MEMORANDUM

TO: Hon. Chairperson Barbara Carey-Shuler, Ed.D.
and Members, Board of County Commissioners

DATE: December 9, 2003

FROM: George M. Burgess
County Manager

SUBJECT: Authorization to Execute Amendment Number One to Agreement with Robayna and Associates, Inc.

RECOMMENDATION

It is recommended that the Board of County Commissioners approve the attached resolution authorizing the County Manager to execute Amendment Number One to the Professional Services Agreement with Robayna and Associates Inc. (Robayna) to provide additional design services for neighborhood water distribution and sewage collection and transmissions systems throughout the County for the Miami-Dade Water and Sewer Department (Department). Approval of an additional $10 million in the Department's FY 03-04 budget for the Needs Assessment Program (NAP) will require additional design services to correct deficiencies in the system for projects within the 13 commission districts. The agreement will be extended until November 3, 2005 and will increase compensation by $730,000 from $770,000 to $1,500,000. This is a companion item to six other packages also on this agenda, one Program Manager and five other design consultants.

BACKGROUND

On November 3, 2001, the County Manager, pursuant to Resolution No. 1426-01, approved a Non-exclusive Professional Services Agreement for design services with the engineering firm of Robayna to design neighborhood water distribution and sewage collection and transmissions systems throughout the County. The firm was competitively selected through the County's Architect and Engineering Selection Process governed by Section 2-10.4 of the County Code and Chapter 287.055 of the Florida Statutes in compliance with the normal selection process and its requirements. Design service is ongoing and it is more cost effective to continue with the existing firm. At the time of the award, five of the six design firms were certified CBE firms.

Additional funding was made available for new projects within each of the commission districts as part of the Department FY 03-04 budget. Approval of Amendment Number One will ensure that Robayna continues design services for current and future improvement projects with the commission districts and that delays are not encountered in completing these vital projects.

Therefore, approval of the attached resolution is respectfully requested.

Assistant County Manager

107.07-17A MIAMI-DADE/GSA-MAT. MGT.

MEMORANDUM

TO: Hon. Chairperson Barbara Carey-Shuler, Ed.D.
and Members, Board of County Commissioners

DATE:

FROM: George M. Burgess
County Manager

SUBJECT: Approval of Amendment Number One to Professional Services Agreement for Engineering Services for Needs Assessment Program, Project No. E01-WASD-05, EP Project No. 4

The attached Amendment Number One to a non-exclusive Professional Services Agreement between Miami-Dade County and Robayna and Associates Inc. has been prepared by the Miami-Dade Water and Sewer Department and is recommended for approval.

PROJECT NAME:	Needs Assessment Program
AMENDMENT NO:	One
PROJECT NO:	E01-WASD-05, EP Project 4
CONTRACT NO.	01ROAI001
PROJECT DESCRIPTION:	Provide the design services for neighborhood water distribution and sewage collection and transmissions systems throughout the County.
PROJECT LOCATION:	Countywide
COST ESTIMATE:	
Design Phase:	$770,000
Construction Phase:	$0
INSPECTOR GENERAL FEE: (Ordinance No. 97-215)	$1,925
IPSIG: (A.O. 3-20)	$7,700
REVIEW COMMITTEE DATE:	October 16, 2001
REVIEW COMMITTEE ASSIGNED CONTRACT MEASURES:	
CSBE GOAL:	N/A
CBE GOAL:	100%
DBE GOAL:	N/A

FIRM NAME:	Robayna and Associates Inc.
FIRM LOCATION:	2100 W. 76th Street, Suite 101 Hialeah, Florida 33016
COMPANY PRINCIPAL:	Rafael L. Robayna
ORIGINAL AGREEMENT PERIOD:	Completion of the design services
YEARS IN BUSINESS:	22 Years
PREVIOUS AGREEMENTS WITH COUNTY:	5 contracts totaling $4,180,000
AMENDED AGREEMENT PERIOD:	November 3, 2005
ORIGINAL AGREEMENT AMOUNT:	
Base Agreement	$770,000
Contingency/Allowance	$ 77,000
Total Contract Value	$847,000
AMENDED AGREEMENT AMOUNT:	
Base Agreement	$1,500,000
Contingency/Allowance	$ 150,000
Total Contract Value	$1,650,000
SUBCONSULTANTS:	None
RECOMMENDED AMENDMENT/MODIFICATION:	Provide for a term of the agreement until November 3, 2005 and provide additional compensation of $730,000
JUSTIFICATION FOR AMENDING/ MODIFICATION:	The Department is requesting a term of the agreement until November 3, 2005 and additional compensation of $730,000 for Robayna and Associates to provide additional design services for neighborhood water distribution and sewer collection and transmission systems throughout the County.
USING AGENCY:	Miami-Dade Water and Sewer Department
MANAGING AGENCY:	Miami-Dade Water and Sewer Department
MINIMUM QUALIFICATIONS	No

EXCEED LEGAL REQUIREMENTS:

FUNDING SOURCE:

Water – Water R&R Fund
Sewer – Wastewater Renewal Fund
Wastewater Revenue Bonds Series 1997

ALLOWANCES/CONTINGENCY:
ORDINANCE No. 00-65

Within Guidelines
($150,000/10%)

ALLOWANCE ACCOUNT USAGE:

Beginning Balance: $77,000
Total Amount Used: $0
Additional Allowance Account $73,000
Ending Amount after this Amendment: $150,000

APROVED AS TO LEGAL SUFFICIENCY:

Assistant County Attorney — Date 11/5/05

MEMORANDUM

(Revised)

TO: Hon. Chairperson Barbara Carey-Shuler, Ed.D. and Members, Board of County Commissioners

DATE: January 20, 2004

FROM: Robert A. Ginsburg
County Attorney

SUBJECT: Agenda Item No.

Please note any items checked.

_____ **"4-Day Rule" ("3-Day Rule" for committees) applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Bid waiver requiring County Manager's written recommendation**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **Housekeeping item (no policy decision required)**

_____ **No committee review**

Approved_____ Mayor
Veto_____
Override_____

Agenda Item No.

RESOLUTION NO._____

RESOLUTION AUTHORIZING COUNTY MANAGER TO EXECUTE AMENDMENT NUMBER ONE TO A NON-EXCLUSIVE PROFESSIONAL SERVICES AGREEMENT WITH ROBAYNA AND ASSOCIATES INC.

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves Amendment Number One to a non-exclusive professional services agreement with Robayna and Associates Inc. to provide the term of the agreement until November 3, 2005 and to increase maximum compensation by $730,000 from $770,000 to $1,500,000 to continue to provide design services for neighborhood water distribution and sewage collection and transmissions systems throughout the County for the Miami-Dade Water and Sewer Department, in substantially the form attached hereto and made a part hereof; and authorizes the County Manager to execute same for and on behalf of Miami-Dade County.

The foregoing resolution was offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Dr. Barbara Carey-Shuler, Chairperson
Katy Sorenson, Vice-Chairperson

Bruno A. Barreiro	Jose "Pepe" Diaz
Betty T. Ferguson	Sally A. Heyman
Joe A. Martinez	Jimmy L. Morales
Dennis C. Moss	Dorrin D. Rolle
Natacha Seijas	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 20th day of January, 2004. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

Approved by County Attorney as to form and legal sufficiency.

By:_____
Deputy Clerk

AMENDMENT NUMBER ONE
TO
NON-EXCLUSIVE PROESSIONAL SERVICES AGREEMENT
BETWEEN MIAMI-DADE COUNTY
AND
Robayna and Associates Inc.

Agreement No. 01ROAI001

THIS AMENDMENT NUMBER ONE, is made and entered into the _____day of _____, 2004, by and between Miami-Dade County, a political subdivision of the State of Florida, hereinafter referred to as the "COUNTY", and Robayna and Associates Inc. a Florida corporation authorized to do business in the State of Florida and with offices in Miami-Dade County, hereinafter referred to as the "ENGINEER".

W I T N E S S E T H

WHEREAS, on November 3, 2001, the COUNTY and ENGINEER entered into a Non-exclusive Professional Services Agreement, hereinafter referred to as the "Agreement", and

WHEREAS, the COUNTY has requested and the ENGINEER has agreed to perform certain design services for the COUNTY's Needs Assessment Program for Miami-Dade Water and Sewer Department;

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, the COUNTY and the ENGINEER hereby agreement to the following:

1. Paragraph 6.D. of the Agreement is hereby modified to state as follows:

   MAXIMUM COMPENSATION The total of all payments to the ENGINEER pursuant to the Agreement shall not exceed one million five hundred thousand dollars ($1,500,000). No minimum amount of compensation will be assured to the ENGINEER.

2. Paragraph 18 of the Agreement is hereby modified to state as follows:

   18. DURATION OF AGREEMENT This Agreement shall remain in full force and effect until November 3, 2005 (although actual completion of the services may extend beyond such term and shall be subject to the same terms and conditions set forth in this agreement, including but not limited to indemnification and insurance) or until the completion of the design services

contemplated herein, and as specified in the authorization to proceed or until depletion of the funds allocated to pay the cost of the services described herein, whichever occurs first. This Agreement may be terminated by mutual consent of the parties hereto, or as otherwise provided herein. The performance of specifically and properly authorized services that may extend beyond the Agreement's effective term shall be compensated in accordance with Paragraph 6 hereof.

3. Paragraph 32 of the Agreement is hereby added to state as follows:

32. PERFORMANCE EVALUATIONS Performance evaluations of the services rendered under this Agreement shall be performed by the Department and shall be utilized by the COUNTY as evaluation criteria for future solicitations.

4. Paragraph 33 of the Agreement is hereby added to state as follows:

33. DOMESTIC LEAVE Pursuant to Ordinance No. 99-5, the ENGINEER certifies its compliance with the Domestic Leave Ordinance, providing domestic violence leave to its employees. In addition, the ENGINEER understands that failure to meet the terms and conditions of the ordinance shall constitute a default of the subject contract and may be cause for suspension, termination and debarment, in accordance with the terms of the contract and the debarment procedures of the COUNTY.

5. All terms, covenants and conditions of the Agreement not expressly modified or revised herein shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed these presents the day and date first written above.

ATTEST:

HARVEY RUVIN,
CLERK OF THE BOARD

By:_____

WITNESSETH:

By:_____

_____
Typed or print name

By:_____

_____
Typed or print name

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

By:_____
County Manager

Robayna and Associates Inc..

By:_____
(Corporate Seal) President

_____
Print name

Approved as to form and legal sufficiency.

_____
Assistant County Attorney

NON-EXCLUSIVE PROFESSIONAL SERVICES AGREEMENT
BETWEEN
MIAMI-DADE COUNTY
AND
ROBAYNA AND ASSOCIATES, INC.

Agreement No. 01ROAI001

THIS NON-EXCLUSIVE PROFESSIONAL SERVICES AGREEMENT is made and entered into this 31 day of Nov., 2001, by and between Miami-Dade County, a political subdivision of the State of Florida, hereinafter referred to as the "COUNTY", and ROBAYNA AND ASSOCIATES, INC., a Florida corporation authorized to do business in the State of Florida with offices in Miami-Dade County, hereinafter referred to as the "ENGINEER".

For and in consideration of the mutual agreements hereinafter contained, the COUNTY hereby retains the ENGINEER and the ENGINEER hereby covenants to provide the professional services described herein in connection with Design of Neighborhood Water and Sewage Collection and Transmission Systems.

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1. COUNTY OBLIGATIONS AND AUTHORIZATION TO PROCEED The COUNTY agrees that its Miami-Dade Water and Sewer Department, hereinafter referred to as the "Department", shall furnish to the ENGINEER any plans or other data available in the COUNTY files pertaining to the work to be performed under this Agreement. Information shown on such plans or data shall be that which has been made available to the COUNTY, and shall be provided to the ENGINEER without guarantee regarding its reliability and accuracy; the ENGINEER shall be responsible for independently verifying such information if it shall be used by the ENGINEER to accomplish the work undertaken pursuant to this Agreement.

The ENGINEER shall submit a proposal upon the Director's request prior to the issuance of an authorization to proceed. No payment shall be made for the ENGINEER's time or service in connection with the preparation of any such proposal. The Director or his designee shall confer with the ENGINEER before any authorization to proceed is issued to discuss and agree upon the scope, time for completion, and fee for services to be rendered pursuant to this Agreement. No payment shall be made for the ENGINEER's time on services in connection with the preparation of any such proposal.

The Director of the Miami-Dade Water and Sewer Department, hereinafter referred to as the "Director", or his designee, shall issue written task order authorizations to proceed to the ENGINEER for each section of the work to be performed hereunder. In case of emergency, the COUNTY reserves the right to issue oral authorizations to the ENGINEER with the understanding that written authorization shall follow within ten (10) working days. If no written authorization is issued within that time, the ENGINEER shall cease work and submit an invoice for work completed.

2. PROFESSIONAL SERVICES Upon receipt of authorization to proceed from the Director, the ENGINEER agrees to perform professional services associated with the requested work in accordance with the negotiated terms of the applicable authorization to proceed. The services under this Agreement shall be performed by the ENGINEER during hours which generally correspond but are not necessarily limited to those office hours of the Department. The services under this Agreement shall be performed by the ENGINEER. Engineering Services may include but shall not be limited to:

A. Design and construction plans preparation for improvement projects.

B. Update and modification of previously designated projects to conform with current requirements of permitting agencies, and new policies.
C. Permitting services.
D. Construction phase services.

3. ENGINEER'S RESPONSIBILITIES In connection with professional services to be rendered pursuant to this Agreement, the ENGINEER agrees to:

A. Use that degree of care and skill ordinarily exercised by other similar professionals in the field under similar conditions.
B. Maintain an adequate staff of qualified personnel on the work at all times to ensure its completion within the term specified in the applicable task order authorization to proceed.
C. Comply with all federal, state and local laws or ordinance applicable to the work.
D. Cooperate fully with the COUNTY in the scheduling and coordination of all phases of the work.
E. Report the status of the work to the Director upon request and hold pertinent data, and other products open to the inspection of the Director or designee at any reasonable time and during normal business hours.
F. Submit for COUNTY review design computations, sketches, and other data representative of the work's progress at the percentage stages of completion which may be stipulated in the applicable authorization to proceed. Submit for COUNTY approval the final work products upon incorporation of any modifications requested by the COUNTY during any previous review.
G. Confer with the COUNTY at any time during the further development and implementation of improvements for which the ENGINEER has provided design or other services as to interpretation of plans and other documents, correction of errors and omissions and preparation of any necessary plan thereof. The ENGINEER shall not be compensated for the correction of errors and omissions on the part of the ENGINEER.
H. Prior to final approval of the work by the Director, complete a preliminary check of any construction documents through any county, city, state, or federal agency from which a permit or other approval is required.
I. Use computer and networking hardware, software and firmware standards as approved by the MIS Division of the Department. The software must perform fault-free in the processing of date and date related data (including, but not limited to calculation, comparing and sequencing) by all hardware and software products delivered under this agreement, individually and in combination, upon installation. Fault-free performance includes the manipulation of data with dates prior to, through, and beyond 2000. The user shall not see the above processing. Hardware and software products, individually and in combination, shall successfully transition into the year 2000 with correct system date, without human intervention, including leap year calculations. Hardware and software products, individually and in combination, shall also provide correct results when moving forward or backward in time across the year 2000. All systems developed by the ENGINEER pursuant to this Agreement

shall become the property of the COUNTY and the COUNTY will receive the source codes.

4. TIME FOR COMPLETION The services to be rendered by the ENGINEER for each section of the work shall commence upon receipt of a written task order authorization to proceed from the Director or his designee subsequent to the execution of this Agreement, and be completed within the time stated in the authorization to proceed.

5. DELAY IN PERFORMANCE NO CLAIM FOR DAMAGES OR ANY CLAIM OTHER THAN FOR AN EXTENSION OF TIME SHALL BE MADE OR ASSERTED AGAINST THE COUNTY BY REASON OF ANY DELAYS. The ENGINEER shall not be entitled to an increase in the Agreement Sum or payment or compensation of any kind from the COUNTY or direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause whatsoever; provided, however, that this provision shall not preclude recovery or damages by the ENGINEER for hindrances or delays due solely to fraud, bad faith or active interference on the part of the COUNTY or its agents. Otherwise, the ENGINEER shall be entitled only to extensions of the Agreement Time as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided below.

The time to perform this agreement shall be extended only if the ENGINEER is delayed in performing any obligation under this agreement due to a force majeure or inevitable accident or occurrence, the ENGINEER shall request in writing a time extension from the Director within ten (10) days of said force majeure or inevitable accident or occurrence. For the purpose of this Paragraph, force majeure shall mean an act of God which includes but is not limited to sudden, unexpected or extraordinary forces of nature such as floods, washouts, storms, fires, earthquakes, landslides, epidemics, explosions or other forces of nature. Inevitable accidents or occurrences shall mean those which are unpreventable by the ENGINEER and shall include but not be limited to strikes, lockouts, other industrial disturbances, wars, blockades, acts of public enemies, insurrections, riots, federal, state, county and local governmental restraints, military action, civil disturbances, explosions, conditions in federal, state, county and local permits, bid protests, manufacturing and delivery delays, unknown or unanticipated soil, water or ground conditions and cave-ins, and contract default by the COUNTY's other consulting and design Engineers and contractors. Provision of the above specified notice shall be a condition precedent to maintenance of a claim for delay.

Such acts or events do not include inclement weather (except as noted above) or the acts or omissions of subconsultants, materialmen, suppliers, or their subcontractors, unless such acts or omissions are otherwise encompassed by the definition set forth above.

6. COMPENSATION The COUNTY agrees to pay and the ENGINEER agrees to accept a fee representing full compensation for the performance of the services specified herein. The ENGINEER shall submit monthly invoices for all work in progress using a format and procedure provided by the Department and in accordance with the Prompt Payment Ordinance. Invoices shall be submitted within 120 days of the performance of the service being billed. The COUNTY shall not pay invoices that are not properly submitted within that period. Additionally, the COUNTY may

withhold payment of any invoices from the ENGINEER if the COUNTY determines that the ENGINEER submitted and received payment of an inaccurate invoice, without limitation to any other legal or equitable remedies. Fees and other compensation will be computed in accordance with one or a combination of the methods outlined below:

A. Fee as a Multiple of Direct Salary Cost and Fixed Hourly Rate

(1) The fee for professional services rendered by the ENGINEER's employees, principals excluded, shall be computed based on the direct salary cost, as reported to the Internal Revenue Service, excluding bonuses or awards if applicable, for the time of said employee engaged directly in the work, times a negotiated multiplier of 2.85 for office employees, 2.40 for the ENGINEER's employees working in COUNTY offices and 2.0 for all field employees excluding surveying. This fee shall constitute full compensation to the ENGINEER for costs incurred in the performance of the work such as salaries, overhead, fringe benefits, operating margin and all other costs not covered by reimbursable expenses.

(2) For personnel required to be paid overtime, compensation for overtime work considered necessary and authorized in advance by the Director shall be computed as a multiple of 1.1 times the difference between the hourly overtime rate and the standard hourly rate times the overtime hours. Principals shall not receive additional compensation for performance of overtime work.

(3) The ENGINEER shall be compensated at the flat rate of ($110.00) per hour for the time of a Principal engaged directly in the work. This rate shall not be subject to the negotiated multiplier.

B. Lump Sum Fee The fee for any requested portion of work may, at the option of the DEPARTMENT, be a lump sum mutually agreed upon by the COUNTY and the ENGINEER and stated in the written authorization to proceed.

C. Reimbursable Expenses The ENGINEER may be compensated for certain work related expenditures not covered by fees for engineering services, provided such expenditures are previously authorized by the Director or his designee in writing. Reimbursable expenses may include:

(1) Expenses for laboratory tasks and analyses, permitting fees, printing and reproduction costs, rental or purchase of specialized equipment and instruments necessary for the efficient performance of the work, provided that such equipment and instruments become the property of the COUNTY upon work completion.

(2) Expenses for travel, except that ENGINEER shall claim no more in expenses for travel, transportation, and subsistence than would be allowed an "authorized person" pursuant to the terms of Chapter 112.061, Florida Statutes and the COUNTY'S Administrative Orders 6-1 and 6-3, as presently written or hereafter amended. No such expenses shall be approved without the prior written consent of the Director. For the

purposes of this section, the principal place of business shall be considered the ENGINEER's local corporate headquarters. Failure to obtain such prior authorization shall be grounds for nonpayment of such expenses. To be compensated, the ENGINEER shall maintain accurate records in a format and procedure provided by the Department and the ENGINEER shall submit said records with their invoices.

(3) Items not listed shall be reviewed on a case-by-case basis and shall be approved in advance by the Director or his designee.

(4) Reimbursable expenses, of the ENGINEER and approved subconsultants shall be reimbursed on a direct cost basis.

(5) The Engineer shall be required to submit original receipts of all reimbursable expenses.

D. Maximum Compensation The total of all payments to the ENGINEER pursuant to this Agreement shall not exceed seven hundred seventy thousand dollars ($770,000). No minimum amount of compensation will be assured to the ENGINEER.

E. Additional Services In the event additional services are necessary to perform extra work due to a change in the scope of the project or contingency items, the COUNTY agrees to pay and the ENGINEER agrees to accept fees for such additional services. The performance of all additional services and additional compensation to be paid to the ENGINEER shall be set forth in an amendment to this Agreement. The Director, or his designee, shall have the right to authorize performance of additional services provided that compensation for such services does not exceed ten percent (10%) of the Agreement's maximum compensation limit.

F. Certification of Wage Rates In Accordance with Florida Statute 287.055. The ENGINEER hereby certifies and warrants that wage rates and other factual unit costs, as submitted in support of the compensation provided in this paragraph, are accurate, complete and current as of the date of this Agreement. It is further agreed that said compensation shall be adjusted to exclude any significant costs where the COUNTY shall determine that the price of services was increased due to inaccurate, incomplete or unclear wage rates or other factual unit costs. All such compensation adjustments shall be made within one (1) year from the date of final billing or acceptance of the work by the COUNTY, whichever is later.

7. METHODS OF PAYMENT The COUNTY agrees to make monthly or partial payments to the ENGINEER, in accordance with Prompt Payment Ordinance No. 94-40, currently in effect or as amended in the future, for all authorized work performed during the previous calendar month or other mutually agreed invoicing period. The ENGINEER is responsible to submit invoices that do not contain charges that are more than 120 days old. In the case where disallowed charges are found, the COUNTY may return the entire invoice for correction and resubmittal. The ENGINEER agrees to provide all records necessary to substantiate payment requests to the COUNTY. Payments shall be made in accordance with the following methods:

A. Time and/or Material for Professional Fees and/or Reimbursable Expenses.

(1) The ENGINEER shall submit two copies of its invoice in a format provided by the Department. One shall be the original and the copy shall be clearly stamped "copy". Each invoice shall reference the particular authorization to proceed that authorized the services and shall include a status report describing work completed.

(1) With each invoice, the ENGINEER shall submit a "Monthly Utilization Report" form, attached hereto as Exhibit "A", signed by the ENGINEER and signed by each of the ENGINEER'S subconsultants who performed work during the invoicing period. Invoices shall not be considered valid without said form.

(2) The amount of the invoice submitted shall be comprised of the amounts due for all services performed and reimbursable expenses incurred during the previous calendar month or other mutually agreed invoicing period to date in connection with authorized work. The amounts due for professional services and reimbursable expenses shall be calculated in accordance with Paragraph 6.A. and 6.C. hereof, respectively. Invoiced reimbursable expenses must be substantiated by original receipts and other documentation as necessary.

B. Lump Sum Fee

(1) The ENGINEER shall submit two copies of its invoice in a format provided by the Department. One shall be the original and the copy shall be clearly stamped "copy". Each invoice shall reference the particular task order authorization to proceed which authorized the services and shall include a status report describing work completed.

(2) With each invoice, the ENGINEER shall submit a "Monthly Utilization Report" form, attached hereto as Exhibit "A", signed by the ENGINEER. Invoices shall not be considered valid without said form.

(3) The amount due on the invoice shall be calculated by applying the percentage of the total work completed to date to the authorized lump sum and subtracting any previous billings.

(4) Payments shall be calculated on a percentage of work completed.

8. CHANGE OF PRINCIPAL AND/OR PROJECT MANAGER Rafael L. Robayna and Ariadna P. Risher shall be the ENGINEER'S Principal and Project Manager, respectively. If the COUNTY or the ENGINEER requests a change of the Principal or the Project Manager, the party initiating said change shall make the request in writing and said request shall be received by the other party at least thirty (30) days prior to any such change. The Director reserves the right to approve the replacement Principal or Project Manager.

9. SCHEDULE OF WORK The Department shall have the sole right to determine on which units or sections of the work the ENGINEER shall proceed and in what order. The written task order authorization to proceed issued by the Director shall cover in detail the scope, time for completion

and compensation for the engineering services requested in connection with each unit or section of work.

10. RIGHT OF DECISIONS All services shall be performed by the ENGINEER to the satisfaction of the Director who shall decide all questions, difficulties, and disputes of whatever nature which may arise under or by reason of this Agreement, the prosecution and fulfillment of the services hereunder, and the character, quality, amount and value thereof. The Director's decisions upon all claims, questions and disputes shall be final, conclusive and binding upon the parties hereto unless such determination is clearly arbitrary or unreasonable. In the event the ENGINEER does not concur with the decisions of the Director, the ENGINEER shall present any such objections in writing to the County Manager. The Director and the ENGINEER shall abide by the decisions of the County Manager.

11. OWNERSHIP OF DOCUMENTS All reports, tracings, plans, specifications, maps, contract documents, and/or other data developed by the ENGINEER pursuant to this Agreement shall become the property of the COUNTY without restrictions or limitations upon their use and shall be made available by the ENGINEER at any time upon request by the COUNTY. Reuse of such data by the COUNTY for any purpose other than that for which it was prepared shall be at the COUNTY's sole risk. All drawings shall be AUTOCAD format in a version acceptable to the Department, produced by computer in files maintained on 3.5" disks or CD. When each individual section of work requested pursuant to this Agreement is complete, all of the above data shall be delivered to the Director.

12. NOTICES Any notices, reports or other written communications from the ENGINEER shall be considered delivered when posted by certified mail or delivered in person to the Director. Any notices, reports or other communications from the COUNTY to the ENGINEER shall be considered delivered when posted by certified mail to the ENGINEER at the last address left on file with the COUNTY or delivered in person to said ENGINEER or the ENGINEER's authorized representative.

13. AUDIT RIGHTS The COUNTY reserves the right to audit the records of the ENGINEER related to this Agreement at any reasonable time and during normal business hours during the performance of the work included herein and for a period of three (3) years after final payment under this Agreement. The ENGINEER agrees to provide any records necessary to substantiate payment requests to the COUNTY, including audited financial statements. In the event an audit undertaken pursuant to this section reveals improper, inadvertent, or mistaken payments to the ENGINEER, the ENGINEER shall remit such payments to the COUNTY. The COUNTY shall retain all legal and equitable rights with respect to recovery of payments.

14. SUBCONSULTANTS

A. The ENGINEER shall utilize the following firms as subconsultants: None. The ENGINEER shall not subconsult, assign or transfer to others work performed under this Agreement without the written consent of the Director or his designee. In addition, the ENGINEER shall not allow the subconsultant to utilize, assign or transfer work to others for work performed under this

Agreement without the written consent of the Director or his designee. When applicable and upon receipt of such consent in writing, the ENGINEER shall cause the names of the firms responsible for the major portions of each separate specialty of the work to be inserted in the pertinent documents or data. Nothing contained in this Agreement shall create any contractual relationship between the COUNTY and the subconsultants.

B. In addition, and as applicable, the ENGINEER agrees to comply with Miami-Dade County Ordinance 01-103 and Administrative Order 3-32 regarding the Community Business Enterprise (CBE) program. The COUNTY has established a participation goal of 100% based on the total amount of compensation authorized under this Agreement. If applicable, the ENGINEER shall be responsible to submit to the COUNTY a Monthly Utilization Report attached hereto as Exhibit "A" on or before the tenth working day following the preceding month.

15. PROMPT PAYMENT TO SMALL BUSINESS SUBCONSULTANTS The ENGINEER agrees to comply with Section 2-8.1.4 of the Code of Miami-Dade County, requiring the ENGINEER to issue prompt payment to all small business contractors and to have dispute resolution procedures in place in the event of disputed payments to small businesses. Failure of the ENGINEER to issue prompt payment to small businesses, or to adhere to its dispute resolution procedures, may be cause for suspension, termination, and debarment.

16. WARRANTY The ENGINEER warrants that no companies or persons, other than bona fide employees working solely for the ENGINEER or the ENGINEER's subconsultants, have been retained or employed to solicit or secure this Agreement or have been paid or guaranteed payment of any fees, commissions, percentage fees, gifts or any other considerations contingent upon or resulting from the award or making of this Agreement. The ENGINEER also warrants that no COUNTY personnel, whether a full-time or part-time employee, has or shall be retained or employed in any capacity, by the ENGINEER or the ENGINEER's subconsultants, to accomplish the work contemplated under the terms of this Agreement. For breach or violation of this warranty, the Director shall have the right to annul this Agreement without liability.

17. TERMINATION OF AGREEMENT It is expressly understood and agreed that the Director may terminate this Agreement, in total or in part, without cause or penalty, by ten (10) days prior written notification or by declining to issue the written task order authorization, as provided herein in which event the COUNTY's sole obligation to the ENGINEER shall be payment, in accordance with Paragraph 6, for those units or sections of work previously authorized. Such payment shall be determined on the basis of the hours or percentage of work performed by the ENGINEER up to the time of termination. In the event partial payment has been made for professional services not performed, the ENGINEER shall return such sums to the COUNTY within ten (10) days after receipt of written notice that said sums are due. Upon such termination, the COUNTY may, without penalty or other obligation to the ENGINEER, elect to employ other persons to perform the same or similar services.

18. DURATION OF AGREEMENT This Agreement shall remain in full force and effect until completion of the design and construction management services contemplated herein and as specified in the authorization to proceed or until depletion of the funds allocated to pay the cost of

the services described herein, whichever occurs first. This Agreement may be terminated by mutual consent of the parties hereto, or as otherwise provided herein. The performance of specifically and properly authorized services that may extend beyond the Agreement's effective term shall be compensated in accordance with Paragraph 6 hereof.

19. DEFAULT If the ENGINEER fails to comply with the provisions of this Agreement, the Director may declare the ENGINEER in default by ten (10) days prior written notification. In such event, the ENGINEER shall only be compensated for any professional services completed as of the date written notice of default is served. In the event partial payment has been made for incomplete professional services, the ENGINEER shall return such sums to the COUNTY within ten (10) days after receipt of written notice that said sums are due. The ENGINEER shall not be compensated for professional services that have been performed but not completed by the time the Director declares a default. In the event the COUNTY prevails in litigation to enforce or defend the provisions of this or any other Paragraph of this Agreement, the COUNTY shall be compensated by the ENGINEER for reasonable attorney's fees and court costs.

20. INDEMNIFICATION AND INSURANCE The ENGINEER shall indemnify, save and hold harmless the COUNTY, its officers, employees, agents and instrumentalities from any and all claims, liability, losses and causes of actions arising out of any willful or negligent act, error or omission of the ENGINEER, or its principals, subconsultants, employees and agents, as a result of the performance of the ENGINEER's professional services under this Agreement; and to the extent of any such claim, liability, loss or cause of action, the ENGINEER shall pay all such claims, losses, costs and judgments which may issue thereon, as well as any attorney's fees incurred.

The ENGINEER, including subconsultants, shall not commence any work pursuant to this Agreement until all insurance required under this Section has been obtained and such insurance has been approved by the COUNTY's Risk Management Division of General Services Administration. The ENGINEER shall maintain during the term of this Agreement the following insurance:

A. Automobile Liability Insurance covering all owned, nonowned and hired vehicles used in connection with the work in an amount not less than $300,000 combined single limit per occurrence for bodily injury and property damage.

B. Professional Liability Insurance in the amount of $250,000 with a deductible per claim, if any, not to exceed ten percent (10%) of the limit of liability, providing for all sums which the ENGINEER shall become legally obligated to pay as damages for claims arising out of the services performed by the ENGINEER, its principals, subconsultants, employees and agents or any person employed by the ENGINEER in connection with this Agreement.

C. Public Liability Insurance, on a comprehensive basis, in an amount not less than $300,000 combined single limit per occurrence for bodily injury and property damage.

All insurance policies must be issued by companies authorized to do business under the laws of the State of Florida and must be endorsed to show Miami-Dade County as additional insured. The

companies must be rated no less than "B" as to management and no less than "Class V" as to strength by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the Risk Management Division, or, the companies must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida", issued by the State of Florida Department of Insurance and be members of the Florida Guaranty Fund.

The ENGINEER shall furnish certificates of insurance to the Risk Management Division, Suite 2340, Stephen P. Clark Center, 111 N.W. First Street, Miami, FL 33128-1987 prior to the commencement of operations, which certificates shall clearly indicate that the ENGINEER has obtained insurance in the type, amount, and classification as required for strict compliance with this Paragraph and that no material change or cancellation of this insurance shall be effective without thirty (30) days prior written notice to the COUNTY.

Compliance with the foregoing requirements shall not relieve the ENGINEER of the liabilities and obligations under this Section or under any other portion of this Agreement, and the COUNTY shall have the right to inspect the original insurance policies.

21. ORDINANCES The ENGINEER agrees to abide by and be governed by Miami-Dade County ordinances which may have a bearing on the work contemplated hereunder, including but not necessarily limited to the following:

A. Ordinance No. 72-82 (Conflict of Interest), as amended, and Ordinance No. 77-13 (Financial Disclosures), as amended, which are incorporated herein by reference, as if fully set forth herein in connection with the ENGINEER'S obligations hereunder. The ENGINEER shall comply with the financial disclosure requirements of Ordinance No. 77-13 by filing within thirty (30) days of the execution of this Agreement one of the following with the Miami-Dade County Elections Department, P. O. Box 012241, Miami, Florida 33101:

(1) A source of income statement;
(2) A current certified financial statement;
(3) A copy of the ENGINEER's Current Federal Income Tax Return.

B. The ENGINEER further agrees to comply with the requirements of applicable County, State and Federal Ordinances, Resolutions and/or Regulations, including, but not limited to the list below. The ENGINEER shall execute the related affidavits, attached hereto as Exhibit "B".

1) Ordinance No. 91-142, Family Leave; as amended by Ordinance No. 92-91, superseded by Ordinance No. 93-118;modified by Resolution Nos. 1499-91 and R-183-00
2) Ordinance No. 90-133, Miami-Dade County Disclosure Affidavit;

3) Ordinance No. 92-15, Drug-Free Workplace;
4) Disability Nondiscrimination Affidavit; (Resolution No. 385-95/Americans with Disabilities Act of 1990).
5) Ordinance No. 93-129, Debarment Disclosure Affidavit;
6) State of Florida Statutes 287.133 (3) (a) of Public Crimes Affidavit;
7) Ordinance No. 94-34, Criminal Record Affidavit;
8) Ordinance No. 95-178, Delinquent or Currently Due Fees or Taxes;
9) Ordinance No. 91-22, Certification Regarding Lobbying;
10) Ordinance No. 92-27, Lobbyist Registration for Oral Presentation;
11) Resolution No. 1634-93, Quarterly Reports (Miami-Dade County Work);
12) Resolution No. 113-94, Quarterly Reports (Private Sector Work);
13) Resolution No. 516-96 and Administrative Order No. 3-20, Independent Private Sector Inspector General (IPSIG);
14) Ordinance No. 97-215, Inspector General (IG);
15) Ordinance No. 99-152, False Claims;
16) Ordinance No. 02-96, Code of Business Ethics Affidavit

The ENGINEER further agrees to comply with any other ordinances or resolutions of the COUNTY that may become effective prior to the execution of this Agreement by both parties.

22. PROPRIETARY INFORMATION Notwithstanding any other provisions of this Agreement or any provisions in a particular authorization to proceed, all of ENGINEER's proprietary computer programs or software, developed by ENGINEER outside of this Agreement shall remain the exclusive property of the ENGINEER, subject, however, to Florida Public Records Law (Chap. 119, Fla. Statutes).

23. AFFIRMATIVE ACTION PLAN In accordance with Ordinance No. 82-37, the ENGINEER must have an Affirmative Action Plan filed and approved by Miami-Dade County's Department of Business Development (DBD). The Plan is hereby incorporated as a contractual obligation of the ENGINEER to Miami-Dade County.

24. EQUAL OPPORTUNITY The ENGINEER shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, sexual orientation, marital status, physical handicap, or national origin. The ENGINEER shall take affirmative actions to insure that applicants are employed and that employees are treated during their employment without regard to their race, religion, color, sex, age, sexual orientation, marital status, physical handicap or national origin. Such actions shall include, but shall not be limited to the following: employment; upgrading, transfer or demotion; recruitment or recruitment advertising; layoff or termination; rates of pay or other form of compensation and selection for training, including apprenticeship. The ENGINEER agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this Equal Opportunity Clause.

THE ENGINEER shall comply with all applicable provisions of the Civil Rights Acts of 1964; Executive Order 11246 of September 24, 1965 as amended by Executive Order 11375; Executive Order 11625 of October 13, 1971; the Age Discrimination in Employment Act, effective

June 12, 1968; the rules and regulations, and relevant orders of the Secretary of Labor; Florida Statutes 112.041, 112.042 and 112.0113; and Miami-Dade County Ordinance No. 75-46, effective June 28, 1975.

During the performance of this Agreement, the ENGINEER agrees to state in all solicitations or advertisements for employees placed by or on behalf of the ENGINEER that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, age, sexual orientation, marital status, physical handicap or national origin. If requested to do so, the ENGINEER shall furnish all information and reports required by Executive Order 11246, as amended by Executive Order 11375 and by rules, regulations and orders of the Secretary of Labor, and will permit access to its books, records and accounts by the COUNTY, and compliance review agencies for purposes of investigation to ascertain compliance with such rules and regulations and orders. The ENGINEER further agrees that he will comply with the requirements of the Americans with Disabilities Act.

25. OFFICE OF THE COUNTY INSPECTOR GENERAL Pursuant to Ordinance No. 97-215 as currently in effect and as amended, the COUNTY has established the Office of Inspector General which is required to perform mandatory random audits on all COUNTY agreements throughout the duration of each agreement. The cost of any such audit for this Agreement shall be one quarter (1/4) of one percent (1%) of the total agreement amount. The ENGINEER agrees that such audit cost is included in the total amount of this Agreement. The audit cost will be deducted by the COUNTY from payments to the ENGINEER. The audit cost shall also be included in any additional services, renewals and extensions.

The COUNTY Inspector General is authorized and empowered to review past, present and proposed COUNTY and Public Health Trust programs, agreements, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. The Inspector General is empowered to retain the services of independent private sector inspectors general (IPSIG) to audit, investigate, monitor, oversee, inspect and review proposals, operations, activities and performance of the ENGINEER, its officers, agents and employees, lobbyists, COUNTY staff and elected officials to ensure compliance with agreement terms and conditions and to detect fraud and corruption.

Upon five (5) business days prior written notice to ENGINEER from the Inspector General or IPSIG retained by the Inspector General, the ENGINEER shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the ENGINEER's possession, custody or control which, in Inspector General's or IPSIG's sole judgement, pertain to performance of the agreement including, but not limited to original estimate files, change order estimate files, worksheets proposals and agreements from and with successful and unsuccessful subconsultants and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, and contract documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends

received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

The provisions in this Paragraph shall apply to the ENGINEER, its officers, agents, employees, subconsultants and suppliers of any one piece of equipment costing more than $1,000. The ENGINEER shall incorporate the provisions in this Paragraph in all subcontracts and all other agreements executed by the ENGINEER in connection with the performance of the Agreement.

Nothing in this Agreement shall impair any independent right of the COUNTY to conduct audit or investigative activities. The provisions of this Paragraph are neither intended nor shall they be construed to impose any liability on the COUNTY by the ENGINEER or third parties.

26. INDEPENDENT PRIVATE SECTOR INSPECTOR GENERAL Pursuant to Resolution No. 516-96 and Administrative Order No. 3-20, the Miami-Dade County Inspector General's Office shall have the right but not the obligation to retain the services of an independent private sector inspector general (IPSIG) who may be engaged to audit, investigate, monitor, oversee, inspect and review the operations, activities and performance of the ENGINEER and COUNTY in connection with the agreement. The scope of services performed by an IPSIG may include, but is not limited to, monitoring and investigating compliance with contract specifications, projects costs, and investigating and preventing corruption and fraud. Accordingly, the appropriate amount for payment of an IPSIG will be reserved by the Department. This amount will not be reflected in the proposals for task assignments. Said amount shall equal the following percentage of the maximum compensation of the agreement:

Percentage	Contract Price
1.00%	$0 - $10 million
0.75%	$10 million - $30 million
0.50%	$30 million and over

The provisions in this Paragraph shall apply to the ENGINEER, its officers, agents, employees, subconsultants and suppliers. The ENGINEER shall incorporate the provisions in this Paragraph in all subcontracts executed by the ENGINEER in connection with the performance of the agreement.

Services for COUNTY retained IPSIG's will be paid for by the COUNTY by establishment of a reserve amount for each contract. Nothing in this contract shall impair any independent right of the COUNTY to conduct audit or investigative activities. The provisions of this Paragraph are neither intended nor shall they be construed to impose any liability on the COUNTY by the ENGINEER or third parties.

27. ASSIGNMENT OF AGREEMENT This Agreement shall not be transferred, assigned or otherwise conveyed to any other party without the express written consent of the Director.

28. ATTORNEY'S FEES In the event of any litigation arising out of this agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs including appellate fees, from the other party.

29. ENTIRETY OF AGREEMENT This writing embodies the entire agreement and understanding between the parties hereto, and there are no other agreements and understandings, oral or written with reference to the subject matter hereof that are not merged herein and superseded hereby.

30. MODIFICATION No alteration, change, or modification of the terms of this Agreement shall be valid unless made in writing, signed by all parties hereto, and approved by the COUNTY.

31. GOVERNING LAW This Agreement, regardless of where executed, shall be governed by and construed according to the laws of the State of Florida, and venue shall be in Miami-Dade County, Florida.

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IN WITNESS WHEREOF the parties hereto have executed this Agreement by their duly authorized officers on the date first written above.

TEST:

HARVEY RUVIN,
CLERK OF THE BOARD

By:_____

MIAMI-DADE COUNTY, FLORIDA BY ITS BOARD OF COUNTY COMMISSIONERS

By: _____
for County Manager

WITNESSETH:

Angela Benitez
Signature

Angela Benitez
Printed Name

Yohandra Antigua
Signature

Yohandra Antigua
Printed Name

ROBAYNA AND ASSOCIATES, INC.
Firm Name (Place Corporate Seal)

By: _____
President

Rafael L. Robayna
Printed Name

Approved as to form
and legal sufficiency.

_____
Assistant County Attorney

Agreement No. 01ROAI001
11/1/01