# Memorandum

MIAMI-DADE COUNTY

**Date:** March 2, 2010

**To:** Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

Agenda Item No. 8(M)(1)(B)

**From:** George M. Burgess
County Manager

**Subject:** Assignment, Assumption, Acknowledgement and Consent Agreement by and between Miami-Dade County, G.M. Selby & Associates, Inc. and G.M. Selby, Inc.

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**Recommendation**

Miami-Dade County Park and Recreation Department (MDPR) recommends approval of the attached Assignment, Assumption, Acknowledgement and Consent Agreement (Agreement) by and between Miami-Dade County, G.M. Selby & Associates, Inc. and G.M. Selby, Inc., assigning the Professional Services Agreement (PSA) with Miami-Dade County from G.M. Selby & Associates, Inc. ("Assignor") to G.M. Selby, Inc. ("Assignee").

**Scope**

This item impacts the completion of one project in Crandon Park located in Commission District 7.

**Fiscal Impact/Funding Source**

There is no fiscal impact associated with the recommended approval of the Agreement.

**Track Record/Monitor**

The Assignee has three performance evaluations with an average rating of 3.0 out of 4.0 listed in the Office of Capital Improvements (OCI) database.

**Background**

Miami-Dade County entered into a PSA with G.M. Selby & Associates, Inc. (also referred to as the "Assignor") to perform county-wide miscellaneous structural engineering professional services (E00-PARK-04) on February 28, 2002. G.M. Selby & Associates, Inc., a firm heavily involved in the telecommunications industry, experienced the negative effects of the economic downturn of that industry. Those effects led the principals of G.M. Selby, Inc. to reorganize and focus their resources on the structural engineering portion of their practice. The Assignor has stopped doing business as G.M. Selby & Associates, Inc. and requested that all rights, obligations and responsibilities of the PSA be assigned to the newly formed engineering firm – G.M. Selby, Inc. (also referred to as the "Assignee").

Since one of the projects under the PSA is still active (Crandon Park Tennis Center Telescopic Light Poles – replacement of existing fixed height tennis court light poles with adjustable height light poles) and the principals in the newly formed firm are the same, it is in the best interest of Miami-Dade County to assign the PSA so that the new entity can continue and complete the work. The Assignment Agreement will allow for the Assignee to assume all of the Assignors past, current and future obligations and liabilities associated with the Miami-Dade County PSA.

MDPR has done its due diligence and researched the firm's current history and has found no other outstanding issues at this time. The approval of the Assignment Agreement is recommended because it is in the best interest of Miami-Dade County to facilitate the efficient completion of the project.

Attachments

Alex Muñoz
Assistant County Manager

# MEMORANDUM
(Revised)

**TO:** Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

**DATE:** March 2, 2010

**FROM:** R. A. Cuevas, Jr. County Attorney

**SUBJECT:** Agenda Item No. 8(M)(1)(B)

**Please note any items checked.**

_____ **"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**

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

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____ ) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(M)(1)(B)
3-2-10

RESOLUTION NO. _____

RESOLUTION APPROVING ASSIGNMENT, ASSUMPTION, ACKNOWLEDGEMENT AND CONSENT AGREEMENT BY AND BETWEEN MIAMI-DADE COUNTY, G.M. SELBY & ASSOCIATES, INC. AND G.M. SELBY, INC. FOR PROFESSIONAL SERVICES AGREEMENT E00-PARK-04; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE AGREEMENT AND EXERCISE ANY AND ALL RIGHTS CONFERRED THEREIN

**WHEREAS**, this Board desires to accomplish the purpose 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 hereby approves the Assignment, Assumption, Acknowledgement and Consent Agreement (Agreement), by and between Miami-Dade County, G.M. Selby & Associates, Inc. and G.M. Selby, Inc., in substantially the form attached hereto and made a part hereof; and authorizes the County Mayor or County Mayor's designee to execute the Agreement for and on behalf of Miami-Dade County and to exercise any and all rights conferred therein.

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:

Dennis C. Moss, Chairman
Jose "Pepe" Diaz, Vice-Chairman

Bruno A. Barreiro
Carlos A. Gimenez
Barbara J. Jordan
Dorrin D. Rolle
Katy Sorenson
Sen. Javier D. Souto
Audrey M. Edmonson
Sally A. Heyman
Joe A. Martinez
Natacha Seijas
Rebeca Sosa

The Chairperson thereupon declared the resolution duly passed and adopted this 2nd day of March, 2010. 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

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. MR

Monica Rizo

**ASSIGNMENT, ASSUMPTION, ACKNOWLEDGEMENT AND CONSENT AGREEMENT**

This ASSIGNMENT AND ASSUMPTION AGREEMENT ("Assignment Agreement") effective as of the _____ day of _____ in the year 2009___ by and between G.M. Selby & Associates, Inc ("Assignor") and G.M. Selby, Inc. ("Assignee").

Whereas, on _G.M. Selby & Associates, Inc._, the Assignor entered into a Professional Services Agreement E00-Park-04(the "PSA") (Attached hereto as Exhibit A) with Miami-Dade County ("County") as defined in the PSA; and

Whereas, Section 8.04.A of the PSA requires the County to approve or reject all proposed assignees, successor or other changes in the ownership structure and composition of the Assignor; and

Whereas, the Assignor and the Assignee desire to assign the PSA from Assignor to the Assignee.

Now, therefore, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. Assignee accepts, or has accepted, the assignment of the PSA from the Assignor. Assignor and Assignee warrant that Assignee is fully capable of faithfully performing all of the terms and obligations of the Assignor under the PSA. Assignee agrees to assume and faithfully perform and discharge all of the terms and obligations of the Assignor under the PSA with the County, and agrees to be bound by all covenants and agreements of the PSA. The Assignee further represents and warrants that it is in compliance with all current State and County laws and requirements. Assignee further agrees to be responsible and liable for all prior acts of the Assignor under the PSA and

any claims, actions, causes of action, demands, rights, damages, costs, loss of service, expenses, liens, and compensation whatsoever, whether known or unknown, that have accrued or may accrue as a result of Assignor's prior performance under the PSA may now be brought against Assignee

2. Pursuant to Section 8.04.A of the PSA, the County hereby acknowledges and consents to the Assignor's assignment of its rights, title, and interests in the PSA to the Assignee.

Dated: _____

**G.M. Selby & Associates, Inc. *(Assignor)***

By: _____

Name: Gerald Zadikoff

Title: C.E.O

**G.M. Selby, Inc. (Assignee)**

By: _____

Name: Mamie Attar

Title: President

**MIAMI-DADE COUNTY, FLORIDA**

By: _____

Name: _____

Title: _____

# Exhibit 'A'

(PSA Contract No. E00-PARK-04)

# PROFESSIONAL SERVICES AGREEMENT BETWEEN MIAMI DADE COUNTY, FLORIDA AND CONSULTANT FOR PROFESSIONAL SERVICES

EXHIBIT A

WHEREAS, The County has selected the Consultant in accordance with Section 287.055, Florida Statutes (Consultant's Competitive Negotiation Act) and in accordance with Section 2-10.4, Code of Miami-Dade County and

WHEREAS, This Agreement has been entered into this 28th day of February in the year two thousand and Two, BY AND BETWEEN MIAMI-DADE COUNTY, FLORIDA, a political subdivision of the State of Florida, acting by and through its Board of County Commissioners, hereinafter called the "County" or "Owner" and G.M. Selby & Associates, Inc., hereinafter called the Consultant, for the following Project:

## Miscellaneous Structural Engineering Professional Services
## DPM Contract No. *E00-PARK-04*

The County and the Consultant agree as follows:

### ARTICLE 1 – DEFINITIONS

**1.01) BASIC SERVICES:** Those engineering services defined in Section 2.01.

**1.02) ADDITIONAL SERVICES:** Those engineering services defined in Section 2.02.

**1.03) BOARD OF COUNTY COMMISSIONERS:** The duly elected officials authorized to act on behalf of the Owner.

**1.04) CONSULTANT:** The engineer who has entered into a contract with the Owner to provide professional services under this Agreement. He/she shall act as the Owner's representative for the duration of the construction of the project, inclusive of the Warranty Phase.

**1.05) CONTRACTOR:** The firm who has entered into a Contract with the Owner for the construction of County facilities and incidentals thereto.

**1.06) OWNER:** Miami-Dade County, a political subdivision of the State of Florida.

1.07) **PROJECT**: The construction, alteration or repair, and all services and incidentals thereto of the facility as contemplated and budgeted by the Owner, and listed in this Agreement.

1.08) **SERVICE ORDER**: A document issued by the Owner to the Consultant authorizing the performance of specific professional services, stating the time for completion and amount of the fee authorized for such services.

1.09) **USING AGENCY**: The department, division, bureau or other subdivision of the Owner, for whom the Project is required.

## ARTICLE 2 - SERVICES AND RESPONSIBILITIES OF THE CONSULTANT

2.01) **BASIC SERVICES**: The Consultant agrees to provide complete professional engineering services as set forth in the five Phases enumerated hereinafter, including all civil engineering, structural engineering, architectural, mechanical/plumbing engineering, electrical engineering and landscape design services required for the Project. The professional Engineering documents shall be produced by Computer Aided Design (CAD) in accordance with "Attachment A" These services are hereinafter referred to as "Basic Services". The Consultant will be responsible for writing and distributing minutes of all meetings he/she is asked to attend. When a reproducible set of documents is referred to hereunder, it shall mean an unbound set of copies of all documents which is 11" x 17" or smaller and/or an unbound copy reproducible by the diazo method for all documents larger than 11" x 17".

If a Construction Manager at Risk is assigned by the Owner to the Project, the Consultant shall as part of his/her Basic Services, coordinate with the Construction Manager through all phases of the Project at no additional cost to the Owner to ensure that the Construction Manager's comments and suggestions are incorporated.

Services shall include the design of interface facilities for Art in Public Places and the coordination of such design with the appropriate agencies.

**2.01.A) Phase I - Programming and Schematic Design:**

**2.01.A.1)** The Consultant shall confer with representatives of the Owner to establish a Program consisting of a detailed listing of all functions and spaces together with the square footage of each assignable space, gross square footage, and a description of the relationships between and among the principal programmatic elements.

**2.01.A.2)** The Consultant shall prepare and present in writing, and if requested in an oral presentation, for approval by the Owner, a Design Concept and Schematics Report, comprising Schematic

Design Studies, a Project Development Schedule and a statement of Probable Construction Costs in CSI format as defined below:

**2.01.A.2A)** The Schematic Design Studies shall consist of site plans, elevations, sections, and all other elements required to show the scale and relationship of the components and design concepts of the whole. Site plans shall include identification of any special site or environmental requirements. The plans may be single-line diagrams.

**2.01.A.2B)** A simple perspective rendering or sketch, or photograph thereof will be provided upon request by the Owner to further show the design concept. Studies shall include a general description of the major components (civil, structural, mechanical and electrical systems) of the Project.

**2.01.A.2C)** The Project Development Schedule shall show the proposed completion date of each Phase of the Project; (1) Programming and Schematic; (2) Design Development; (3) Construction Documents Development; (4) Bidding and Award of Contract; and (5) Construction. The Consultant shall be held directly responsible for adhering to the Project Development Schedule and requirements for submittal for Phases 1, 2 and 3 above.

**2.01.A.2D)** The Statement of Probable Construction Costs shall include a detailed breakdown in CSI format of the estimated cost including fixed equipment, site improvements, professional fees, construction contingency allowance, movable equipment, if any, utility service extensions and funding allocation evaluation comprising a brief description of the basis for estimated costs. Costs shall be adjusted to the projected bid date and a preliminary evaluation of the program as it pertains to the allocated construction funds.

**2.01.A.2E)** If the statement of Probable Construction Costs exceeds allocated funds, the Consultant shall prepare recommendations for reducing the scope of the Project in order to bring the estimated costs within allocated funds at no additional cost to the owner.

**2.01.A.3)** The Consultant shall submit three (3) copies of documents required under this Phase, without additional charge, for review and approval by the Owner. The Consultant shall not proceed to the next Phase of the Project until authorized in writing by the Owner.

**2.01.B) Phase II - Design Development**

**2.01.B.1)** From the approved Schematic Design documents, the Consultant shall prepare for approval by the Owner and present in writing and, if requested by the Owner, at an oral presentation, the following: Design Development Documents, an updated Project Development Schedule and an updated Statement of Probable Construction Costs as defined below:

**2.01.B.1A)** The Design Development Documents shall consist of drawings (site plans, elevations, sections, etc.), outline specifications, and other documents that delineate and describe the character of the entire Project with respect to civil, structural, plumbing mechanical and electrical systems; landscaping; construction materials and finishes and other items incidental thereto as may be appropriate and applicable. Consultant's staff from each of the major technical disciplines shall attend the oral presentation (if requested by the Owner) of Phase II documents, to explain the design concept of their systems.

**2.01.B.1B)** The updated Project Development Schedule shall show the proposed completion date of each Phase of the Project through design, bidding, and construction and proposed date of occupancy.

**2.01.B.1C)** The updated Statement of Probable Construction Cost shall include a summary of the estimated cost including fixed equipment, site improvements, professional fees, construction contingency allowance, movable equipment (as applicable), utility service extensions and funding allocation evaluation comprising a brief description of the basis for estimated costs. Costs shall be adjusted to the projected bid date and an evaluation of the Project costs as they pertain to the allocated construction of the Project, appropriate cost or scope reduction recommendations must be included with the submittal at no additional cost to the Owner.

**2.01.B.2)** The Consultant shall submit three (3) copies of documents required under this Phase, without additional charge, for review and approval by the Owner. The Consultant shall not proceed to the next Phase of the Project until the Owner issues a Work Order.

**2.01.B.3)** The Consultant shall return to the Owner review (check) sets of documents from the Schematic Design Phase submission. The Consultant shall provide an appropriate response to all review

commentary noted on these previous Phase documents. The Consultant shall not proceed to the next Phase of the Project until the Owner approves.

**2.01.C) Phase III - Construction Documents Development**

**2.01.C.1)** From the approved Design Development Documents, the Consultant shall prepare the Final Construction Documents setting forth in detail the requirements for the construction of the Project, including the Proposal-Agreement (Bid) form and all necessary information for the bidders, Conditions of the Contract, complete drawings and technical specifications (the Project Manual). The Consultant is responsible for complete coordination between the engineering disciplines and compliance of the Design and Construction Documents with all applicable Codes.

**2.01.C.2)** 50% Construction Documents Submittal: The Consultant shall (without additional charge) make a 50% Construction Documents submittal, for review and approval by the Owner, which shall include the following:

**2.01.C.2A)** Three (3) sets of all 50% construction drawings. The Consultant shall additionally attach a list of all anticipated drawings necessary to fully define the construction and an estimate of the current percent of completion of each of the drawings.

**2.01.C.2B)** Three (3) sets of the Project Manual. The Consultant shall in his/her preparation of the Project Manual, use CSI Standards, including the 16-Division and 3-Part Section format, developed and recommended by the Construction Specifications Institute (CSI). The Project Manual at the 50% Construction Documents submittal shall include all sections of "Division 0" and "Division 1" which shall be 100% completed, and at least 50% of the technical specification sections, which shall be 100% completed. These specifications shall be in final form, except as may be revised through the review process and shall be more than merely outline specifications as submitted during the Design Development Phase.

**2.01.C.2C)** Color boards, if applicable, which shall show complete color selections for all finish materials. The updated Development Schedule shall show the proposed completion date of each Phase of the Project through design, bidding construction and proposed date of occupancy.

**2.01.C.2D)** An updated Statement of Probable Construction Cost (including construction contingency allowance) broken down by specification sections. The Statement shall include any adjustments necessary for projected award date, changes in requirements, or general market conditions. A work order to proceed with the completion of Phase III will not be issued if the latest Statement of Probable Construction Cost exceeds the Total Allocated Funds for Construction, unless the Consultant and the Owner agree on methods to enable construction to be completed within the funds available.

**2.01.C.2E)** The Consultant may be authorized to include in Construction Documents approved additive alternate bid items, to permit the Owner to award a Construction Contract within the limit of the Total Allocated Funds.

**2.01.C.3)** The Consultant shall return to the Owner review (check) sets of documents from the Design Development Phase submission. The Consultant shall provide an appropriate response to all review commentary noted on these previous Phase documents.

**2.01.C.4)** The Consultant shall not proceed with further Construction Documents Development until approval of the 50% documents is received from the Owner. Approval by the Owner shall be for progress only and does not relieve the Consultant of its responsibilities and liabilities relative to code compliance and to other covenants contained in this Agreement. The Consultant shall resolve all questions indicated on the documents and make all changes to the documents necessary in response to the review commentary. The 50% Documents review (check) set shall be returned to the Owner.

**2.01.C.5)** Rendering Requirements (if applicable): At approximately 75% completion of the Construction Documents, the Consultant shall submit several simple studies of proposed perspective drawings of the Project indicating suggestions for angles of view and general composition of a rendering. Upon the Owner's selection of a perspective format, the Consultant shall execute final renderings for submission with 100% Construction Documents submittal.

**2.01.C.6)** 100% Construction Documents Submittal: The Consultant shall (at no additional charge) make a 100% Construction Documents submittal, for final review, comments, and approval by the Owner. The Owner shall review documents for program compliance only; it is the Consultant's responsibility to coordinate his/her work as well as the work generated by the various Sub-consultants

involved with the Project. The 100% submittal shall include the following:

**2.01.C.6A)** Three (3) sets of all 100% construction drawings. Three (3) sets of the Project Manual. These specifications shall be in final form, except as may be revised through the review process.

**2.01.C.6B)** Three (3) sets of all reports, programs, and similar documents necessary for the issuance of documents for bidding and Construction Contract award.

**2.01.C.6C)** An updated Development Schedule showing the proposed completion date of each Phase of the Project through design, bidding, and construction and proposed date of occupancy.

**2.01.C.6D)** An updated Statement of Probable Construction Costs (including construction contingency allowance and similar allowances) broken down by CSI Division or as otherwise directed by the Owner. The Statement shall include all adjustments necessary for projected award date, changes in requirements, or general market conditions. If the Statement of Probable Construction Cost exceeds the Total Allocated Funds for Construction, the Consultant is responsible and shall review materials, equipment, component systems and types of construction included in the Contract Documents and shall recommend changes in such items and/or reasonable adjustment in the scope of the Project and Additive/Alternates that will result in bids within the allocated funds. All such changes in the Contract Documents shall be made at no additional cost to the Owner.

**2.01.C.6E)** It is agreed that any "Statement of Probable Construction Cost" or Cost Estimate prepared by the Consultant represents a reasonable estimate of cost in his/her best judgment as a professional familiar with the local construction industry, and that the Consultant has no control over the cost of labor, materials, tools, equipment, bidders' methods, bid prices, competitive bidding or market conditions. Therefore the Consultant cannot and does not guarantee that bids will not vary from the Cost Estimate.

**2.01.C.6F)** Final rendering consisting of one (1) 20" x 30" framed and glassed (in non-reflective glazing) perspective rendering in

color and three (3) 10" x 15" framed color photographic copies of the rendering.

2.01.C.7) The Consultant shall file and follow-up for a building permit at the earliest practicable time during the performance of the Services, the necessary portions of the Contract Documents for approval by County, State and/or Federal authorities having jurisdiction over the Project by law or contract with the County and shall assist in obtaining any such applicable certifications of "permit approval" by such authorities prior to approval by the Department of the 100% complete Review Set and printing of the Contract Documents. The Consultant shall promptly, at any time during the performance of the Services hereunder, advise the Owner of any substantial increases in costs set forth in the Statement of Probable Construction Cost that in the opinion of the Consultant is caused by the requirement(s) of such authorities. The Consultant will be issued a reimbursable expenses work order for "dry-run" and other permit fees paid to authorities that have jurisdiction over the work.

2.01.C.8) The Consultant shall make all required changes and resolve all questions presented by the Owner and/or permitting authorities on the documents. The 100% complete check set(s) shall be returned to the Owner. Upon final approval by the Owner, the Consultant shall furnish one reproducible and one set of all drawings and Project Manual to the Owner, without additional charge.

2.01.C.9) The Consultant shall return to the Owner review (check) sets of the 50% construction Documents submission. The Consultant shall provide an appropriate response to all review commentary noted on these previous Phase documents.

2.01.C.10) The Consultant shall, when required, obtain all necessary permit approvals required for construction. The consultant shall assist in permit renewals, if required.

**2.01.D) Phase IV - Bidding and Award of Contract**

2.01.D.1) Approval of Bid Documents and Printing: Upon obtaining all necessary approvals of the Construction Documents; from authorities having jurisdiction, and acceptance by the Owner of the Bid Documents and latest Statement of Probable Construction Cost, the Consultant shall assist the Owner in obtaining bids, preparing and awarding the Construction Contract. The Owner, for bidding purposes, will have the bid documents (drawings and Project Manual) printed through its existing agreements with

printing firms, or, at its own discretion, may authorize such printing as a reimbursable service to the Consultant.

**2.01.D.2)** Issuance of Bid Documents, Addenda, Pre-Bid Meetings, and Bid Opening:

**2.01.D.2A)** The Consultant, at no additional cost to the Owner, shall issue the Bid Documents to prospective bidders and keep a complete "List of Bidders" on an Owner furnished form.

**2.01.D.2B)** The Consultant shall record all questions, prepare and issue an appropriate response to such questions (Addenda), if any are required, during the bidding period. The Consultant shall advise all bidders to submit, in writing (with a copy to the Owner's representative), any questions to which a response is necessary to prepare a bid on the Project. The Consultant shall maintain a complete log of addenda issued on an Owner furnished form. No addenda shall be issued without the Owner's concurrence.

**2.01.D.2C)** The Owner has established a policy requiring a "Mandatory Pre-Bid Meeting" on an as needed basis, for most Projects. The Consultant shall assist the Owner in the scheduling and notification of all prospective bidders of such mandatory pre-bid meetings. The Consultant shall attend all Mandatory Pre-Bid Meetings and require attendance of major sub-consultants at such meetings. The Consultant shall prepare, no later than two days after said meeting, minutes of meeting(s), prepare and issue Addenda responding to issues raised at the pre-bid meeting(s). The Consultant shall execute the "Pre-Bid Attendance Affidavit" at the Pre-Bid Meeting(s) for attendees at mandatory pre-bid meetings no later than two days after said meeting. The Consultant shall furnish the above to the Owner no later than two days following said meeting(s).

**2.01.D.2D)** The Consultant shall be present at the bid opening with the Owner's staff. The Consultant shall prepare the "Bid Tabulation" in the form approved or provided by the Owner, listing all General Contractors who obtained the Bid documents and any bid amounts submitted by the Bidders. The Consultant shall at that time also turn over to the Owner all funds received for the non-refundable deposits on the Bid Documents.

**2.01.D.3)** The Consultant shall assist the Owner in evaluating of bids, determining the responsiveness of bids and the preparing of documents for Award of Contract. If the lowest responsive

Base Bid received exceeds the Total Allocated Funds for Construction, the Owner may:

**2.01.D3A)** Approve the increase in the Project Budget and award a Contract;

**2.01.D.3B)** Reject all bids and direct the Consultant to re-bid the Project within a reasonable time with no change in the Project; or additional compensation to the Consultant;

**2.01.D.3C)** Direct the Consultant to revise the scope and/or quality of construction, and re-bid the Project. The Consultant shall, without additional compensation, modify the Construction Documents as necessary to bring the Probable Construction Cost based on such revisions within the Total Allocated Construction Funds. The Owner may recognize exceptional construction market cost fluctuations before exercising this option;

**2.01.D.3D)** Suspend or abandon the Project.

**2.01.E) Phase V - Administration of the Construction Contract**

**2.01.E.1)** The Construction Phase will commence with the award of a Construction Contract and will terminate when the Owner approves the Contractor's final Capital Project Payment Certificate. During this period, the Consultant shall provide Administration of the Construction Contract and this Agreement.

**2.01.E.2)** The Consultant, as the representative of the Owner during the Construction Phase, shall advise and consult with the Owner and shall have the authority to act on behalf of the Owner to the extent provided in the Construction Contract.

**2.01.E.3)** The Consultant and his/her Subconsultants shall visit the site to conduct field inspections once a week (minimum) or at any time at the request of the Owner, and at all key construction events, and to ascertain the progress of the Project and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. Subconsultants shall visit the site as appropriate to conduct field inspections, to ascertain the progress of the Project and determine, in general, if the Work is proceeding in accordance with the Contract Documents. The Consultant shall provide all inspections necessary for certification required by the authorities having jurisdiction; pile driving inspection (if applicable) threshold inspection shall be provided by the Consultant and compensated as

an additional/reimbursable service. On the basis of on-site observations, the Consultant and his/her Subconsultants shall endeavor to safeguard the Owner against defects and deficiencies in the Work of the Contractor. The Consultant will be responsible at no additional cost to the Owner for writing minutes of all meetings and field inspection reports he/she is asked to attend, as well as to distribute the minutes within one day. The Consultant and his/her Subconsultants will not be held responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work. The Consultant and his/her Subconsultants will not be held responsible for the Contractor's or Subcontractors', or any of their agents' or employees' failure to perform the work in accordance with the Contract unless such failure of performance results from the Consultant's acts or omissions.

**2.01.E.4)** The Consultant shall furnish the Owner with a written report of all observations of the Work made by him/her and require all Subconsultants to do same during each visit to the site of the work. He/She shall also note the general status and progress of the Work, and submit copies of same to the Contractor and Owner within two days. Copies of the Field Reports shall be attached to the request for monthly professional services payment for Construction Administration Services. The Consultant's failure to provide written reports of all site visits or minutes of meeting in accordance with Articles 2.01.E.3 and 2.01.E.4 of this Agreement shall result in a proportional reduction in Construction Administration fees paid to the Consultant. The Consultant and his/her subconsultants shall ascertain that the Contractor is making timely, accurate, and complete notations on the "record drawings". If requested by the Owner, the Consultant and/or Subconsultants shall provide additional detail on written reports of observations of the work.

**2.01.E.5)** Based on observations at the site and consultation with the Owner, the Consultant shall determine the amount due the Contractor, and he/she shall recommend approval of such amount. This recommendation shall constitute a representation, by the Consultant, to the Owner, that, to the best of the Consultant's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents and the Contractor is entitled to amounts stated on the requisition subject to:

**2.01.E.5A)** Detailed evaluation of the Work for conformance with the Contract Documents upon Substantial Completion;

2.01.E.5B) The results of testing required by the Contract Documents; for which final results have not been received;

2.01.E.5C) Minor deviations from the Contract Documents correctable prior to completion;

2.01.E.5D) Specific written representations made by the Contractor on the Capital Project Payment Certificate or attachments thereto; and Prior to recommending payment to the Contractor, the Consultant will prepare a written statement to the Owner on the status of the Work relative to the Construction Schedule, which shall be attached to the Contractor's Requisition. Such statement shall be prepared immediately following the requisition field meeting and shall not be cause for delay in timely payment to the Contractor.

2.01.E.6) For the purposes of this Phase, the Consultant shall be the interpreter of the requirements of the Contract Documents. The Consultant shall make recommendations on all claims of the Owner or the Contractor relating to the execution and progress of the Work and all other matters or questions related thereto.

2.01.E.7) The Consultant shall have the authority to recommend rejection of Work that does not conform to the Contract Documents. Whenever, in his/her reasonable opinion, the Consultant considers it necessary or advisable to insure compliance with the Contract Documents, he/she will have the authority to recommend special inspection or testing of any Work deemed to be not in accordance with the Contract, whether or not such Work has been fabricated or delivered to the Project, or installed and completed.

2.01.E.8) The Consultant shall promptly review and approve shop drawings, samples, and other submissions of the Contractor at no additional charge to the Owner. Changes or substitutions to the Contract Documents shall not be authorized without concurrence of the Owner and shall be authorized by Change Authorization with or without change in costs to the construction. The Consultant shall have a maximum of fourteen (14) calendar days from receipt of shop drawings or other submittals by the Contractor, to return the shop drawings or submittals to the Contractor with comments indicating either approval or disapproval.

2.01.E.9) The Consultant shall initiate and prepare required documentation for Changes as required by his/her own observations or as requested by the Owner, and shall review and recommend action

on proposed Changes. Where the Contractor submits a request for Change Order or Change Proposal request, the Consultant shall, within fourteen (14) calendar days, review and submit to the Owner, his/her recommendation, or proposed action along with an analysis and/or study supporting such recommendation.

**2.01.E.9A)** The Consultant shall not receive additional compensation for work associated with changes to the contract due to errors or omissions for which the Consultant is responsible.

**2.01.E.10)** The Consultant shall examine the Work upon receipt of the "Contractor's Request for Substantial Completion Inspection" and shall, prior to occupancy by the Owner, recommend execution of a "Certificate of Acceptance for Substantial Completion" after first ascertaining that the Project meets minimum requirements for substantial completion in accordance with the Contract requirements. A "Punch List" of any defects and discrepancies in the work shall be prepared by the Consultant and his/her sub-consultants in conjunction with the representatives of the Owner. The Consultant shall recommend execution of a "Certificate of Final Acceptance" and final payment to the Contractor only for or upon satisfactory completion of all items on the "Punch List" and receipt of all necessary close-out documentation from the Contractor, including but not limited to all guarantees, operating and maintenance manuals, releases of claims and such other documents and certificates required by applicable codes, laws, and the Contract Documents, and deliver them to the Owner.

**2.01.E.11)** The Consultant shall provide assistance relative to instruction of the Owner's personnel in the operation and maintenance of any equipment or system, and monitor initial start-up and testing, adjusting and balancing of equipment and systems of the Project to assure a smooth transition from Construction to Occupancy Phase of the Project.

**2.01.E.12)** The Consultant shall furnish to the Owner the original documents revised to "record drawings and specifications" condition. Transfer of changes made by "Change Authorization", "Change Order", "Request for Information", substitution approvals, or other clarifications will be the Consultant's responsibility to incorporate into the "record" documents. Changes made in the field to suit field conditions, or otherwise made by the Contractor for his/her convenience shall be marked by the Contractor on the "Field Record Set" and transferred to a copy of the original Contract Documents by the Consultant. The original documents as well as the "Field Record Set" shall become the property of the Owner. The Consultant will furnish one electronic set of all drawings and

one reproducible set of all other "Record Set" documents to the Owner free of charge.

**2.01.E.13)** The Consultant shall furnish to the Owner one complete set of "Record Drawings" in Auto CAD (version as agreed to by Owner and Consultant, but not less than version 14 or 2000) formatted on CD, in drawing (*.dwg) files and one set of vellums. Such CD's and vellums shall become the property of the Owner.

**2.01.E.14)** The Consultant shall furnish to the Owner one simplified site plan reflecting "Record Drawings" conditions with graphic scale and north arrow. Two sets of reproducible drawings shall be furnished on 11" x 17" sheets.

**2.01.F) Guarantee Administration**

**2.01.F.1)** The Consultant shall assist the Owner with inspections of defects reported during the one-year guarantee period and shall oversee and represent the Owner with the correction of defective Work or guarantee/warranty corrections that may be discovered during said guarantee period at no additional cost to the Owner. The Consultant's assistance may be sought by the Owner for guarantees exceeding one year, for which the Consultant will be compensated as mutually agreed to by the Consultant and Owner.

**2.02) ADDITIONAL SERVICES**

**2.02.A)** Other Services as listed below are normally considered to be beyond the scope of the Basic Services as defined in this Agreement. The Consultant shall provide these services, if authorized by an appropriate "Service", and will be compensated for as provided under Section 5.02.

**2.02.A.1)** Special analysis of the Owner's needs, and special detailed programming requirements for the Project.

**2.02.A.2)** Financial feasibility, life cycle costing, or other special studies. Planning surveys, site evaluations, or comparative studies of prospective sites.

**2.02.A.3)** Design services relative to future facilities, systems and equipment that are no intended to be constructed as part of this Project.

2.02.A.4) Services to investigate existing conditions or facilities, or to make measured drawings thereof, or to verify the accuracy of the drawings or other information furnished by the Owner.

2.02.A.5) Professional detailed Estimates of Construction Cost consisting of quantity surveys itemizing all material, equipment, and labor required for the Project.

2.02.A.6) Research, analysis, and recommendations for design criteria packages for design/ build projects.

2.02.A.7) Professional value engineering analysis reports as required.

2.02.A.8) Landscape Architectural services to include conceptual and preliminary site design, preparation of Master Plans, Grading and Drainage Plans, Irrigation Plans, Planting Plans and any other service customarily provided by a Landscape Architect.

2.02.A.9) Interior design services required for or in connection with the selection of furniture or furnishings. (These services may be authorized under the terms of this agreement, not as Additional Services to be paid from the limits established under Article 5.02, but as extended "Basic" services to be paid for as "Basic Services").

2.02.A.10) Services for planning tenant or rental spaces unless included in the Interiors Project.

2.02.A.11) Investigation and making detailed appraisals and valuations of existing facilities, and surveys or inventories required in connection with construction performed by the Owner.

2.02.A.12) Any additional special professional services (other than the normal civil, structural, mechanical, electrical engineering, and landscape services) as may be required for the Project, including but not limited to: acoustical, food services, theatrical, electronic, artists, sculptors and soils Consultant.

2.02.A13) The provision of staff to act as the County's project manager from the Design Phase through construction on an as needed basis.

2.02.A.14) The Services of full-time Field Representative(s) during construction, including the services of a special/threshold inspector.

2.02.A.15) The provision of technical support staff including but not limited to: drafting and clerical staff on an as needed basis.

**2.02.A.16)** Making major revisions, changing the scope of the Project, to the drawings and specifications when such revisions are inconsistent with written approvals or instructions previously given by the Owner and are due to causes beyond the control of the Consultant. (Major revisions are defined as those changing the scope, engineering systems, scheme, or any significant portion thereof). Preparing to serve as an expert witness in connection with any public hearing, arbitration proceeding, or legal proceeding.

**2.02.A.17)** Preparing supporting data, drawings, and specifications as may be required for Change Orders, provided the changes in the Consultant's Basic Compensation resulting from the adjusted Contract Sum does not fully compensate for such services and the changes are not a result of errors in the Consultant's Work or omissions in the work.

**2.02.A.18)** Preparation of deductive Change Orders, and the preparation of additive Change Orders that are not incorporated in the Work.

**2.02.A.19)** Any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted engineering practice related directly to construction.

**2.02.B)** One or more of these Additional Services may be included in the Basic Services requirement of this Agreement.

## 2.03) REIMBURSABLE SERVICES

**2.03.A)** Reimbursable Services are those authorized by the Owner in addition to the "Basic services" and "Additional Services" and consist of actual expenditures made by the Consultant and the Consultant's employees, Subconsultants and Special Consultants in the interest of the Work for the following purposes:

**2.03.A.1)** Authorized travel, lodging and meals in connection with the Project subject to limitations imposed by Chapter 112.061, Florida Statues, and County Administrative orders;

**2.03.A.2)** Costs/Fees paid for securing approvals of authorities having jurisdiction over the Work;

**2.03.A.3)** Reproductions, excluding those for the office use of the Consultant and check/review sets required by the Contract;

**2.03.A.4)** Mailing of Bid Documents (if required).

**2.03.A.5)** Courier services to deliver documents.

**2.03.A.6)** Equipment or supplies or any other direct expenses required in the performance of the work.

## ARTICLE 3 – SUBCONSULTANTS

### 3.01) DEFINITIONS

**3.01.A)** A Subconsultant is a person or organization of properly registered professional Architects, Engineers, Landscape Architects or other qualified professional in other fields not requiring professional registration, who has signed an Agreement with the Consultant to furnish professional services for the Project, described under Basic Services Section 2.01.

**3.01.B)** A Special Subconsultant is a person or organization of properly registered professional Architects and/or Engineers, who has signed an Agreement with the Consultant to furnish professional services for the Project, described under Additional Services, Section 2.02.A.10.

### 3.02) SUBCONSULTANTS' RELATIONS

**3.02.A)** All services provided by the Subconsultants shall be pursuant to appropriate agreements between the Consultant and Subconsultants which shall contain provisions that preserve and protect the rights of the Owner and the Consultant under this Agreement, and which impose no responsibilities or liabilities on the Owner except as provided herein.

**3.02.B)** The Consultant proposes to utilize the following Subconsultants for the Project:

Firm Name: Louis J. Aguirre, P.A.

Consulting Service: Mechanical Engineering

Firm Name: Weidener Surveying & Mapping, P.A.

Consulting Service: Surveying

Firm Name:

Consulting Service: _____

Firm Name: _____

Consulting Service: _____

Firm Name: _____

Consulting Service: _____

Firm Name: _____

Consulting Service: _____

Firm Name: _____

Consulting Service: _____

Firm Name: _____

Consulting Service: _____

Firm Name: _____

Consulting Service: _____

**3.02.C)** The Consultant shall not change any Subconsultant without the Owner's approval after a written request from the Consultant is presented, stating the reasons for the proposed change.

## ARTICLE 4 - THE OWNER'S RESPONSIBILITIES

### 4.01) INFORMATION FURNISHED

**4.01.A)** The Owner, at its expense, shall furnish the Consultant with the following information, or may authorize the Consultant to provide the information as a Reimbursable Service.

**4.01.A.1)** A survey of the proposed Project site if available. The survey shall give boundary dimensions, location of existing structures or similar site improvements; trees; the grades and lines of street, pavement and adjoining properties; right of ways, restrictions and easements; topographic data of the building site; and information

as it relates to sewer, water, gas and electrical services available to the site.

**4.01.A.2)** Soil borings or test pits; chemical, mechanical, structural, or other tests when deemed necessary; and if required by the Consultant, an appropriate professional interpretation thereof and recommendations. The Consultant shall recommend such necessary tests to the Owner.

**4.01.A.3)** Information regarding the Project budget, Owner's procedures, guidelines, forms, formats and assistance to establish the Project program per Section 2.01.A.1 of this Agreement.

**4.02) PROJECT MANAGEMENT**

**4.02.A)** The Miami-Dade County Park and Recreation Department Director, or designee, shall act on behalf of the Owner in all matters pertaining to this Agreement, and shall approve all Work Orders to the Consultant and all invoices for payment to the Consultant.

**4.02.B)** The Miami-Dade Park & Recreation Department Director shall designate a Project Manager to act as liaison between the Consultant and County Agencies. The Consultant shall have general responsibility for management of the Project through all Phases of the work included in this Agreement. The Consultant shall meet with the Project Manager at periodic intervals throughout the preparation of the Contract Documents to assess the progress of the Consultant's work in accordance with approved (progress) "Project Development Schedules" associated with the Project to establish and/or review programmatic requirements and scope of Project.

**4.02.C)** During the construction phase, the Consultant shall be responsible for the provisions described in the "General Conditions" and "Supplementary Conditions" of the Construction Contract.

## ARTICLE 5 - BASIS OF COMPENSATION

**5.01) BASIC SERVICES FEE:** The Owner agrees to pay the Consultant, and the Consultant agrees to accept for Basic Services rendered pursuant to this Agreement, fees computed by the outlined under Section, 5.01 of this Agreement called the "Basic Fee".

**5.01.A) Agreed Lump Sum**

**5.01A.1)** The Consultant agrees to perform specifically described services for an agreed fixed dollar amount of compensation.

**5.01.B) Multiple of Direct Salary Expense**

Fees calculated on an hourly basis shall be a multiple of 2.8 times the salary rate paid to the personnel directly engaged on the Project and in no case shall the maximum billable hourly (including multiples) exceed $120 per hour for prime and subconsultant except as specifically provided herein. The rate for personnel shall be as determined from the actual paid salaries reported to the Director of Internal Revenue. If a full-time project Field Representative is required the multiple shall not exceed 2.0. Said fee shall be full compensation for supervision, overhead and profit except in no case shall the maximum billable hourly (including multiples) exceed the hourly rate agreed upon above for prime. The owner must authorize any overtime in advance.

**5.01.B.1)** Personnel directly engaged on the Project by the Consultant may include Architects, Engineers, Designers, Job Captains, Draftspersons, Specification Writers, Field Accountants and Inspectors engaged in construction, research, design, production of drawings, specifications and related documents, construction inspection and other services pertinent to the Project during all phases thereof.

**5.01.B.2)** Multiple of Direct Salary Expense services fees shall not include charges for office rent or over-head expenses of any kind, including local telephone and utility charges, office/drafting supplies, depreciation of equipment, professional dues, subscriptions, reproductions of drawings and/or specifications, mailing, stenographic, clerical, or other employee time or travel and substance not directly related to the Project. The multiple factor set forth above shall cover all such costs pertinent to the Project. Authorized reproduction costs in excess of that required at each Phase of the Work shall be considered a Reimbursable Service as defined in Article 2.03 of this Agreement.

**5.01.C) Fee for Design of Additive Alternates**

**5.01.C.1)** The design of additive alternates up to 10% of the allocated funds, if authorized by the Owner, will be considered a Basic Service.

**5.01.D) Fee for Work Authorized from the Construction Contingency Allowance**

**5.01.D.1)** When a portion or all of the Construction Contingency Allowance is utilized for authorizing changes to the Construction Contract, the Consultant will be authorized an Additional Services Fee for that amount computed by the method agreed upon under Article 5.01 of

this Agreement, provided that such changes are not attributable to errors or omissions.

**5.01.E)** **Fee for Change Orders to the Construction Contract**

**5.01.E.1)** The Consultant will be authorized an Additional Services Fee computed by the method agreed upon under Article 5.01 of this Agreement for additional design fees ascribed to "Change Orders", provided that such changes are not attributable to errors or omissions.

## 5.02) ADDITIONAL/REIMBURSABLE SERVICES FEE

**5.02.A)** The Consultant may be authorized to perform Additional/Reimbursable Services described under Sections 2.02 of this Agreement.

**5.02.B)** The fee for Additional Services will be computed by one of the methods outlined above (in Section 5.01.A and 5.01.B) and as mutually agreed to by the Owner and the Consultant. If the Owner and Consultant cannot agree on a lump sump for additional services as described in art 5.01A then the Owner may direct the consultant to perform the services as a multiple of direct salary expense as defined in art 5.01B. Should the Consultant refuse such a service work order, it may become the basis for termination of this agreement in accordance with art 8.05A.

**5.02.C)** The Owner as verified by appropriate bills, invoices or statements will reimburse the fee for Reimbursable Services.

# ARTICLE 6 - PAYMENTS TO THE CONSULTANT

## 6.01) PAYMENT FOR BASIC SERVICES

**6.01.A)** Payment for Basic Services may be requested monthly in proportion to services performed during each Phase of the Work. Said payments shall, in the aggregate, not exceed the percentage of the estimated total Basic Compensation indicated below for each Phase.

**6.01.A.1)** 10% upon completion and approval of Phase I

**6.01.A.2)** 20% upon completion and approval of Phase II

**6.01.A.3)** 45% upon completion and approval of Phase III - 50% Documents

**6.01.A.4)** 75% upon completion and approval of Phase III - 100% Documents and submittal or required renderings and Phase IIIA permitting and Dry Run if applicable.

**6.01.A.5)** 80% upon completion of Phase IV (including Contract Award)

**6.01.A.6)** 100% upon completion of Phase V, and approval of all Work, as per 2.01.E.

**6.01.B)** Partial payments not to exceed 90% in the aggregate may be made during Phase V according to the overall percentage completed of the Construction Contract.

**6.01.C)** If the Construction Administration Time is extended due to the Contractor's failure to substantially complete the work within the contract time, through no fault of the Consultant, he/she shall be compensated for any additional professional services required and/or expenses not otherwise compensated for in connection with such time extension(s) as Extended Basic Services. The Fee for such services will be mutually agreed to by the Consultant and the Owner.

**6.01.D)** All payments will be made on duly certified invoices stating that the services for which payment is requested have been performed per this agreement.

## 6.02) PAYMENT FOR ADDITIONAL/REIMBURSABLE SERVICES

**6.02.A)** Payment for Additional/Reimbursable Services may be requested monthly in proportion to the services performed.

**6.02.B)** When such services are authorized as a Multiple of Direct Salary Expense, the Consultant shall submit the names, classification, salary rate per hour, hours worked, and total charge for all personnel directly engaged on the Project, multiplied by the multiplier stated in Section 5.01.C of this Agreement.

**6.02.C)** When services are authorized as a Reimbursable Expense, the Consultant shall attach the expense invoice with all supporting data necessary to substantiate costs reimbursement.

**6.02.D)** All payments will be made on duly certified invoices stating that the services for which payment is requested have been performed per this agreement.

## 6.03) DEDUCTIONS

**6.03.A)** Reserved

## 6.04) PROJECT SUSPENSION OR ABANDONMENT

**6.04.A)** If the Project is suspended for the convenience of the Owner for more than six months, or abandoned in whole or in part for the convenience of the Owner under any phase, the Owner shall give notice to the Consultant of such Project abandonment or suspension. If the Project is to be suspended for less than six months, then the Consultant shall remain on the Project under this Agreement but will be compensated only for work issued under a Work Order; the County will not be liable for stand-by, overhead, or any other costs direct or indirect, that the Consultant may incur outside of any direct costs associated with a Work Order. If the Project is suspended for the convenience of the Owner for more than six months, or abandoned in whole or in part for the convenience of the Owner during any phase, the Consultant shall be paid for services authorized by Work Order which were performed prior to such suspension or abandonment and the Owner shall have no further obligation or liability to the Consultant under this Agreement. If the Project is resumed after having been suspended for more than six months, the Consultant's further compensation may be renegotiated, but the Owner will have no obligation to complete the Project under this Agreement, and may hire or contract with another Consultant to complete the project. The Owner will have no further obligation or liability to the Consultant.

# ARTICLE 7 - REUSE OF PLANS AND SPECIFICATIONS

## 7.01) SCOPE OF SERVICES

**7.01.A)** If the Owner elects to re-use the same plans and specifications for other sites, for purposes other than that for which it was prepared, it shall be at the Owner's sole risk and the Consultant will not receive additional compensation.

**7.01.B)** The Consultant shall bind all Subconsultants to the Agreement requirements for re-use of plans and specifications.

# ARTICLE 8 - GENERAL PROVISIONS

## 8.01) INDEMNIFICATION AND WAIVER OF LIABILITY

**8.01.A)** The Consultant shall indemnify and save the Owner harmless from any claims, losses, and causes of actions, which may arise out of the performance of this Agreement as a result of any act of negligence of the Consultant or his/her Subconsultants. The Consultant shall pay all claims and losses of any nature whatsoever, in connection with such acts of negligence, and shall defend all suits in the name of the Owner when applicable and shall pay all costs and judgments which may ensue thereon.

## 8.02) ERRORS AND OMMISSIONS

**8.02.A)** The Owner shall maintain a record of all construction changes that shall be categorized according to the various types, causes, etc. that the County may determine are useful or necessary for its purposes. Among those categories are construction changes caused by design errors or omissions in the bid documents that were prepared by the Consultant. For the purposes of this contract provision, errors and omissions shall be dealt with as follows:

**8.02. A.1)** **Errors**

It is specifically agreed that construction changes caused by an error in the bid documents that were prepared by the Consultant will constitute an additional cost to the Owner only to the extent that the cost would not have been incurred without the error. The damages to the Owner for errors shall be calculated as one hundred percent (100%) of such additional cost and includes direct and indirect costs. Indirect costs may include delay damages caused by the error. Should the Consultant(s) disagree that all or part of such damages are the result of errors, the Consultant may appeal this determination in writing to the Owner.

**8.02.A.2)** **Omissions**

It is further specifically agreed for the purposes of this agreement that construction changes caused by an omission in the bid documents that were prepared by the Consultant will constitute an additional cost to the Owner to the extent that the cost would not have been incurred without the omission. The damages to the Owner for omissions shall be calculated as the actual additional cost. Damages shall include delay damages caused by the omission. Should the Consultant(s) disagree that all or part of such damages is the result of omissions, the Consultant may appeal this determination in writing to the Owner.

**8.02.A.3)** So long as the total damages to the Owner caused by Consultant errors and/or omissions as calculated above remains less than one-half of one percent (0.5%) of the total construction cost of the Project, the Owner shall not look to the Consultant and/or the Consultant's insurer for reimbursement for errors and omissions. Should the total damages to the Owner caused by Consultant errors and/or omissions as calculated above exceed one-half of one percent (0.5%) of the total construction cost of the Project, the Owner shall recover the total cost of the damages calculated above. To obtain such recovery, the Owner shall deduct from funds due the Consultant in this contract up to the amount of the Consultant's insurance deductible. Should the damages incurred by the Owner exceed the amount due under the contract or the Consultant's insurance deductible, whichever is greater, the Owner shall look to the Consultant and the Consultant's insurer for the remaining amount of additional damages incurred by the Owner. In executing this agreement, the Consultant agrees and his insurer specifically agrees to the reasonableness of these damage calculations and to the Owner's right to recover same as stated above. The recovery of additional costs to the Owner under this paragraph shall not limit or preclude recovery for other separate and/or additional damages that the Owner may otherwise incur.

**8.02.A.4)** The Consultant shall participate in all negotiations with the Contractor related to this section. Such Consultant participation shall be at no additional cost to the Owner.

**8.02.A.5)** For purposes of this section, direct and indirect costs shall be defined as in the general conditions section of the construction specifications for the Project.

## 8.03) INSURANCE

**8.03.A)** The Consultant shall not start on this Project under this Agreement until he/she has obtained all insurance required hereunder. The Consultant shall maintain all required insurance for the full term of this Agreement.

**8.03.B)** **Insurance Required**

**8.03.B.1)** Worker's Compensation Insurance: The Consultant shall maintain Worker's Compensation Insurance in compliance with Florida Statutes, Chapter 440.

**8.03.B.2)** Public Liability Insurance on a comprehensive basis in an amount not less than $300,000.00 combined single limit per occurrence for

bodily injury and property damage. Miami-Dade County must be shown as an additional insured with respect to this coverage.

**8.03.B.3)** Automobile Liability Insurance: The Consultant shall maintain Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with this Agreement in amounts not less than $300,000.00 per occurrence for bodily injury and property damage combined.

**8.03.B.4)** Professional Liability Insurance: The Consultant shall maintain Professional Liability Insurance in the amount of $500,000.00 providing for all sums which the Consultant shall be legally obligated to pay as damages (deductible permitted not in excess of 10% of the coverage limits) for claims arising out of the services performed by the Consultant or by any person employed by him in connection with this Agreement. Such claims may include changes arising out of design errors and omissions in the bid document prepared by the Consultant that result in construction changes. This insurance shall be maintained for at least one year after completion of the construction and acceptance of the Project.

**8.03.C)** The insurance coverage required shall include those classifications, as listed in standard insurance manuals, which most nearly reflect the operations of the Consultant.

**8.03.D)** All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida with the following qualifications.

**8.03.D1)** The company must be rated no less than "B" as to management, and no less than Class "V" as to financial strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to approval by the Owner's Risk Management Division.

**8.03.D2)** Upon approval of this agreement by the Board of County Commissioners the Consultant shall, within fourteen (14) days, furnish the Owner (through the Project Manager) photocopies of his/her professional liability insurance policy and certificates of insurance. The certificates shall clearly indicate that the Consultant has obtained insurance of the type, amount, classification required by these provisions. No material change or cancellation of the insurance shall be effective without a 30-day prior written notice to and approval by Owner.

**8.04) PERFORMANCE**

8.04.A) Performance and Delegation: The performance of this Agreement shall not be delegated or assigned by the Consultant without the written consent of the Owner, and such consent will not be given to any proposed delegation which would relieve the Consultant or his/her surety of their responsibilities under this Agreement. The services to be performed hereunder shall be performed by the Consultant's own staff unless otherwise approved by the Owner. The employment of, contract with, or use of services of any other person or firm by the Consultant as Subconsultant or Special Subconsultant or otherwise is subject to approval by the Owner.

8.04.B) Term of The Agreement: The term of this Agreement shall start upon execution by the parties hereto and extend until completion of the work authorized by the Owner or reasonably associated with the continuation of a Project which has commenced prior to the expiration of the Agreement. Term of the Agreement shall extend until completion of the Guarantee Phase of the Construction Project.

8.04.C) Time for Performance: The Consultant agrees to start all work hereunder upon receipt of a Work Order issued by the Owner and complete each Phase within the time stipulated in each Work Order. A reasonable extension of time for completion of various Phases will be granted by the Owner should there be a delay on the part of the Owner in fulfilling its part of the Agreement as stated herein. Such extension of time shall not be cause for any claim by the Consultant for extra compensation.

## 8.05) TERMINATION OF AGREEMENT

8.05.A) The County may terminate performance of work under this contract in whole or, from time to time, in part if the "Owner" determines that a termination is in the County's interest. The Contracting Officer shall terminate by delivering to the Consultant a Notice of Termination specifying the extent of the termination and the effective date. Such Notice of Termination under this clause will not be deemed a breach of this Agreement, and may be issued with or without cause. Upon such Notice of Termination, the Consultant shall be entitled to receive only costs incurred as of the date of the Notice of Termination, reasonable profit on work done as of the date of the Notice of Termination, and the costs of preparing its final invoice to the County, and upon payment thereof the County will have no further obligation or liability to the Consultant under this Agreement. The Consultant shall not be entitled to any other compensation under this Agreement.

8.05.B) Annulment: The Consultant warrants that he/she has not employed or retained any company, person other than an employee working solely for

the Consultant, to solicit or secure this Agreement; and that he/she has not paid, nor agreed to pay, any company or other person any fee, commission, gift or other consideration contingent upon making of this Agreement, for breach or violation of this warranty, the Owner has the right to annul this Agreement without liability.

## 8.06) CONSULTANT'S ACCOUNTING RECORDS

**8.06.A)** The Owner reserves the right to audit the Consultant's financial records during, including but not limited to audited financial statements, balance sheets, and other financial records, during the performance of this Agreement and for one year after final payment under this Agreement. The Consultant agrees to furnish copies of any records necessary to approve any requests for payment by the Consultant.

## 8.07) OWNERSHIP OF THE DOCUMENTS

**8.07.A)** The Consultant agrees that all notes, designs, drawings, specifications, models, photographs, reports, surveys, investigations, field reports, and other data produced in performance of this Agreement shall be the sole property of the Owner, including all rights therein of whatever kind except as may otherwise be provided hereinafter.

## 8.08) COMPLIANCE WITH LAWS

**8.08.A)** The Architect/Engineer shall, during the term of this Agreement, be governed by Federal, State and Miami-Dade County Laws, Regulatory Orders, Ordinance and Resolutions which may have a bearing on the Services involved in this Project. The Agreement shall be governed by the laws of the State of Florida and may be enforced in a court of competent jurisdiction in Miami-Dade County, Florida.

**8.08.B)** The Consultant agrees to abide by Miami-Dade County Ordinances that may have a bearing on the work involved under this Agreement, including but not limited to:

**8.08.B1)** Ordinance No. 72-82- Conflict of Interest Ordinance.

**8.08.B2)** Ordinance No. 77-13- Financial Disclosure.

**8.08.B.3)** Ordinance No. 82-112- Art in Public Places.

**8.08.B.4)** Ordinance No. 90-133—Disclosure of Ownership, Collective Bargaining Agreement, and Employee Wages, Health Care Benefits, Race, National Origin, and Gender.

**8.08.B.5)** Ordinance No. 90-143-Responsible Wages and Benefits.

**8.08.B.6)** Ordinance No. 91-142- Family Leave as Amended by Ordinance No. 93-118

**8.08.B.7)** Ordinance No. 92-15-Drug-free Work place.

**8.08.B.8)** Ordinance No. 92-91—Family Leave as amended superseded by 93-118 (Family Leave Act) and amended by Resolution R-183-00.

**8.08.B.9)** Ordinance No. 93-136. Debarment, Exclusion from County Contracting, Subcontracting, and BBE Certification for Individuals and Entities Who Aid or Abet Attempts to Comply with Black Business Enterprise Program through Fraud, Misrepresentation, or Material Misstatement.

**8.08.B.10)** Ordinance No.93-137. Penalties and Debarment of Contractors Attempting to Meet Contractual Obligations with the County Through Fraud, Misrepresentation or Material Misstatement.

**8.08.B.11)** Ordinance 94-73—Value Analysis and Life-Cycle Costing.

**8.08.B.15)** Ordinance No. 95-178—Proposers are to verify that all delinquent and currently due fees or taxes have been paid as a condition of award.

**8.08.B.16)** Ordinance No. 97-35 Fair Subcontracting Practices as Amended by Ordinance No. 98-124.

**8.08.B.17** Ordinance No. 97-67—Amending Chapter 11A Prohibiting Discrimination in Contracting, Procurement, Bonding, and Financial Services.

**8.08.B.18)** Ordinance No. 97-172—Ordinance amending Section 2-10.4 requiring certain agreements for Professional Architectural and Engineering Services to include Value Analysis as part of the scope of services.

**8.08.B19)** Ordinance No. 97-215 Inspector General.

**8.08.B.20)** Ordinance No. 98-106—Cone of Silence.

**8.08.B.21)** Ordinance No. 99-5—Domestic Violence Leave.

**8.08.B.22)** Ordinance No. 99-152—False Claim Ordinance.

**8.08.B.23)** Ordinance No. 99-162—Precluding entities who are not current I their obligations to the County from receiving new contracts or purchase orders.

**8.08.B.24)** Ordinance No. 00-67—Prohibition of contracting with individuals and entities while in arrears with the County, as amended by Resolution R-531-00.

**8.08.B.25)** Ordinance No. 00-85—Ordinance amending Section 2-8.9 of the Code of Miami-Dade County (The Living Wage Ordinance).

**8.08.B.26)** Deleted

**8.08.B.27)** Resolution R-1049-93—Affirmative Action Plan Furtherance and Compliance.

**8.08.B.28)** Resolution R-385-95—Policy prohibiting contracts with firms violating the A.D.A. and other laws prohibiting discrimination on the basis of disability A.D.A. requirements, are a condition of award, as amended by Resolution R-182-00.

**8.08.B.29)** Resolution R-516-96—Independent Private Sector Inspector General (IPSIG) Services.

**8.08.B.30)** Deleted

**8.08.B.31)** Resolution R-744-00—Requiring the continued engagement of critical personnel in contracts for professional services for the duration of the Project.

**8.08.B.32)** Resolution R-994-99—Code of Business Ethics.

**8.08.B.33)** Resolution R-185-00—Domestic Violence Leave requirements are a condition of award.

**8.08.B.34)** Administrative Order-3-26—Ordinance amending Section2-10.4 requiring certain agreements for Professional Architectural and Engineering Services to include Value Analysis as a part of the base scope of services which are incorporated herein by reference, as if fully set forth herein, in connection with the Consultant's obligation hereunder.

**8.08.C)** The Consultant shall comply with the financial disclosure requirements of Ordinance 77-13, by filing within 30 days of the execution of this Agreement and prior to July 15th of each succeeding year that the

Agreement is in effect, one of the following with the Supervisor of Elections, Suite 1910, 111 N.W. 1st Street, Miami, Florida 33128:

**8.08.C1)** A Source of Income Statement.

**8.08.C2)** A Statement of Financial Interests.

**8.08.C3)** A copy of the Consultant's current federal income tax return.

**8.08.D)** The Consultant shall, upon execution of this Agreement and prior to preliminary design, initiate contact and confer with the Art in Public Places Representative for review of applicability of an art component to the Project. Should Art in Public Places Department determine that the installation of an art component is applicable to this Project based on the provisions of Ordinance No. 73-77 and subsequent amendments and guidelines, and should it decide to pursue said installation, the Consultant shall further confer with the Art in Public Places Representative to develop a concept for art appropriate to the Project, and the Art in Public Places Professional Advisory Committee as to the type(s) of art, location(s), and possible artist(s). The Director of Art in Public Places shall approve the final concept and location. The Art in Public Places Trust will make the final choice of the artist(s), upon recommendation of the Art in Public Places Professional Advisory Committee. As part of its Master Plan, Art in Public Places encourages and will give preference to collaborative projects between the artist(s) and the Consultant to promote the integration of artwork and site. Such collaborative efforts shall include the active involvement of both the Consultant and the artist(s) during design development of the Project. In consultation with the artist(s) and Art in Public Places, the Consultant shall make all the necessary provisions and coordinate the development and incorporation of artwork(s) details and/or specifications in the Contract Documents for the Project. The Consultant shall coordinate the installation of anchorages, special lighting, or plumbing or other utility or installation and connections as required for the proper installation of the artwork in accordance with the artist's concept(s). The Consultant shall provide, without added compensation, technical support including but not limited to assisting the artist(s) in the development of preliminary and final construction cost estimates, construction procedures/approach, typical sections, profiles and details, structural support and utility connection systems (including structural anchorage details as may be required), technical specifications, submittals and shop drawing requirement (including review and approvals) for all ancillary facilities in connection with the installation of the artwork. The Consultant shall coordinate the installation of the artwork with the artist(s) and the Contractor during construction and shall assist the artist(s) and Art in Public Places in the resolution of issues pertaining to coordination. The Consultant shall inspect, along with the artist(s) and the Art in Public Places

Representative, the completed installations(s) by the Contractor for compliance with the Contract Documents.

**8.08.E) Affirmative Action**

**8.08.E.1)** The Consultant's Affirmative Action Plan submitted pursuant to Ordinance 82-37, as approved by the Department of Business and Economic Development and any approved update thereof, are hereby incorporated as contractual obligations of the Consultant to Miami-Dade County hereunder. The Consultant shall undertake and perform the affirmative actions specified herein. The Director may declare the Consultant in default of this agreement for failure of the Consultant to comply with the requirements of this paragraph.

**8.08.F) Monthly Utilization Report (MUR)**

**8.08.F.1)** The Consultant's attention is directed to Miami-Dade County's Administrative Order (A.O.) 3-33. Pursuant to this A.O. the Prime Consultant is required to file monthly utilization reports with the contracting department, unless designated otherwise for all awarded professional services agreements with that individual county agency. The MUR is required to accompany every invoice, which is due on or before the fifteenth (15th) day of each month. The MUR should indicate the amount of contract monies received and paid as a Prime Consultant, including payments to subconsultant(s) (if applicable) from the County, pursuant to each project. Authorized representatives of each subconsultant shall sign the report(s), verifying their participation in the work contracted and receipt of the monies listed.

**8.08.G) PROMPT PAYMENT TO SMALL BUSINESS SUBCONSULTANTS**

**8.08.G.1)** The Consultant's attention is directed to Miami-Dade County Ordinance No. 94-40, providing for expedited payments to small businesses by County agencies and the Public Health Trust; creating dispute resolution procedures for payment of County and Public Health Trust obligations; and requiring the prime Contractor to issue prompt payments, and have the same dispute resolution procedures as the County, for all small business subcontractors.

**8.08.G.2)** Failure of the prime Contractor to issue prompt payment to small businesses, or to adhere to its dispute resolution procedures, may be cause for suspension, termination, and debarment, in accordance with the terms of the County contract or Public Health Trust contract and debarment procedures of the County.

**8.08.H) INSPECTOR GENERAL**

**8.08.H.1)** Miami-Dade County has established the Office of Inspector General which is required to perform mandatory random audits on all County contracts throughout the duration of each contract. The cost of the audit for this Contract shall be 1/4 of 1% of the total contract amount which cost the Consultant agrees is included in the total contract amount. The audit cost will be deducted by the County from progress payments to the Consultant. The audit cost shall also be included in all change orders to this Contract and all contract renewal and extensions. Accordingly, the audit cost will be deducted from progress payments to the Consultant pursuant to all change orders, contract renewals, and extensions.

**8.08.H.2)** The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust programs, contracts, 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. Monitoring of an existing Project or program may include a report concerning whether the Project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract.

**8.08.H.3)** Upon 10 days prior written notice to Consultant from the Inspector General the Consultant shall make all requested records and documents available to the Inspector General for inspection and copying. The Inspector General shall have the right to inspect and copy all documents and records in the Consultants possession, custody or control which, in the Inspector General's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements from and with successful and unsuccessful subcontractors and suppliers, all Project-related correspondence, memoranda, instruction, financial documents construction documents, proposal and contract documents, back charge 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.

**8.08.H.4)** The provisions in this section shall apply to the Consultant, its officers, agents, employees, subcontractors, and suppliers. The Consultant shall incorporate the provisions in this section in all subcontracts and all other agreements executed by the Consultant in connection with the performance of the contract.

**8.08.H.5)** Nothing in this contract shall impair any independent right of the County to conduct audit or investigative activities. The provisions of this section are neither intended nor shall they be construed to impose any liability on the County by the Consultant or third parties.

**8.08.I)** **Deleted**

**8.08.J)** The Consultant must also submit with the executed agreement, to be filed with the Clerk of the Board, the following:

**8.08.J.1)** Miami-Dade County Disclosure Affidavit.

**8.08.J.2)** Sworn Statement on Public Entity Crimes.

**8.08.J.3)** Annual Drug Free Workplace Affidavit.

**8.08.J.4)** Disability Nondiscrimination Affidavit.

**8.08.J.5)** Family Leave Plan Affidavit.

**8.08.J.6)** Fees and Parking Tickets Affidavit.

**8.08.J.7)** Code of Business Ethics.

**8.08.J.8)** Criminal Record Affidavit.

**8.08.J.9)** Debarment Disclosure Affidavit.

**8.08.J.10)** Ownership Disclosure Affidavit.

## 8.09) ATTACHMENTS

**8.09.A)** The following named attachments are made an integral part of this Agreement:

**8.09.A.1)** Miami-Dade County Disclosure Affidavit.

**8.09.A.2)** Sworn Statement on Public Entity Crimes.

**8.09.A.3)** Annual Drug Free Workplace Affidavit.

**8.09.A.4)** Disability Nondiscrimination Affidavit.

**8.09.A.5)** Family Leave Plan Affidavit.

**8.09.A.6)** Fees and Parking Tickets Affidavit.

**8.09.A.7)** Code of Business Ethics.

**8.09.A.8)** Criminal Record Affidavit.

**8.09.A.9)** Debarment Disclosure Affidavit.

**8.09.A.10)** Ownership Disclosure Affidavit.

**8.09.A.11)** CADD Drafting Standards.

## 8.10) MISCELLANEOUS PROVISIONS

**8.10.A)** This Agreement does not confer on the Consultant any exclusive rights to the Owner's Work. Work Orders will be issued under this agreement at the sole discretion of the Owner. The Owner reserves at all times, the right to perform any and all architectural engineering services in-house or with other professional Architects or Engineers as provided by Section 287.055, Florida Statutes, and Section 2-10.4, Code of Miami-Dade County, or as otherwise provided by law.

**8.10.B)** The fees for Professional Services requested shall be determined as mutually agreed upon by the Owner and the Consultant in accordance with Section 5.01 or 5.02 of the Agreement. The Owner will confer with the Consultant before any Work Offer is issued to discuss the Scope to Work and /or A/E Services required, the time to complete the work and the fee and/or compensation for the proposed Services. No payment will be make for the Consultant's time or services in connection with the preparation of any such proposal.

**8.10.C)** The aggregate sum of all payments for fees and costs, including reimbursable expenses to the Consultant under this Agreement shall not exceed $500,000.00.

8.10.D) The term of this Agreement is a period of three (3) years or until the Consultant reaches the maximum compensation limit.

## 8.11) SUCCESSORS AND ASSIGNS

8.11.A) The Consultant and the Owner each binds himself/herself, his/her partners, successors, legal representatives and assigns to the other party of the Agreement and to the partners, successors, legal representatives, and assigns of such party in respect to all covenants of this Agreement. The Consultant shall afford the County the opportunity to approve or reject all proposed assignees, successors, or other changes in the Ownership structure and composition of the Consultant. Failure to do so constitutes a breach of this Agreement by the Consultant.

## 8.12) EXTENT OF AGREEMENT

8.12.A) This Agreement represents the entire and integrated Agreement between the Owner 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 particular, at any time after the execution hereof, except by resolution of the Board of County Commissioners of Miami-Dade County.

**WHEN THE CONSULTANT IS A CORPORATION**

Attest:
Secretary: _____ G.M. Selby & Associates, Inc.
Signature — Legal Name of Corporation

By: Mamie Attar _____
Legal Name — Signature

_____ Gerald Zadikoff, P.E./CEO
(Seal) — Legal Name and Title

**WHEN THE CONSULTANT IS AN INDIVIDUAL**

Attest:

Witness: _____

Signature: _____

Witness: _____

Signature: _____

**WHEN THE CONSULTANT IS A SOLE PROPRIETORSHIP OR OPERATES UNDER A TRADE NAME**

Attest:
Witness: _____ _____
Signature Legal Name of Firm

Witness: _____
Signature

Date Signed: _____

Legal Name and Title: _____

**WHEN THE CONSULTANT IS A PARTNERSHIP**

Attest:
Witness: _____ _____
Signature Legal Name of Partnership

Witness: _____ _____
Signature Legal Name and Title

## MIAMI-DADE COUNTY, FLORIDA

Approved as to Insurance Requirements: Approved as to Form and Legal Sufficiency:

Risk Management Division Assistant County Attorney

IN WITNESS WHEREOF the said MIAMI-DADE COUNTY, FLORIDA, has caused this Agreement to be executed in its name by the County Manager, attested by the Clerk of the Board of County Commissioners, and has caused the seal of the Board County Commissioners to be set hereto, as executed and attested by the undersigned this day and year first above written.

ATTEST:

FOR:
**BOARD OF COUNTY COMMISSIONERS**
**MIAMI-DADE COUNTY, FLORIDA**

(Seal)

**HARVEY RUVIN**
**Clerk of the Court**

**STEVE SHIVER**
**County Manager**

By: _____
**Kay Sullivan, Clerk of the Board**

By: _____
**County Manager**

Distribution:
One Original to Consultant
One Original to Clerk of the Board
One Original to Department of Business Development
One Original to Department of Procurement Management
One Original to Project File

C: Project Manager