the project duration and identify deficient items. Provide Contractor with an updated list at monthly construction meetings. As deficiencies are corrected, revise the list by deleting corrected items. Distribute the list updates to authorized parties.

**A2.06-9 MANUFACTURER'S O&M TRAINING REVIEW**

Review the quantity and quality of specified manufacturer's training and associated O&M manuals. Review Contract Documents with the Contractor to establish which equipment requires training and the number of hours required. Review manufacturer's training outlines and materials for completeness. Observe training sessions to verify both field and classroom training is provided. Collect and log operator equipment training certification forms.

**A2.06-10 NOTIFICATION OF ACCIDENT DAMAGE/INJURY**

Document any Engineering and Inspections made of property damage or personal injury accidents on site and provide a written report to the Construction Project Manager. Require lost-time accident reports at construction meetings.

**A2.06-11 CONTRACT INTERPRETATIONS AND MODIFICATIONS**

Receive, log and coordinate reviews and responses to Contractor's Requests For Information/Interpretations (RFI's). Responses to RFI's are required to be provided to the Contractor within seven (7) days. Prepare and issue response letters, field orders, or Change Proposal Requests as required.

**A2.06-12 ADMINISTRATION OF CHANGED WORK**

Track changes from initiation through completion. Estimate cost and time impacts, and assist with negotiation of changes in contract time and cost. Prepare change orders to incorporate changes within Contract Documents. Evaluate Project on a continual basis to determine when changes are required. Initiate necessary changes in the form of Change Proposal Requests. Review costs presented by Contractor on Change Proposal Requests. Assist with negotiation of final pricing as required.

Assemble approved Change Proposal Requests periodically into Change Orders. Include justification documents with each Change Order. Maintain current status log of all Change Proposal Requests and Change Orders. Review as-recorded drawings to verify changes in work are reflected as applicable.

Review pay requests to verify Change Order items are broken out and that payment is not made until work is complete.

**A2.06-13 FIELD ORDERS**

Provide coordination and review to identify the need for minor changes in the Work consistent with the design intent, and issue Field Orders to communicate the details of the minor changes involving no change in contract time or contract price.

**A2.06-14 COORDINATE AND ISSUE CHANGE PROPOSAL REQUESTS (CPR'S)**

Provide coordination and review to identify needed changes in the Work consistent with the design intent that involve changes in contract price and/or time, and issue CPR's to communicate the details of the changes and request pricing by the Contractor. Collect technical information and evaluate proposed change. Prepare technical description of the CPR using necessary graphic details and specifications. Prepare Engineer's Opinion of Cost and evaluation of impact on Contract Time.

**A2.06-15 WORK CHANGE DIRECTIVES**

Issue Work Change Directives (WCD), as required, to authorize change or extra Work to proceed on a time and material basis when Change Proposal Request finalization is not expedient or possible. Observe Time and Material (T&M) work and reconcile T&M costs with Contractor on a daily basis. Finalize WCD's when associated work is completed in an appropriate Change Order.

**A2.06-16 CHANGE ORDERS**

Coordinate the combining of Change Proposal Requests, Work Change Directives and Field Orders into Change Orders, and assemble the documentation, prepare the Change Order package and circulate for execution by the Consultant, Contractor and Construction Project Manager. Update CPR and Change Order logs and provide status reports tracking the execution of Change Orders.

**A2.06-17 MEASUREMENT AND PAYMENT**

Review and approve the Contractor's Schedule of Values (cost breakdown) to establish a reasonably balanced distribution of costs to the various elements of the total construction to serve as a basis for progress payments and determination of cost impact of changes. Notify Contractor with either letter of acceptance or letter of rejection noting exceptions to obvious or apparent areas of unbalanced costs.

**A2.06-18 REVIEW AND PROCESS CONTRACTOR'S APPLICATIONS FOR PAYMENT**

Receive and review draft application for payment prepared by the Contractor, and note and attempt to reconcile discrepancies between Engineer's estimate of progress and Contractor's application. Review draft application for payment in comparison to measured or estimated quantities. Make notations of deficient work not recommended for payment until corrected; deletion of payment for stored materials and/or equipment which do not have approved shop drawings and/or proper invoices; reduction of value for partially completed items claimed as complete. Return a copy of the reviewed draft to the Contractor. Meet with Contractor to reconcile discrepancies. Review revised application for payment and, if appropriate, advise Contractor to submit the required number of copies. Forward copies to the Construction Project Manager for processing.

**A2.06-19 PROJECT CLOSEOUT**

Receive and review Contractor's required substantial completion submittal, and determine if Project is ready for substantial completion inspection. Develop substantial completion submittal checklist and perform the following activities: verify submittal of all required documents; review Contractor Record Drawings; perform drafting of Record Drawing revisions on reproducible set and transmit to the Construction Project Manager; review other substantial completion submittal documents for completeness and compliance with Contract provisions; and schedule substantial completion inspection.

**A2.06-20 CONDUCT SUBSTANTIAL COMPLETION INSPECTION**

Coordinate, conduct and document the substantial completion inspection. Notify all project team members of date of substantial completion inspection. Prepare and distribute the punchlist format to the parties conducting the inspection. Review progress of corrective action on punch list items, periodically updates, and re-issue.

Identify tentative date of substantial completion, and prepare and issue Certificate of Substantial Completion with a list of stated qualifications (punch list).

**A2.06-21 FINAL COMPLETION**

Receive and review the Contractor's required final completion submittal. Develop final completion submittal checklist. Verify submittal of all required documents and review for completeness and compliance with Contract provisions. Notify Construction Project Manager, Contractor and other affected parties of date of final inspection.

Coordinate, attend and conduct the final inspection meeting and physical walk-through of the Project.

**A2.06-22 FINAL PAYMENT**

Collect all payment documents required and forward to the Construction Project Manager for processing along with the Contractors Final Application and Certificate for Payment.

Finalize all project costs and determine the final adjusted amounts for construction. Obtain Contractor's signature on any required Contractor's Certification or Affidavits. Process and sign Final Application for Payment. Prepare transmittal letter indicating recommendation for Final Payment.

Consultant shall review and provide initial recommendations on disputes or claims in response to written notification of claims made by the Contractor, in accordance with the provisions of the Contract Documents, asserting the right to an adjustment in either Contract Price or Contract Time.

**A2.07 PERSONNEL**

**A2.07.1 GENERAL REQUIREMENTS**

The Consultant shall provide sufficient personnel who possess the experience, knowledge, requirements and character to adequately perform the duties assigned for each specific assignment under this scope of work. Unless otherwise agreed by the City of Miami, the City will not compensate straight overtime or premium overtime.

**A2.07.2 CONSULTANTS SAFETY PROGRAM**

Individuals designated by the Consultant for the project should have appropriate level of safety training for their assigned duties.

**A2.07.3 PERSONNEL QUALIFICATIONS**

The Consultant shall utilize only competent personnel, qualified by experience, and education. The Consultant shall submit in writing to the Construction Project Manager the names of personnel proposed for assignment to the Project, including a detailed resume for each containing at a minimum salary, education, and experience. A request for approval shall be submitted to the Construction Project Manager at least two weeks prior to the date an individual is to report to work.

Before the project begins, all project staff shall have a working knowledge of the current FDOT Construction Project Administration Manual (CPAM) and must possess all the necessary certifications for obtaining the duties of the position they hold. The Consultant Project Manager shall assure that the City of Miami's current practices, policies, and procedures are met throughout the course of the project. Cross training of the Consultant's project staff is highly recommended to ensure a knowledgeable and versatile project inspection team and should occur as workload permits.

Minimum qualifications for the Consultant personnel are set forth as follows. Exceptions to these minimum qualifications will be considered on an individual basis. The Construction Program Manager or designee will have the final approval authority.

**A2.07.3-1 CEI PROJECT MANAGER (FDOT CONSTRUCTION TRAINING QUALIFICATION PROGRAM (CTQP))**

For the CEI Project Manager Title: ten years of experience in construction of major road or bridge structures, two years of which involved construction of major road or bridges with the exception of Complex Category 2 (CC2) bridge structures.

To be in primary control, the CEI Project Manager must have supervised two or more Senior CEI Construction Inspectors and two or more support staff (e.g., Office Manager, Compliance Officer, and Secretary) and must have been directly responsible for all CEI services assigned.

Receives general instructions regarding assignments from the City and is expected to exercise initiative and independent judgment in the solution of work problems. Directs and assigns specific tasks to inspectors and assists in all phases of the construction project. Will be responsible for the progress and final estimates throughout the construction project duration.

Must have the following as required by the scope of work of the project:

**Qualifications (Mandatory)**

- FDOT Advanced Maintenance of Traffic (MOT)
- CTQP Final Estimates Level I & II
- Quality Control (QC) Manager
- Advanced American Traffic Safety Services Association (ATSSA) MOT Certification
- Either a Civil Engineering Degree or at least 10 years of construction and contract management experience

**Other**

- Attend CTQP Quality Control Manager Course and pass the examination.
- A Master's Degree in Engineering may be substituted for one year of engineering experience.
- PE License preferred.

**A2.07.3-2 SENIOR CEI CONSTRUCTION INSPECTOR (FDOT CTQP)**

High school graduate or equivalent plus five years of experience in construction inspection. Previous responsibilities must include performing highly complex technical assignments in field surveying and construction layout, checking shop drawings, checking engineering computations, inspecting construction work, conducting field tests, and finalizing punch-lists. Senior Inspectors must be able to coordinate and manage the lower level inspectors. Work is performed under the general supervision of the Project Administrator / Engineer.

Must have the following as required by the scope of work of the project:

**Qualifications**

- CTQP Concrete Field Inspector Level I
- American Concrete Institute (ACI)/Concrete Technician Level I & II
- CTQP Asphalt Roadway Level I
- CTQP Asphalt Roadway Level II
- CTQP Earthwork Construction Inspection Level I
- CTQP Earthwork Construction Inspection Level II
- CTQP Drilled Shaft Inspection (If applicable)
- CTQP Grouting Technician Level I (If applicable)
- FDOT Intermediate MOT
- FDEP Environmental Technician
- CTQP Final Estimates Level I

**Certifications**

- Nuclear Radiation Safety
- Advanced ATSSA MOT
- Troxler/Hazmat

**A2.07.3-3 CEI CONSTRUCTION INSPECTOR**

High school graduate or equivalent plus four (4) years of experience in construction inspection. Previous responsibilities must include inspecting construction work, conducting field tests, and finalizing punch-lists. Must have the following as required by the scope of work of the project:

**Qualifications:**

- CTQP Concrete Field Inspector Level I

- CTQP Asphalt Roadway Level I
- Asphalt Paving Level I
- CTQP Earthwork Construction Inspection Level I
- FDOT Intermediate MOT
- Intermediate ATSSA MOT
- Earthwork Construction Level I
- ACI/Concrete Field Tech

Certifications:

- Nuclear Radiation Safety
- Troxler/Hazmat

**A2.07.3-4 CEI CONTRACT COMPLIANCE SPECIALIST**

Graduation from an accredited high school or equivalent with one year of experience as a compliance officer on a construction project or two years of assisting the compliance officer in monitoring the project. Must be able to provide Construction Contract administration and compliance reporting. Must have prior experience compliance monitoring of Local, State and Federal Aid funded construction projects. Must have particular knowledge of the City of Miami's Procurement Code, particularly the City of Miami's Procurement Code: Section 18-89, Contracts for Public Works or Improvements. Must have knowledge of the United States Department of Labor Wage and Hour Division, including specific knowledge of provisions of the Davis-Bacon Act and the Fair Labor Standards Act. Must be knowledgeable of EEO/AA laws and must have the ability to analyze, collect, evaluate data, and take appropriate action when necessary. Must attend all training workshops or meetings for Compliance Specialists as determined necessary.

**A2.08 STAFFING**

Upon Agreement execution, the Consultant shall establish and maintain appropriate staff which possesses the experience, knowledge, requirements and character to adequately perform assigned project duties. If needed, in order to assist in resolving disputed final pay quantities, Construction Project Manager may ask the Consultant to provide personnel familiar with aspects of a construction project's final measurements.

The Consultant shall replace staff whose performance is unsatisfactory within one week of City notification. Personnel identified in the Consultant technical proposal are to be assigned as proposed and are committed to perform services under this scope of work. Personnel changes will require written approval from City.

**A2.09 TIME FRAMES FOR COMPLETION**

Work shall commence at the same time as commencement of the construction work and shall be finished upon final acceptance of the construction work.

**ARTICLE A3 CHANGE ORDERS**

Changes in the quantity or character of the Project within the scope of the work, including all changes resulting in changes in the Compensation, or the Schedule, shall be authorized only by Change Orders approved in advance and issued in accordance with the provisions of the City.

The Consultant shall be required to provide the City with a detailed Change Proposal Request which shall include requested revisions to the Proposal, including but not limited to adjustments to the Compensation and Schedule, if applicable. The Contractor is required to provide sufficient data in support of the cost proposal demonstrating its reasonableness. In furtherance of this obligation, the City may require that the Consultant submit any or all of the following: a cost breakdown of material costs, labor costs, labor rates by classification, and Project classification and overhead rates in support of Consultant's Change Proposal Request. The Consultant's Change Proposal Request must include any schedule revisions and an explanation of the cost and schedule impact of the changes on the Project.

**ARTICLE A4 REIMBURSABLE EXPENSES**

**A4.01 GENERAL**

Reimbursable Expenses cover those services and items authorized by City in addition to the Basic and Additional Services and consist of actual, direct expenditures made by Consultant for the purposes listed below.

Transportation, travel and per diem expenses within Dade, Broward, or Palm Beach Counties shall not be considered as reimbursable expenses under this Agreement.

**A4.01-1 COMMUNICATIONS EXPENSES**

Identifiable communication expenses approved by the Project Manager, long distance telephone, courier and express mail between Consultant's various permanent offices and Sub-consultant. Consultant's field office at the Project site is not considered a permanent office. Cell phones will not be considered as a reimbursable expense under this agreement.

**A4.01-2 REPRODUCTION, PHOTOGRAPHY**

Cost of printing, reproduction or photography, beyond that which is required by or of Consultant's part of the work, set forth in this Agreement.

**A4.01-3 OTHER** Items not indicated in Section 4.01 when authorized by the Program Manager.

**ARTICLE A5 CITY'S RESPONSIBILITIES**

**A5.01 PROJECT & SITE INFORMATION**

City, at its expense and insofar as performance under this Agreement will furnish Consultant with the information described below, or, if not readily available, may authorize Consultant to provide such information as an Additional Service, eligible as a Reimbursable Expense.

- (i) Plans & Specifications: City shall provide to the Consultant copies of the permitted plans and the specifications prepared by the Design Professional.
- (ii) City's Standard Specifications for Road and Bridge Construction.
- (iii) Copy of the Executed Construction Contract.

**ARTICLE A6 CONSULTANT FURNISHED DOCUMENTS AND EQUIPMENT**

**A6.01** Consultant shall provide as part of its Basic Services the following documentation and equipment, which shall be part of the Basic Services fee.

**A6.01-1 FDOT DOCUMENTS**

All applicable FDOT documents, as indicated in the City's Standard Specifications for Road and Bridge Construction, shall be provided by the Consultant. Most, if not all, FDOT documents, specifications, directives, procedures, and standard forms are available through the FDOT's internet website.

**A6.01-2 VEHICLES**

Vehicles used in the field by inspectors will be suitable for their intended purpose and will be equipped with appropriate safety equipment. Vehicles shall have the name and phone number of the consulting firm visibly displayed.

**A6.01-3 FIELD EQUIPMENT**

The Consultant shall supply survey, inspection, and testing equipment in order to carry out the Scope of Work, and other items as determined by the Construction Project Manager. Quality and quantity of such items is to meet the Construction Project Manager's approval.

Hard hats and other appropriate safety gear will be provided to all field personnel. Hard hats shall have the name of the consulting firm visibly displayed.

Computers, Personal Digital Assistants (PDAs), printers, and other related hardware will be provided by the Consultant.

Such equipment includes those non-consumable and non-expendable items, which are normally needed for a CEI project and are essential in order to carry out the Scope of Work.

Equipment described herein under this section will remain the property of the Consultant.

The Consultant's handling of nuclear density gauges shall be in compliance with their license.

The Consultant shall retain responsibility for risk of loss or damage to said equipment during performance of Services.

**A6.01-4 LICENSES**

The Consultant will be responsible for obtaining proper licenses for testing equipment and personnel operating testing equipment when licenses are required. The Consultant shall make the license and supporting documents available to the City of Miami, for verification, upon request. Radioactive Materials License for use of Surface Moisture Density Gauges shall be in compliance with FDOT's requirements.

## SCHEDULE A1 – SUB-CONSULTANTS

FIRM NAME	CONSULTING FIELD

## SCHEDULE A2 – KEY STAFF

NAME	JOB CLASSIFICATION

## **ATTACHMENT B - COMPENSATION AND PAYMENTS**

### **ARTICLE B.1 METHOD OF COMPENSATION**

The fees for Professional Services for each Work Order shall be determined by the Hourly Rates set forth herein, as defined B3.01 in Section and at the rates set forth therein.

#### **B1.01 COMPENSATION LIMITS**

The aggregate sum of all payments for fees and costs, including reimbursable expenses, to the Consultant payable by the City under this Agreement shall be limited to the amount specified in Section 2.03-1 as the maximum compensation limit for cumulative expenditures under this Agreement. Under no circumstances will the City have any liability for work performed, or as otherwise may be alleged or claimed by Consultant, beyond the cumulative amount provided herein, except where specifically approved in accordance with the City Code by the City Manager or City Commission as applicable as an increase to the Agreement and put into effect via an Amendment to this Agreement.

#### **B1.02 CONSULTANT NOT TO EXCEED**

Absent an amendment to the Agreement or to any specific Work Order, any maximum dollar or percentage amounts stated for compensation shall not be exceeded. In the event they are so exceeded, the City shall have no liability or responsibility for paying any amount of such excess, which will be at Consultant's own cost and expense.

### **ARTICLE B2 WAGE RATES**

#### **B2.01 FEE BASIS**

All fees and compensation payable under this Agreement shall be formulated and based upon the averages of the certified Wage Rates that have received and approved by the Director. The averages of said certified Wage Rates are summarized in Schedule B1 incorporated herein by reference. Said Wage Rates are the effective direct hourly rates, as approved by the City, of Consultant and Sub-Consultant employees in the specified professions and job categories that are to be utilized to provide the services under this Agreement, regardless of manner of compensation.

#### **B2.02 EMPLOYEES AND JOB CLASSIFICATIONS**

Schedule B1 identifies the professions, job categories and/or employees expected to be used during the term of this Agreement. These include architects, engineers, landscape architects, professional interns, designers, CADD technicians, project managers, GIS and environmental specialists, specification writers, clerical/administrative support, and others engaged in the Work. In determining compensation for a given Scope of Work, the City reserves the right to recommend the use of Consultant employees at particular Wage Rate levels.

#### **B2.03 MULTIPLIER**

For Work assigned under this Agreement, a multiplier for home office and for field office shall apply to Consultant's hourly Wage Rates in calculating compensation payable by the City. Said multiplier is intended to cover the Consultant employee benefits and the Consultant's profit and overhead, including, without limitation, office rent, local telephone and utility charges, office and drafting supplies, depreciation of equipment, professional dues, subscriptions, stenographic, administrative and clerical support, other employee time or travel and subsistence not directly related to a project.

#### **B2.04 CALCULATION**

Said Wage Rates are to be utilized by Consultant in calculating compensation payable for specific assignments and Work Orders as requested by City. Consultant shall identify job classifications, available staff and projected man-hours required for the proper completion of tasks and/or groups of tasks, milestones and deliverables identified under the Scope of Work as exemplified in Schedule A2.

#### **B2.05 EMPLOYEE BENEFITS AND OVERHEAD**

Regardless of the method of compensation elected herein, compensation paid by City shall, via the Multiplier, cover all Consultant costs including, without limitation, employee fringe benefits (e.g. sick leave,

vacation, holiday, unemployment taxes, retirement, medical, insurance and unemployment benefits) and an overhead factor. Failure to comply with this section shall be cause for cancellation of this Agreement.

#### **B2.06 ESCALATION**

There shall be no escalation clause as part of this Agreement.

### **ARTICLE B3 COMPUTATION OF FEES AND COMPENSATION**

The City agrees to pay the Consultant, and the Consultant agrees to accept for services rendered pursuant to this Agreement, fees computed by the hourly rates identified in Schedule B1 Wage Rates in the following manner. Compensation for the Scope of Work shall be the Not to Exceed Fee mutually agreed upon in writing by the City and the Consultant and as stated in Article 2.03-1 Compensation Limits, above. The City shall make a determination of allowable costs in accordance with the Federal cost principals for services rendered under this Agreement.

#### **B3.01 HOURLY RATE FEES**

**B3.01-1** Hourly Rate Fees shall be those rates for Consultant and Sub-Consultant employees identified in Schedule B1 Wage Rates. The City shall have no liability for any fee, cost or expense above this figure.

#### **B3.01-2 CONDITIONS FOR USE**

Hourly Rate Fees shall be used in those instances where the parties agree that it is not possible to determine, define, quantify and/or calculate the complete nature, and/or aspects, tasks, man-hours, or milestones for a particular Project or portion thereof at the time of Work Order issuance. Hourly Rate Fees may be utilized for Additional Work that is similarly indeterminate. In such cases, the City will establish an Allowance in the Work Order that shall serve as a Not to Exceed Fee for the Work to be performed on an Hourly Rate Basis.

#### **B3.02 REIMBURSABLE EXPENSES**

Any fees for authorized reimbursable expenses shall not include charges for Consultant handling, office rent or overhead expenses of any kind, including local telephone and utility charges, office and drafting supplies, depreciation of equipment, professional dues, subscriptions, etc., reproduction of drawings and specifications (above the quantities set forth in this Agreement), mailing, stenographic, clerical, or other employees time or travel and subsistence not directly related to a project. All reimbursable services shall be billed to the City at direct cost expended by the Consultant. City authorized reproductions in excess of sets required at each phase of the Work will be a Reimbursable Expense.

The City will reimburse the Consultant for authorized Reimbursable Expenses pursuant to the limitations of this Agreement as verified by supporting documentation deemed appropriate by Director or designee including, without limitation, detailed bills, itemized invoices and/or copies of cancelled checks.

#### **B3.03 FEES FOR ADDITIVE or DEDUCTIVE ALTERNATES:**

The design of additive and deductive alternates contemplated as part of the original Scope for a Project as authorized by the Director will be considered as part of Basic Services. The design of additive and deductive alternates that are beyond the original Scope of Work and construction budget may be billed to City as Additional Services. The fees for alternates will be calculated by one of the three methods outlined above, as mutually agreed by the DIRECTOR and the Consultant.

#### **B3.04 FEES FOR ADDITIONAL SERVICES**

The Consultant may be authorized to perform Additional Services for which additional compensation and/or Reimbursable Expenses, as defined in this Agreement under Sections B3.04 and B3.02 respectively, may be applicable. Consultant shall utilize the Work Order Proposal Form and worksheets which can be found on the City's Webpage at <http://www.miamigov.com/MiamiCapital/forms.html>.

The webpage also provides the procedures for completing these forms. Failure to use the forms or follow the procedures will result in the rejection of the Work Order Proposal.

**B3.04-1 DETERMINATION OF FEE**

The compensation for such services will be one of the methods described herein: mutually agreed upon Lump Sum; Hourly Rate with a Not to Exceed Limit, or Percentage of Construction Cost.

**B3.04-2 PROCEDURE AND COMPLIANCE**

An independent and detailed Notice to Proceed, and an Amendment to a specific Work Order, shall be required to be issued and signed by the Director for each additional service requested by the City. The Notice to Proceed will specify the fee for such service and upper limit of the fee, which shall not be exceeded, and shall comply with the City of Miami regulations, including the Purchasing Ordinance, the Consultant's Competitive Negotiation Act, and other applicable laws.

**B3.04-3 FEE LIMITATIONS**

Any authorized compensation for Additional Services, either professional fees or reimbursable expenses, shall not include additional charges for office rent or overhead expenses of any kind, including local telephone and utility charges, office and drafting supplies, depreciation of equipment, professional dues, subscriptions, etc., reproduction of drawings and specifications, mailing, stenographic, clerical, or other employees time or travel and subsistence not directly related to a project. For all reimbursable services the Consultant will apply the multiplier of one-(1.0) times the amount expended by the Consultant.

**B3.05 PAYMENT EXCLUSIONS**

Consultant shall not be compensated by City for revisions and/or modifications to drawings and specifications, for extended construction administration, or for other work when such work is due to errors or omissions of Consultant as determined by City.

**B3.06 FEES RESULTING FROM PROJECT SUSPENSION**

If a project is suspended for the convenience of the City for more than three months or terminated without any cause in whole or in part, during any Phase, the Consultant shall be paid for services duly authorized, performed prior to such suspension or termination, together with the cost of authorized reimbursable services and expenses then due, and all appropriate, applicable, and documented expenses resulting from such suspension or termination. If the Project is resumed after having been suspended for more than three months, the Consultant's further compensation shall be subject to renegotiations.

**ARTICLE B4 PAYMENTS TO THE CONSULTANT****B4.01 PAYMENTS GENERALLY**

Payments for Basic Services may be requested monthly in proportion to services performed during each Phase of the Work. Sub-Consultant fees and Reimbursable Expenses shall be billed to the City in the actual amount paid by Consultant. Consultant shall utilize the City's Invoice Form which can be found on the City's Webpage at <http://www.miamigov.com/MiamiCapital/forms.html>. Failure to use the City Form will result in rejection of the invoice.

**B4.02 FOR COMPREHENSIVE BASIC SERVICES**

For those Projects and Work Orders where comprehensive design services are stipulated, said payments shall, in the aggregate, not exceed the percentage of the estimated total Basic Compensation indicated below for each Phase.

**B4.03 BILLING – HOURLY RATE**

Invoices submitted by Consultant shall be sufficiently detailed and accompanied by supporting documentation to allow for proper audit of expenditures. When services are authorized on an Hourly Rate basis, the Consultant shall submit for approval by the Director, a duly certified invoice, giving names, classification, salary rate per hour, hours worked and total charge for all personnel directly engaged on a project or task. To the sum thus obtained, any authorized Reimbursable Services Cost may be added. The Consultant shall attach to the invoice all supporting data for payments made to and incurred by Sub-Consultants engaged on the Project. In addition to the invoice, the Consultant shall, for Hourly Rate authorizations, submit a progress report giving the percentage of completion of the Project development and the total estimated fee to completion.

**B4.04 PAYMENT FOR ADDITIONAL SERVICES & REIMBURSABLE EXPENSES**

Payment for Additional Services may be requested monthly in proportion to the services performed.

When such services are authorized on an Hourly Rate basis, the Consultant shall submit for approval by the Director, a duly certified invoice, giving names, classification, salary rate per hour, hours worked and total charge for all personnel directly engaged on a project or task. To the sum thus obtained, any authorized Reimbursable Services Cost may be added. The Consultant shall attach to the invoice all supporting data for payments made to or costs incurred by Sub-Consultants engaged on the project or task.

In addition to the invoice, the Consultant shall, for Hourly Rate authorizations, submit a progress report giving the percentage of completion of the Project development and the total estimated fee to completion.

#### **B4.05 DEDUCTIONS**

No deductions shall be made from the Consultant's compensation on account of liquidated damages assessed against contractors or other sums withheld from payments to contractors.

#### **REIMBURSABLE EXPENSES:**

##### **B4.06 GENERAL**

Reimbursable Expenses are those items authorized by the City outside of or in addition to the Scope of Work as identified in the Work Order (as Basic Services and/or Additional Services) and consist of actual expenditures made by the Consultant and the Consultants' employees, Sub-Consultants, and Special Sub-Consultants in the interest of the Work for the purposes identified below:

##### **B4.06-1 COMMUNICATION EXPENSES**

Identifiable communication expenses approved by the Project Manager, long distance telephone, courier and express mail between the Consultant's various permanent offices. The Consultant's field office at the Project site is not considered a permanent office.

##### **B4.06-2 REPRODUCTION, PHOTOGRAPHY**

Cost of printing, reproduction or photography, which is required by or of Consultant to deliver services, set forth in this Agreement.

##### **B4.06-3 PERMIT FEES**

All Permit fees paid to regulatory agencies for approvals directly attributable to the Project. These permit fees do not include those permits required to be paid by the construction Contractor.

##### **B4.07 REIMBURSEMENTS TO SUB-CONSULTANTS**

Reimbursable Sub-Consultant's expenses are limited to the items described above when the Sub-Consultant agreement provides for reimbursable expenses and when such agreement has been previously approved in writing by the Director and subject to all budgetary limitations of the City and requirements herein.

#### **ARTICLE B5 COMPENSATION FOR REUSE OF PLANS AND SPECIFICATIONS**

##### **B5.01 GENERAL**

It is understood that all Consultant agreements and/or work orders for new work will include the provision for the re-use of plans and specifications, including construction drawings, at the City's sole option, by virtue of signing this agreement they agree to a re-use in accordance with this provision without the necessity of further approvals, compensation, fees or documents being required and without recourse for such re-use.

**ATTACHMENT B - COMPENSATION  
SCHEDULE B1 - WAGE RATES SUMMARY**

<b>NAME</b>	<b>JOB CLASSIFICATION</b>	<b>NEGOTIATED HOURLY RATE</b>	<b>ADJUSTED AVERAGE HOURLY RATE (HOME 2.5)</b>	<b>ADJUSTED AVERAGE HOURLY RATE (FIELD 2.15)</b>

## ATTACHMENT B SCHEDULE B2 – CONSULTANT INVOICE

CITY OF MIAMI OFFICE OF CAPITAL IMPROVEMENTS (OCI) CONSULTANT STANDARD INVOICE					
<b>To:</b> City of Miami Office of Capital Improvements (OCI) 444 SW 2nd Avenue - 8th Floor Miami, FL 33130		<b>Invoice Number:</b> 			
<b>ATTN:</b>		<b>Invoice Date:</b> Month 00, 0000			
<b>From:</b>		<b>Page:</b>			
		<b>Invoice Period:</b>		<b>From:</b> Month 00, 0000 <b>To:</b> Month 00, 0000	
		<b>Contract No.:</b>			
		<b>Contract Title:</b>			
		<b>Project No.:</b>			
		<b>Project Name:</b>			
<b>NOTE:</b> Invoices received past 3:00 PM will be stamped with the Next Business Date Prepare invoices properly to avoid payment delay. Each invoice must be signed by a Principal of the firm as designated. Attach appropriate back-up documents to each invoice.		<b>Purchase Order No.:</b>			
		<b>Work Order No.:</b>			
SERVICE	CONTRACT AMOUNT	% COMPLETE	TOTAL EARNED TO DATE	PREVIOUSLY INVOICED	CURRENT INVOICE AMOUNT
Schematic Design (SD)	\$ -	0%	\$ -	\$ -	\$ -
Design Development (DD)	\$ -	0%	\$ -	\$ -	\$ -
30% Construction Documents (30% CD)	\$ -	0%	\$ -	\$ -	\$ -
60% Construction Documents (60% CD)	\$ -	0%	\$ -	\$ -	\$ -
90% Construction Documents (90% CD)	\$ -	0%	\$ -	\$ -	\$ -
100% Construction Documents (100% CD)	\$ -	0%	\$ -	\$ -	\$ -
Dry Run Permitting	\$ -	0%	\$ -	\$ -	\$ -
Bidding or Negotiation Phase	\$ -	0%	\$ -	\$ -	\$ -
Construction Administration (CA)	\$ -	0%	\$ -	\$ -	\$ -
	\$ -	0%	\$ -	\$ -	\$ -
	\$ -	0%	\$ -	\$ -	\$ -
	\$ -	0%	\$ -	\$ -	\$ -
	\$ -	0%	\$ -	\$ -	\$ -
Reimbursable Expenses	\$ -	0%	\$ -	\$ -	\$ -
1. (Title)	\$ -	0%	\$ -	\$ -	\$ -
2. (Title)	\$ -	0%	\$ -	\$ -	\$ -
3. (Title)	\$ -	0%	\$ -	\$ -	\$ -
	\$ -	0%	\$ -	\$ -	\$ -
Additional Services	\$ -	0%	\$ -	\$ -	\$ -
1. (Title)	\$ -	0%	\$ -	\$ -	\$ -
2. (Title)	\$ -	0%	\$ -	\$ -	\$ -
3. (Title)	\$ -	0%	\$ -	\$ -	\$ -
	\$ -	0%	\$ -	\$ -	\$ -
<b>TOTAL:</b>	<b>\$ -</b>		<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
				<b>Subtotal:</b>	<b>\$ -</b>
				<b>Deductions:</b>	<b>\$ -</b>
				<b>Total Due :</b>	<b>\$ -</b>
<b>TO BE COMPLETED BY CONSULTANT FIRM</b>					
<b>CERTIFIED TRUE AND CORRECT BY:</b>  _____ (Signature of Principal)  _____ (Type Name and Title of Principal)			<b>SUPPORTING DOCUMENTS CHECKLIST:</b> Activation Letter of Phase being Invoiced: _____ Supporting Documents for Invoice: _____ Construction Status Report: _____ Final Payment Documents: _____ Additional Service Authorizations: _____		
<b>AREA TO BE COMPLETED BY CITY OF MIAMI</b>					
<b>CITY OF MIAMI APPROVAL:</b>	<b>DATE</b>	<b>SIGNATURE</b>	<b>Date Received CIP:</b>  		
0					
PROJECT MANAGER					
CHIEF PROJECT MANAGER					
Hector Badia			<b>Date Received for Payment Processing (Budget Department):</b>  		
ASSISTANT DIRECTOR					
Steven C. Williamson					
DIRECTOR					

## **FDOT FORMS**

- **FDOT Form #375-040-84 – Local Agency Program Terms For Federal Aid Contracts**
  
- **FDOT Form #375-040-62 – Bid Opportunity List For Professional Consultant Services, and Commodities & Contractual Services**
  
- **FDOT Form #275-030-11 – DBE Bid Package Information**

**LOCAL AGENCY PROGRAM FEDERAL-AID TERMS  
For PROFESSIONAL SERVICES CONTRACTS**

**TERMS FOR FEDERAL AID CONTRACTS (APPENDIX I):**

The following terms apply to all contracts in which it is indicated that the services involve the expenditure of federal funds:

- A. It is understood and agreed that all rights of the Local Agency relating to inspection, review, approval, patents, copyrights, and audit of the work, tracings, plans, specifications, maps, data, and cost records relating to this Agreement shall also be reserved and held by authorized representatives of the United States of America.
- B. All tracings, plans, specifications, maps, computer files and/or reports prepared or obtained under this Agreement, as well as all data collected, together with summaries and charts derived therefrom, will be considered works made for hire and will become the property of the Agency upon completion or termination without restriction or limitation on their use and will be made available, upon request, to the Agency at any time during the performance of such services and/or completion or termination of this Agreement. Upon delivery to the Agency of said document(s), the Agency will become the custodian thereof in accordance with Chapter 119, Florida Statutes. The Consultant will not copyright any material and products or patent any invention developed under this agreement. The Agency will have the right to visit the site for inspection of the work and the products of the Consultant at any time.
- C. It is understood and agreed that, in order to permit federal participation, no supplemental agreement of any nature may be entered into by the parties hereto with regard to the work to be performed hereunder without the approval of the U.S. Department of Transportation, anything to the contrary in this Agreement notwithstanding.
- D. The consultant shall provide access by the Florida Department of Transportation (recipient), the Agency (subrecipient), the Federal Highway Administration, the U.S. Department of Transportation's Inspector General, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the consultant which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
- E. Compliance with Regulations: The Consultant shall comply with the Regulations: relative to nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.
- F. Nondiscrimination: The Consultant, with regard to the work performed during the contract, shall not discriminate on the basis of race, color, national origin, sex, age, disability, religion or family status in the selection and retention of subcontractors, including procurements of material and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- G. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations made by the Consultant, either by competitive bidding or negotiation for work to be performed under a subcontract, including procurements of materials and leases of equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant's obligations under this contract and the Regulations relative to nondiscrimination on the basis of race, color, national origin, sex, age, disability, religion or family status.
- H. Information and Reports: The Consultant will provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Local Agency, Florida Department of Transportation, Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or Federal Motor Carrier Safety Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Local Agency, Florida Department of Transportation, Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
- I. Sanctions for Noncompliance: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this contract, the Local Agency shall impose such contract sanctions as it or the Florida Department of Transportation, Federal Transit Administration, Federal Aviation Administration, and/or Federal Motor Carrier Safety Administration may determine to be appropriate, including, but not limited to,
  - 1. withholding of payments to the Consultant under the contract until the Consultant complies and/or
  - 2. cancellation, termination or suspension of the contract, in whole or in part.
- J. Incorporation or Provisions: The Consultant will include the provisions of Paragraph C through K in every subcontract, including procurements of materials and leases of equipment unless exempt by the Regulations, order, or instructions

LOCAL AGENCY PROGRAM FEDERAL-AID TERMS  
For PROFESSIONAL SERVICES CONTRACTS

issued pursuant thereto. The Consultant shall take such action with respect to any subcontract or procurement as the Local Agency, Florida Department of Transportation, Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration may direct as a means of enforcing such provisions, including sanctions for noncompliance. In the event a Consultant becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the Consultant may request the Local Agency to enter into such litigation to protect the interests of the Local Agency, and, in addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

- K. Compliance with Nondiscrimination Statutes and Authorities: Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21; The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects); Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex); Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27; The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age); Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex); The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not); Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 -- 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38; The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex); Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations; Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).
- L. Interest of Members of Congress: No member of or delegate to the Congress of the United States will be admitted to any share or part of this contract or to any benefit arising therefrom.
- M. Interest of Public Officials: No member, officer, or employee of the public body or of a local public body during his tenure or for one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof. For purposes of this provision, public body shall include municipalities and other political subdivisions of States; and public corporations, boards, and commissions established under the laws of any State.
- N. Participation by Disadvantaged Business Enterprises: The Consultant shall agree to abide by the following statement from 49 CFR 26.13(b). This statement shall be included in all subsequent agreements between the Consultant and any subconsultant or contractor.
1. The Consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in termination of this contract or other such remedy as the recipient deems appropriate.
- O. It is mutually understood and agreed that the willful falsification, distortion or misrepresentation with respect to any facts related to the project(s) described in this Agreement is a violation of the Federal Law. Accordingly, United States Code, Title 18, Section 1020, is hereby incorporated by reference and made a part of this Agreement.
- P. It is understood and agreed that if the Consultant at any time learns that the certification it provided the Local Agency in compliance with 49 CFR, Section 26.51, was erroneous when submitted or has become erroneous by reason of changed circumstances, the Consultant shall provide immediate written notice to the Local Agency. It is further agreed that the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction" as set forth in 49 CFR, Section 29.510, shall be included by the Consultant in all lower tier covered transactions and in all aforementioned federal regulation.
- Q. The Local Agency hereby certifies that neither the consultant nor the consultant's representative has been required by the Local Agency, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this contract, to

**LOCAL AGENCY PROGRAM FEDERAL-AID TERMS  
For PROFESSIONAL SERVICES CONTRACTS**

1. employ or retain, or agree to employ or retain, any firm or person, or
2. pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind;

The Local Agency further acknowledges that this agreement will be furnished to a federal agency, in connection with this contract involving participation of Federal-Aid funds, and is subject to applicable State and Federal Laws, both criminal and civil.

R. The Consultant hereby certifies that it has not:

1. employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for the above contractor) to solicit or secure this contract;
2. agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out this contract; or
3. paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for the above contractor) any fee contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the contract.

The consultant further acknowledges that this agreement will be furnished to the Local Agency, the State of Florida Department of Transportation and a federal agency in connection with this contract involving participation of Federal-Aid funds, and is subject to applicable State and Federal Laws, both criminal and civil.

- S. The Consultant shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Contractor during the term of the Contract and shall expressly require any subcontractors performing work or providing services pursuant to the Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the Contract term.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**BID OPPORTUNITY LIST FOR PROFESSIONAL CONSULTANT  
SERVICES, AND COMMODITIES & CONTRACTUAL SERVICES**

375-040-62  
PROCUREMENT  
04/07

Prime Contractor/Prime Consultant: \_\_\_\_\_

Address/Phone Number: \_\_\_\_\_

Procurement Number/Advertisement Number: \_\_\_\_\_

49 CFR Part 26.11 The list is intended to be a listing of all firms that are participating, or attempting to participate, on DOT-assisted contracts. The list must include all firms that bid on prime contracts, or bid or quote subcontracts and supplies materials on DOT-assisted projects, including both DBEs and non-DBEs. For consulting companies this list must include all subconsultants contacting you and expressing an interest in teaming with you on a specific DOT-assisted project. Prime contractors and consultants must provide information for Numbers 1, 2, 3 and 4, and should provide any information they have available on Numbers 5, 6, 7, and 8 for themselves, and their subcontractors and subconsultants.

1. Federal Tax ID Number: \_\_\_\_\_  
2. Firm Name: \_\_\_\_\_  
3. Phone: \_\_\_\_\_  
4. Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
5. Year Firm Established: \_\_\_\_\_

6.  DBE  
 Non-DBE  
7.  Subcontractor  
 Subconsultant

8. Annual Gross Receipts  
 Less than \$1 million  
 Between \$1 - \$5 million  
 Between \$5 - \$10 million  
 Between \$10 - \$15 million  
 More than \$15 million

1. Federal Tax ID Number: \_\_\_\_\_  
2. Firm Name: \_\_\_\_\_  
3. Phone: \_\_\_\_\_  
4. Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
5. Year Firm Established: \_\_\_\_\_

6.  DBE  
 Non-DBE  
7.  Subcontractor  
 Subconsultant

8. Annual Gross Receipts  
 Less than \$1 million  
 Between \$1 - \$5 million  
 Between \$5 - \$10 million  
 Between \$10 - \$15 million  
 More than \$15 million

1. Federal Tax ID Number: \_\_\_\_\_  
2. Firm Name: \_\_\_\_\_  
3. Phone: \_\_\_\_\_  
4. Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
5. Year Firm Established: \_\_\_\_\_

6.  DBE  
 Non-DBE  
7.  Subcontractor  
 Subconsultant

8. Annual Gross Receipts  
 Less than \$1 million  
 Between \$1 - \$5 million  
 Between \$5 - \$10 million  
 Between \$10 - \$15 million  
 More than \$15 million

1. Federal Tax ID Number: \_\_\_\_\_  
2. Firm Name: \_\_\_\_\_  
3. Phone: \_\_\_\_\_  
4. Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
5. Year Firm Established: \_\_\_\_\_

6.  DBE  
 Non-DBE  
7.  Subcontractor  
 Subconsultant

8. Annual Gross Receipts  
 Less than \$1 million  
 Between \$1 - \$5 million  
 Between \$5 - \$10 million  
 Between \$10 - \$15 million  
 More than \$15 million

**AS APPLICABLE, PLEASE SUBMIT THIS FORM WITH YOUR:**

**BID SHEET (Invitation to Bid – ITB)  
LETTERS OF RESPONSE (LOR)  
PRICE PROPOSAL (Request for Proposal – RFP)  
REPLY (Invitation to Negotiate – ITN)**

### **DBE Utilization**

The Department began its DBE race neutral program January 1, 2000. **Contract specific goals are not placed on Federal/State contracts;** however, the Department has an overall 10.65% DBE goal it must achieve. In order to assist contractors in determining their DBE commitment level, the Department has reviewed the estimates for this letting.

As you prepare your bid, please monitor potential or anticipated DBE utilization for contracts. When the low bidder executes the contract with the Department, information will be requested of the contractor's DBE participation for the project. While the utilization is not mandatory in order to be awarded the project, continuing utilization of DBE firms on contracts supports the success of Florida's DBE Program, and supports contractors' Equal Employment Opportunity and DBE Affirmative Action Programs.

Any project listed as 0% DBE availability does not mean that a DBE may not be used on that project. A 0% DBE availability may have been established due to any of the following reasons: limited identified subcontracting opportunities, minimal contract days, and/or small contract dollar amount. Contractors are encouraged to identify any opportunities to subcontract to DBE's.

Please contact the Equal Opportunity Office at (850) 414-4747 if you have any questions regarding this information. Forms may be downloaded at: [www.dot.state.fl.us/proceduraldocuments/](http://www.dot.state.fl.us/proceduraldocuments/) .

### **DBE Reporting**

If you are the prime contractor on a project, enter your DBE participation in the Equal Opportunity Compliance system prior to the pre-construction or pre-work conference for all federal and state funded projects. This **will not** become a mandatory part of the contract. It will assist the Department in tracking and reporting planned or estimated DBE utilization. During the contract, the prime contractor is required to report actual payments to DBE and MBE subcontractors through the web-based Equal Opportunity Compliance (EOC) system.

All DBE payments must be reported whether or not you initially planned to utilize the company. In order for our race neutral DBE Program to be successful, your cooperation is imperative. If you have any questions, please contact EOOHelp@dot.state.fl.us.

### **Bid Opportunity List**

The Federal DBE Program requires States to maintain a database of all firms that are participating or attempting to participate on FDOT-assisted contracts. The list must include all firms that bid on prime contracts or bid or quote subcontracts on FDOT-assisted projects, including both **DBE's and non-DBEs**.

Please complete the Bidders Opportunity List through the Equal Opportunity Compliance system within 3 business days of submission of the bid or proposal for ALL subcontractors or sub-consultants who quoted to you for specific project for this letting. The web address to the Equal Opportunity Compliance system is:

<https://www3.dot.state.fl.us/EqualOpportunityCompliance/Account.aspx/Login?ReturnUrl=%2fEqualOpportunityCompliance%2f> .

### **DBE/AA Plans**

Contractors bidding on FDOT contracts are to have an approved DBE Affirmative Action Plan (FDOT Form 275-030-11B) on file with the FDOT Equal Opportunity Office before execution of a contract. DBE/AA Plans must be received with the contractors bid or received by the Equal Opportunity Office prior to the award of the contract.

Plans are approved by the Equal Opportunity Office in accordance with Ch. 14-78, Florida Administrative Code. Plans that do not meet these mandatory requirements may not be approved. Approvals are for a (3) three year period and should be updated at anytime there is a change in the company's DBE Liaison Officer and/or President. Contractors may evidence adoption of the DBE/AA Policy and Plan and/or a change in the designated DBE Liaison officer as follows:

- Print the first page of the document on company stationery ("letterhead") that indicates the company's name, mailing address, phone number, etc.
- Print the company's name in the "\_\_\_\_" space; next to "Date" print the month/day/year the policy is being signed; record the signature of the company's Chief Executive Officer, President or Chairperson in the space next to "by" and print the full first and last name and position title of the official signing the policy.
- Print the DBE Liaison's full name, email address, business mailing address and phone number the bottom of email.

E-mail the completed and signed DBE AA Plan to: **eeoforms@dot.state.fl.us**.

The Department will review the policy, update department records and issue a notification of approval or disapproval; a copy of the submitted plan will not be returned to the contractor.