

Memorandum



Date: October 3, 2019  
To: Honorable Chairwoman Audrey M. Edmonson  
and Members, Board of County Commissioners  
From: Honorable Carlos A. Gimenez  
County Mayor

Agenda Item No. 8(N)(3)

Subject: Contract Award Recommendation for Professional Services Agreement for Construction, Engineering and Inspection Services for Department of Transportation and Public Works - Project No.: E17-DTPW-03; Contract No.: CIP190-DTPW17-CEI (2), to CIMA Engineering Corp.

Resolution No. R-1064-19

**Recommendation**

This Recommendation for Award for Professional Services Agreement (PSA), Contract Number: CIP190-DTPW17-CEI (2) between CIMA Engineering Corp. and Miami-Dade County (County) has been prepared by the Department of Transportation and Public Works (DTPW) and is recommended for approval pursuant to Section 2-8.1 of the Miami-Dade County Code, for a total contract amount not to exceed \$2,475,000.00, inclusive of a contingency allowance amount of \$225,000.00.

This contract award recommendation is placed for Committee review pursuant to County Code Section 29-124(f). This request may only be considered by the Board of County Commissioners (Board) if the Citizens' Independent Transportation Trust (CITT) has forwarded a recommendation to the Board prior to the date scheduled for Board consideration or 45 days have elapsed since the filing with the Clerk of the Board of this contract award recommendation. If the CITT has not forwarded a recommendation and 45 days have not elapsed since the filing of this award recommendation, I will request a withdrawal of this item.

**Delegation of Authority**

The authority of the County Mayor or County Mayor's designee to execute and implement this contract is consistent with those authorities granted under the Code of Miami-Dade County. No further delegation is necessary for this contract.

**Scope**

**PROJECT NAME:** Construction, Engineering and Inspection Services for Department of Transportation and Public Works

**PROJECT NO:** CIP190

**CONTRACT NO:** CIP190-DTPW17-CEI (2)

**PROJECT DESCRIPTION:** The Consultant shall provide Construction, Engineering and Inspection (CEI) services for contract administration and inspection in support of the DTPW's capital improvement plan. The CEI Consultant will manage and inspect work performed by the selected Contractors to ensure compliance with the contract requirements, construction and design standards, plans, and specifications. The CEI Consultant will also support DTPW by providing assistance during the design and construction phases of the projects and perform duties such as design support, plans review

and conformance resident engineering, office engineering, on-site inspection services, quality control, testing analyses, contract administration, construction safety and security, construction survey analyses, manage the budget for each project separately, assist with cash flow reports, monitor contractors progress, prepare construction cost estimates, provide invoices/requisitions analyses and recommendations, process shop drawings and Request for Information, and contract closeout phases of projects. Services will be in compliance with the applicable federal requirements under the Federal Transit Administration (FTA) Circular 4220.1F, FTA's Best Practices Procurement Manual, and Florida Statute 287.055. No minimum amount of work or compensation will be guaranteed. Funding for these services will be provided by the FTA and other state and local sources, on a project-by-project basis in accordance with negotiated fees and tasks described in each individual service work order.

**PROJECT LOCATION:**

Various

**PROJECT SITES:**

<u>SITE #</u>	<u>LOCATION 1</u>	<u>DIST</u>	<u>ESTIMATE</u>
3001044	SW quadrant of SW 8 St. & SW 147th Ave. intersection	Various	\$1,076,723.00
3000139	Metrorail	Various	\$1,398,277.00
Total:			\$2,475,000.00

**PRIMARY COMMISSION DISTRICT:**

Various Districts

**APPROVAL PATH:**

Board of County Commissioners

**ISD A&E PROJECT NUMBER:**

E17-DTPW-03

**USING**

**DEPARTMENT:**

Department of Transportation and Public Works

**MANAGING**

**DEPARTMENT:**

Department of Transportation and Public Works

**Fiscal Impact / Funding Source**

<u>FUNDING SOURCE:</u>	<u>SOURCE</u>	<u>PROJECT NUM</u>	<u>SITE #</u>	<u>AMOUNT</u>
	FDOT Funds	6730101	3001044	\$ 50,000.00
	FTA Section 5307/5309 Formula Grant	6730101	3001044	\$1,026,723.00
	People's Transportation Plan Bond Program	<u>2000000104</u>	<u>3000139</u>	<u>\$1,398,277.00</u>
TOTAL FUNDING:				\$2,475,000.00

**OPERATIONS COST**

**IMPACT / FUNDING:** Not Applicable, this is a PSA for CEI services.

**MAINTENANCE**

**COST IMPACT / FUNDING:**

Not Applicable, this is a PSA for CEI services.

**LIFE EXPECTANCY OF ASSET:**

Not Applicable, this is a PSA for CEI services.

**PTP FUNDING:** Yes

**GOB FUNDING:** No

**ARRA FUNDING:** No

**CAPITAL BUDGET PROJECTS:**

**CAPITAL BUDGET PROJECT # - DESCRIPTION**

**AWARD ESTIMATE**

6730101 – BUS ENHANCEMENTS  
 FY 2018-19 Adopted Budget and Multi-Year Capital Plan,  
 Vol 2. Transportation and Public Works \$1,076,723.00

2000000104 – METRORAIL – STATIONS AND SYSTEMS  
 IMPROVEMENTS  
 FY 2018-19 Adopted Budget and Multi-Year Capital Plan,  
 Vol 2. Transportation and Public Works \$1,398,277.00

CAPITAL BUDGET PROJECTS TOTAL: \$2,475,000.00

**PROJECT TECHNICAL CERTIFICATION REQUIREMENTS:**

**TYPE CODE DESCRIPTION**

- Prime 16.00 GENERAL CIVIL ENGINEERING
- Prime 17.00 ENGINEERING CONSTRUCTION MANAGEMENT
- Other 2.01 MASS TRANSIT SYSTEMS - MASS TRANSIT PROGRAM (SYSTEMS) MANAGEMENT
- Other 2.06 MASS TRANSIT SYSTEMS - MASS TRANSIT SAFETY CERTIFICATION FOR SYSTEM ELEMENTS
- Other 9.02 SOILS, FOUNDATIONS AND MATERIALS TESTING- GEOTECHNICAL AND MATERIALS ENGINEERING SERVICES
- Other 12.00 GENERAL MECHANICAL ENGINEERING
- Other 13.00 GENERAL ELECTRICAL ENGINEERING

**SUSTAINABLE BUILDINGS ORDINANCE:**  
 (I.O NO. 8-8)

Did the Notice to Professional Consultants contain Specific Language requiring compliance with the Sustainable Buildings Program?  
 Not Applicable

**NTPC'S DOWNLOADED:** 38

**PROPOSALS RECEIVED:** 4

**TOTAL CONTRACT PERIOD:** 1825 Days  
The PSA shall remain in full force and effect for five years after its date of execution, or until depletion of the funds allocated to pay for the cost of the services described in the PSA, whichever comes first.

**CONTINGENCY PERIOD:** 183 Days.  
Based on the five (5) year term of the contract.

**IG FEE INCLUDED IN BASE CONTRACT:** No

**ART IN PUBLIC PLACES:** No

**BASE ESTIMATE:** \$2,250,000.00

**BASE CONTRACT AMOUNT:** \$2,250,000.00

CONTINGENCY ALLOWANCE (SECTION 2-8.1 MIAMI DADE COUNTY CODE):	TYPE	PERCENT	AMOUNT	COMMENT
	PSA	10%	\$225,000.00	

**TOTAL DEDICATED ALLOWANCE:** \$0.00

**TOTAL AMOUNT:** \$2,475,000.00

**Track Record / Monitor**

**SBD HISTORY OF VIOLATIONS:** No violations were found on record.

**EXPLANATION:** A Notice to Professional Consultants (NTPC) was advertised on May 11, 2018, to retain two qualified consultants/team of firms for two separate Non-Exclusive PSAs. Four proposals were received by the submittal deadline of June 12, 2018. All respondents were found in compliance with the technical certification and FTA requirements established for this solicitation. The Competitive Selection Committee (CSC) appointed by the County Mayor conducted a First-Tier Meeting on September 12, 2018, to evaluate the proposals received. The firms were evaluated in accordance with Section 2-10.4 of the Miami-Dade County Code, Implementing Order 3-34, and Administrative Order 3-39. Due to federal regulations, Local Preference was not applicable to the First-Tier evaluation.

The total scores for the firms were as follows: Firm No. 1, A & P Consulting Transportation Engineers Corp. received 276 Adjusted Qualitative Points and an Adjusted Ordinal Score of three points; Firm No. 2, CIMA Engineering Corp. received 264 Adjusted Qualitative Points and an Adjusted Ordinal Score of eight points; Firm No. 3, T.Y. Lin International received 254 Adjusted Qualitative Points and an Adjusted Ordinal Score of nine points; and Firm No. 4, Nova Consulting,

Inc. received 249 Adjusted Qualitative Points and an Adjusted Ordinal Score of 11 points. Based on the CSC's professional judgement, the information provided in the proposals were deemed sufficient to determine the qualifications of the Proposers. As a result, and by a majority vote, the CSC decided to forego Second-Tier proceedings and recommended that negotiations be conducted with the two highest ranked firms: Firm No. 1, A & P Consulting Transportation Engineers Corp and Firm No. 2, CIMA Engineering Corp. This Recommendation for Award summarizes the negotiation process for CIMA Engineering Corp.

Subsequently, on November 08, 2018, CIMA Engineering Corp. was found in compliance with the Disadvantage Business Enterprise (DBE) requirements established for the solicitation. The County Mayor's Designee, Director of the Internal Services Department (ISD), concurred with the CSC and on February 28, 2019, the first negotiation meeting was held. After only one negotiation, the Negotiation Committee arrived at a schedule of rates that was fair and reasonable to provide CE&I services. Based on the above, it is recommended that this Agreement be awarded in the not to exceed amount of \$2,475,000.00 (inclusive of the 10% contingency allowance account), to CIMA Engineering Corp.

**DUE DILIGENCE:** Pursuant to Resolution R-187-12, and in accordance with ISD's Procurement Guidelines, DTPW staff exercised due diligence to determine Consultant responsibility for CIMA Engineering Corp. The lists that were referenced included, but were not limited to: convicted vendors, debarred vendors, delinquent contractors, suspended vendors and federal excluded parties. There were no adverse findings relating to the Consultant's responsibility. Although there are no evaluations on record for CIMA Engineering Corp. in the Capital Improvements Information System, DTPW staff reviewed the business references included in CIMA Engineering Corp's proposal and deemed their experience for this project to be satisfactory.

**SUBMITTAL DATE:** 06/12/2018

**ESTIMATED  
NOTICE TO  
PROCEED:** 07/29/2019

**PRIME  
CONSULTANT:** CIMA Engineering Corp.

**COMPANY  
PRINCIPAL:** Jose A. Gonzalez

**COMPANY  
QUALIFIERS:** Jose A. Gonzalez

**COMPANY EMAIL  
ADDRESS:** joseagonzalez@cimaeng.com

Honorable Chairwoman Audrey M. Edmonson  
and Members, Board of County Commissioners  
Page No. 6

**COMPANY STREET**

**ADDRESS:** 7420 SW 33 Street

**COMPANY CITY-**

**STATE-ZIP:** Miami, FL 33155

**YEARS IN**

**BUSINESS:** 19

**PREVIOUS  
EXPERIENCE WITH  
COUNTY IN THE  
LAST FIVE YEARS**

According to the Firm History Report, as provided by ISD's Division of Small Business Development, within the last five years, CIMA Engineering Corp. has held two contracts through the Equitable Distribution Program with a total value of \$400,000.00.

**SUB-  
CONSULTANTS:**

305 Consulting Engineers, LLC  
GCES Engineering Services, LLC  
Louis J. Aguirre & Associates, P.A.

**MINIMUM  
QUALIFICATIONS  
EXCEED LEGAL  
REQUIREMENTS:**

Minimum five years of experience with CE&I services on Transit related projects valued at \$5 million or more.

**REVIEW  
COMMITTEE:**

**MEETING DATE: N/A SIGNOFF DATE: 3/06/2018**

**APPLICABLE  
WAGES:  
(RESOLUTION No.  
R-54-10)**

No

**REVIEW  
COMMITTEE  
ASSIGNED  
CONTRACT  
MEASURES:**

**TYPE    COMMENT**

DBE    Race-neutral application for certified DBE firms who by reason of their certification are ready, willing and able to provide the services.  
SBE-    Work Orders solely utilizing local funds will be forwarded to SBD for review  
A/E    for processing through the Equitable Distribution Program (when applicable) or determination for small business measures.

**MANDATORY  
CLEARING HOUSE:**

No

**CONTRACT  
MANAGER:**

Leticia Smith                      (786) 469-5291    Leticia.Smith@miamidade.gov

**PROJECT  
MANAGER:**

Bassam Moubayed    (305) 375-2116    Bassam.Moubayed@miamidade.gov

**BACKGROUND:**

DTPW has a need to establish a non-exclusive PSA to provide CEI services for contract administration and inspection in support of the DTPW's capital improvement plan.

4

DEPARTMENT  
FINANCE:

  
\_\_\_\_\_  
DTPW FINANCE OFFICER

9/10/19  
DATE

INDEX CODE(S):

VARIOUS

BUDGET  
APPROVAL  
FUNDS AVAILABLE: *VC*  
*AR*

  
\_\_\_\_\_  
OMB DIRECTOR

9/10/19  
DATE

APPROVED AS TO  
LEGAL  
SUFFICIENCY:

  
\_\_\_\_\_  
COUNTY ATTORNEY

9/11/19  
DATE

DEPARTMENT OF  
TRANSPORTATION  
AND PUBLIC WORKS  
CONCURRENCE:

  
\_\_\_\_\_  
DIRECTOR, DTPW

9-13-19  
DATE

APPROVED PURSUANT TO  
SECTION 2-8.1 OF THE  
MIAMI-DADE COUNTY CODE:

  
\_\_\_\_\_  
DEPUTY MAYOR

9/10/19  
DATE

CLERK:

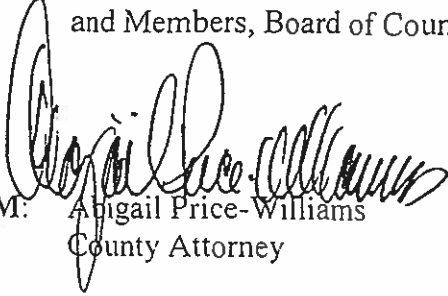
\_\_\_\_\_  
DATE



**MEMORANDUM**  
(Revised)

TO: Honorable Chairwoman Audrey M. Edmonson  
and Members, Board of County Commissioners

DATE: October 3, 2019

FROM:   
Abigail Price-Williams  
County Attorney

SUBJECT: Agenda Item No. 8(N)(3)

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
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's present \_\_\_\_, 2/3 membership \_\_\_\_, 3/5's \_\_\_\_, unanimous \_\_\_\_, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) \_\_\_\_, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) \_\_\_\_, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) \_\_\_\_)
- 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(N)(3)  
10-3-19

RESOLUTION NO. \_\_\_\_\_ R-1064-19

RESOLUTION AWARDING A PROFESSIONAL SERVICES AGREEMENT BETWEEN MIAMI-DADE COUNTY AND CIMA ENGINEERING CORP. FOR CONSTRUCTION, ENGINEERING AND INSPECTION SERVICES FOR DEPARTMENT OF TRANSPORTATION AND PUBLIC WORKS, CONTRACT NO. CIP190-DTPW17-CEI (2), IN AN AMOUNT NOT TO EXCEED \$2,475,000.00, INCLUSIVE OF A CONTINGENCY ALLOWANCE OF \$225,000.00; AUTHORIZING THE USE OF CHARTER COUNTY TRANSPORTATION SURTAX FUNDS FOR SUCH PURPOSES; AND AUTHORIZING THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE TO EXECUTE SAME AND TO EXERCISE THE RIGHTS CONTAINED THEREIN

**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:

**Section 1.** Approves the execution of a Professional Services Agreement between Miami-Dade County and CIMA Engineering Corp. for Construction, Engineering and Inspection Services for Department of Transportation and Public Works; Contract Number CIP190-DTPW17-CEI (2), in an amount not to exceed \$2,475,000.00, inclusive of the contingency allowance of \$225,000.00, in substantially the form attached hereto and made a part hereof, and authorizes the use of Charter County Transportation Surtax funds for such purposes.

**Section 2.** Authorizes the County Mayor or County Mayor's designee to execute the Professional Services Agreement in substantially the form attached hereto and to exercise all rights contained therein.

The foregoing resolution was offered by Commissioner **Sally A. Heyman**, who moved its adoption. The motion was seconded by Commissioner **Dennis C. Moss** and upon being put to a vote, the vote was as follows:

	Audrey M. Edmonson, Chairwoman	nay
	Rebeca Sosa, Vice Chairwoman	absent
Esteban L. Bovo, Jr.	absent	Daniella Levine Cava aye
Jose "Pepe" Diaz	absent	Sally A. Heyman aye
Eileen Higgins	aye	Barbara J. Jordan aye
Joe A. Martinez	nay	Jean Monestime absent
Dennis C. Moss	aye	Sen. Javier D. Souto absent
Xavier L. Suarez	nay	

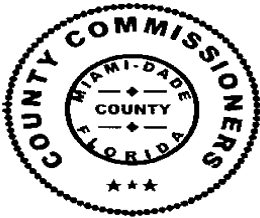
The Chairperson thereupon declared the resolution duly passed and adopted this 3<sup>rd</sup> day of October, 2019. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

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

HARVEY RUVIN, CLERK

**Linda L. Cave**

By: \_\_\_\_\_  
Deputy Clerk



Approved by County Attorney as  
to form and legal sufficiency.

Bruce Libhaber

**Non-Exclusive Professional Services Agreement  
Between  
Miami-Dade County  
And  
CIMA Engineering Corp.**

**For**

**Construction Engineering and Inspection Services  
for Department of Transportation and Public  
Works**

**Contract No.: CIP190-DTPW17-CEI (2)**

**ISD Project No.: E17-DTPW-03**

**TABLE OF CONTENTS**  
**PROFESSIONAL SERVICES AGREEMENT SECTION**

	<b>PAGE</b>
DEFINITIONS.....	4
SECTION I - COUNTY OBLIGATIONS .....	5
SECTION II - PROFESSIONAL SERVICES .....	6
SECTION III - TIME FOR COMPLETION .....	9
SECTION IV - COMPENSATION.....	9
SECTION V - METHOD OF PAYMENT .....	15
SECTION VI - SCHEDULE OF WORK.....	16
SECTION VII - RIGHT OF DECISIONS AND DISPUTE RESOLUTION .....	16
SECTION VIII - OWNERSHIP OF DOCUMENTS .....	17
SECTION IX - REUSE OF DOCUMENTS .....	18
SECTION X – OFFICIAL NOTICES .....	18
SECTION XI - AUDIT RIGHTS .....	19
SECTION XII - SUBCONTRACTING .....	20
SECTION XIII - CERTIFICATION .....	26
SECTION XIV - TERMINATION OF AGREEMENT .....	26
SECTION XV - DURATION OF AGREEMENT .....	27
SECTION XVI - DEFAULT .....	28
SECTION XVII - INDEMNIFICATION AND INSURANCE .....	28
SECTION XVIII - ORDINANCES, RESOLUTIONS AND OTHER REQUIREMENTS.....	30
SECTION XIX - TRUTH IN NEGOTIATION CERTIFICATION OF WAGE RATES .....	33
SECTION XX - EQUAL OPPORTUNITY .....	33
SECTION XXI - AFFIRMATIVE ACTION PLAN REQUIREMENTS .....	35
SECTION XXII - FEDERAL REQUIREMENTS AND PROVISIONS.....	36
SECTION XXIII- FORCE MAJEURE.....	36
SECTION XXIV - PROMPT PAYMENT.....	37
SECTION XXV - ESTIMATE TIME FOR CONTINGENCY.....	37

12

SECTION XXVI - CONTINGENCY ALLOWANCE.....38

SECTION XXVII - SCRUTINIZED COMPANY.....38

SECTION XXVIII – ERRORS AND OMISSIONS.....38

SECTION XXIX - MISCELLANEOUS.....40

SECTION XXX- ENTIRETY OF AGREEMENT.....42

EXHIBITS

- A. DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS
- B. FEDERAL REQUIREMENTS
- C. AFFIDAVITS REQUIRED AT TIME OF PROPOSALS
- D. TRAVEL REQUEST FORM SAMPLE
- E. REIMBURSABLE (DIRECT) EXPENSES (N/A - NEGOTIATED AT WORK ORDER LEVEL)
- F. MAXIMUM DIRECT HOURLY RATES PER CLASSIFICATION
- G. LOCAL ORDINANCES, RESOLUTION (N/A)
- H. DETAILED SCOPE OF WORK (N/A - NEGOTIATED AT WORK ORDER LEVEL)
- I. OVERHEAD RATES
- J. ADDENDA
- K. ISD FORMS
- L. AFFIRMATION OF VENDOR AFFIDAVITS

## DEFINITIONS

The following definition and terms are provided as clarification of the provisions for this Professional Services Agreement (PSA).

1. **Consultant** is the person or organization licensed to practice architecture and/or engineering in the State of Florida and is referred to throughout the PSA as singular in number and masculine in gender.
2. **Contracting Officer** is the Director of Department of Transportation and Public Works.
3. **Contracting Officer's Representative** is the person designated by the Contracting Officer to act on his or her behalf in the administration of the contract within the limits of their respective authorization.
4. **Field Personnel** shall mean personnel that are performing duties in the field, outside of the home offices of the CONSULTANT and/or Subconsultant, and at County Offices [which shall mean that they are under the direct supervision of Miami-Dade County's Department of Transportation and Public Works (DTPW) and that the DTPW provides office space, computers and communication equipment, excluding cellular phones], for more than 30 consecutive days.
5. **Office Personnel** shall mean personnel that are located in the home offices of the CONSULTANT and/or Subconsultants.
6. **Principal** is a design professional who oversees the firm's services in connection with a specific project. A principal ensures that the CONSULTANT performs the Services in a cost-effective and timely manner. This includes allocating and directing staff according to their disciplines, allocating resources needed for the project and ensuring that the CONSULTANT performs the Services in accordance with safety and organizational policies. Principal is often defined as (1) significant (>5%) owner, shareholder or partner of the firm, (2) a director or officer of the firm or (3) both.
7. **Professional Services Agreement (PSA)** is an agreement to provide professional or management consulting services such as administration, designing, feasibility studies, or legal or technical advice.
8. **Subconsultant** means any and all persons, firms or entities which will be engaged by the CONSULTANT to provide services under this PSA. The term is synonymous with "Subconsultant".
9. **Contract Documents** as design plans, specifications, cost estimates, and permit applications.
10. **Field Overhead Rate** is the overhead rate to use when field personnel or personnel on loan are performing duties in the field, outside of the home office of the consultant and/or subconsultant, and at County offices (which shall mean that they are under the direct supervision of the County and the County provides office space, computers and communication equipment, for more than 30 consecutive days).

**NON-EXCLUSIVE PROFESSIONAL SERVICES AGREEMENT**

THIS NON-EXCLUSIVE PROFESSIONAL SERVICES AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2019 by and between Miami-Dade County, a political subdivision of the State of Florida, hereinafter referred to as the "COUNTY" and CIMA ENGINEERING CORP. hereinafter referred to as the "CONSULTANT".

**WITNESSETH**

For and in consideration of the mutual agreements hereinafter contained, the COUNTY hereby retains the CONSULTANT and the CONSULTANT hereby covenants to provide Construction Engineering and Inspection Services for the Department of Transportation and Public Works (DTPW), Contract No.: CIP190-DTPW17-CEI (2), ISD Project No.: E17-DTPW-03, hereinafter referred to as the "Project".

**SECTION I - COUNTY OBLIGATIONS**

The COUNTY agrees that the DTPW shall furnish to the CONSULTANT any plans and any other data available in the COUNTY files pertaining to the work to be performed under this Agreement. The CONSULTANT is responsible to request any and all plans and data not furnished, which the CONSULTANT knows or should know, is necessary or appropriate for the performance of the services described herein.

The COUNTY shall provide the CONSULTANT with access to the project site(s) during CONSULTANT'S scheduled work times.

The Contracting Officer's Representative or his designee of DTPW, hereinafter referred to as the "COR", shall issue written authorization to proceed to the CONSULTANT for the work to be performed hereunder. These authorizations are referred to as Work Orders. In case of emergency, the COUNTY reserves the right to issue verbal authorizations to the CONSULTANT with the understanding that written confirmation within 72 hours.

The CONSULTANT shall submit a proposal, in a form acceptable to the COUNTY, upon the COR's request prior to the issuance of a Work Order. No. payment shall be made for the CONSULTANT's time or services in connection with the preparation of any such proposal.

The COR shall confer with the CONSULTANT before any Work Order is issued to discuss and agree upon the scope, time for completion, compensation method and fee for services to be rendered pursuant to this Agreement.

Performance evaluations of the services rendered under this Agreement shall be performed by the DTPW staff throughout the term of the contract and shall be utilized by the COUNTY as evaluation criteria for future solicitations.

## **SECTION II - PROFESSIONAL SERVICES**

The DTPW requires the professional services for a General Consultants (Consultant) to provide construction, engineering and inspection services for contract administration and inspection in support of the DTPW's Capital Improvement Plan.

Note: This is a Work Order driven PSA and all work must be completed in accordance with all applicable local, state and federal requirements. **Work Orders solely utilizing local funds will be forwarded to Small Business Development (SBD) for review for processing thru the Equitable Distribution Program (when applicable) or determination for small business measures.**

Upon request by the DTPW, said services may include, but not be limited to, the following:

CEI services will manage and inspect work performed by the selected Consultants to ensure compliance with the contract requirements, construction and design standards, plans, and specifications. The consultants will also support DTPW by providing assistance during the design and construction phases of the projects and perform duties such as design support, plans review and conformance resident engineering, office engineering, on-site inspection services, quality control, testing analyses, contract

administration, construction safety and security, construction survey analyses, manage the budget for each project separately, assist with cash flow reports, monitor consultants progress, prepare construction cost estimates, provide invoices/requisitions analyses and recommendations, process shop drawings and Request for Information (RFIs), provide rail system testing services and rail system start-up services, and contract closeout phases of projects. Services will be in compliance with the applicable federal requirements under the Federal Transit Administration (FTA) Circular 4220.1F, FTA's Best Practices Procurement Manual, and Florida Statutes 287.055.

In connection with Professional Services to be rendered pursuant to this Agreement, the CONSULTANT further agrees to:

- A. Maintain an adequate staff of qualified personnel available at all times to perform within the term specified in the applicable Work Order. The COUNTY has the right to approve and regulate the CONSULTANT's workforce and approve specific CONSULTANT employees. The COUNTY has the right to have any CONSULTANT employee removed from the work, if, in the COUNTY's sole judgement, such employee's conduct or performance is detrimental to the project. The CONSULTANT shall not replace any employee in the team initially proposed by the CONSULTANT without prior COUNTY approval.
- B. The CONSULTANT shall submit a list of employees at the work order level intended to be engaged in the work under this Agreement, including their classification and salary rates.
- C. Comply with all federal, state and local laws, regulations, codes, ordinances, resolutions, and administrative orders 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 COR upon request and hold pertinent data, calculations, field notes, records, sketches, and other products open to the inspection of the COR at any

time. The Consultant shall reference all correspondence and work with the Work Order Number.

- F. Submit to the COUNTY review reports, 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 Work Order, as applicable. Submit to the COUNTY for approval, the final work products upon incorporation of any modifications requested by the COUNTY during any previous review and comments resolution process.
- G. Confer with the COUNTY at any time during the further development and implementation of improvements for which the CONSULTANT has provided services as to interpretation of documents, correction of errors and omissions and preparations of any necessary revisions thereof. The CONSULTANT shall not be compensated for the correction of the CONSULTANT'S errors and omissions.
- H. Make no statements, press releases or publicity releases concerning this Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of this Agreement, without first notifying the COUNTY and securing its consent in writing. The CONSULTANT also agrees that it shall not publish, copyright or patent any of the data furnished in compliance with this Agreement, that being understood that under SECTION VIII - OWNERSHIP OF DOCUMENTS hereof such data or information is the property of the COUNTY.
- I. The CONSULTANT shall communicate with the COUNTY by electronic means to the greatest extent possible as directed by the COUNTY.
- J. The CONSULTANT shall develop an effective Quality Assurance Plan in accordance with the latest version, at the time of contract execution, of the Federal Quality Assurance and Quality

Control Guidelines incorporated herein by reference. The Quality Assurance Plan shall be submitted to the Engineering, Planning and Development Section of the DTPW for approval within ten (10) days of the effective date of Notice-to-Proceed. The implementation and maintenance of the Quality Assurance Plan and other contract requirements will be subject to COUNTY Quality Assurance Audits.

### **SECTION III - TIME FOR COMPLETION**

Services to be rendered by the CONSULTANT shall commence upon receipt of a written Work Order from the COR subsequent to the execution of this Agreement, and shall be completed within the time stated in the Work Order. A reasonable extension of time shall be granted in the event there is a delay to the project or should weather conditions or acts of God or other events of force majeure render performance of the CONSULTANT'S duties impossible. Such extensions of time shall not be cause for any claim of the CONSULTANT for extra compensation.

### **SECTION IV - COMPENSATION**

The COUNTY agrees to pay and the CONSULTANT agrees to accept, for services rendered pursuant to this Agreement, fees and other compensation computed in accordance with one or a combination of the methods outlined below:

#### **A. FEE AS A MULTIPLIER OF DIRECT SALARY COST AND FIXED HOURLY RATE**

1. The fee for construction, engineering and inspection services rendered by the CONSULTANT'S personnel, Principals excluded, shall be computed based on the direct salary cost, as reported to the Internal Revenue Service, for the time of said personnel engaged directly in the work, times the following negotiated multipliers (Labor rates are subject to County approval as per paragaph 4 below):

19

FIRMS	OFFICE			FIELD		
	OHR	OP MARGIN	MULTIPLIER	OHR	OP MARGIN	MULTIPLIER
CIMA Engineering Corp.	127.08%	10.00%	2.4979	65.71%	10.00%	1.8228

Note: Overhead rates must be submitted on a yearly basis by the Consultant and Subconsultant. Modifications to the overhead rates must be approved by the COR and implemented by the Department.

The initial overhead rates allowed under this contract for field work shall be 65.71% and for office work is 127.08%. These overhead rates are based on independent audited in accordance with Part 31 of the Federal Acquisition Regulations accepted by a Federal or State agency provided by the CONSULTANT during initial contract negotiations.

2. The COUNTY has the right to request that the CONSULTANT and Subconsultants submit independent audited statements in accordance with Part 31 of the Federal Acquisition Regulations accepted by a Federal or State agency, or an independent audit from a Certified Public Accountant (C.P.A.), to set multipliers. In addition, the CONSULTANT is required to submit a statement indicating that it has reviewed their Subconsultant's overhead rates and confirms that these rates have been substantiated by an independent audit from a C.P.A. Once approved, and until a revision is accepted by the COR, these multipliers shall constitute full compensation to the CONSULTANT for costs incurred in the performance of the work such as overhead, fringe benefits, profit and all other costs not covered by reimbursable expenses.
3. The aforementioned documentation must be updated and provided by the CONSULTANT once, annually from the effective date of the contract, to support requests for overhead rate revisions in order to be accepted by the COR.
4. The maximum direct hourly rates, per classification, excluding overhead billable under this contract shall not exceed the caps as listed in EXHIBIT F – MAXIMUM DIRECT HOURLY RATES PER CLASSIFICATION, unless authorized by the COR in writing, and shall apply to all employees except Principals.

5. The burdened direct labor charges shall constitute full compensation to the CONSULTANT for costs incurred in the performance of the work such as labor, overhead, fringe benefits and all other costs not covered by reimbursable expenses or fixed fees.
3. Overtime work considered necessary and previously authorized by the COR in writing shall be compensated at time-and-a-half of the labor rate normally paid to the employee for personnel below the level of Senior Inspector, unless classified as exempt. Overtime is defined as work on this project in excess of 40 hours per week. Principals shall not receive additional compensation for performance of overtime work.
4. Rates supplied by the CONSULTANT at the work order level shall be consistent with prevailing local wage rates paid for similar work to similar employee classifications and subject to COR approval prior to starting work. Labor rates shall be in accordance with the current list of employees maintained by the COR or designee. The CONSULTANT is permitted to submit a written request for wage increases for its employees once annually from the effective date of the contract, for review and approval by the COR. Yearly wage rate increases for these employees shall be no higher than raises of other similar employees in the firm and subject to approval by the COR, which approval shall not be unreasonably withheld. Annual wage increases for these employees shall be no higher than five percent (5%) unless otherwise approved by the COR. This provision is not meant to limit the hourly rate at which the CONSULTANT pays their employees; it only limits the hourly rate at which the COUNTY will reimburse and pay the CONSULTANT. In no way will an employee's hourly rate exceed the maximum amount per classification stipulated in the contract, without written approval by the COR. The COR may approve higher raises in limited cases subject to the CONSULTANT documenting special circumstances.

5. PRINCIPALS

The CONSULTANT shall be compensated at the following rate for the time of principals engaged directly in the work. The CONSULTANT is permitted to submit a written request for annual wage increases for its principals once annually from the effective date of the contract, for review and approval by the COR. Annual rate increases for Principals shall be at a maximum of 5% per year and subject to approval by the COR in writing, which approval shall not be unreasonably withheld. This rate shall not be subject to the overhead rates or fee and shall be applied to the time spent on requested work by the following Principals:

FIRM	PRINCIPALS	FLAT HOURLY RATE
CIMA Engineering Corp.	Jose A. Gonzalez	\$165.00

Note: CONSULTANT shall not bill for more than 40 hours per year. Additional hours must be previously authorized by the COR.

**B. LUMP SUM FEE**

The fee for any requested portion of work may, at the option of the COUNTY, be a lump sum mutually agreed upon between the COUNTY and the CONSULTANT and stated in the written Work Order. Lump sum fees may or may not include reimbursable expenses.

**C. REIMBURSABLE (DIRECT) EXPENSES**

The CONSULTANT shall be compensated on a direct reimbursement basis for certain work related expenditures not covered by burdened direct labor, provided such expenditures are reasonable and previously authorized by the COR. Reimbursable expenses may include field office, utilities, furnishings, vehicles, expenses for document reproduction (reproduction costs for internal coordination, reviews and other in-house uses will not be reimbursed), rental of specialized equipment, and purchase of special instruments necessary for the efficient performance of the work, provided that such instruments remain the property of the COUNTY upon work completion. These

*22*

expenses shall be reimbursed on a direct cost basis. No separate additional payment shall be authorized for the use of CADD workstations (computers).

Expenses for travel (except commuting), transportation and subsistence by CONSULTANT personnel in the furtherance of the work will be reimbursed according to the provisions of County Administrative Orders 6-1 and 6-3 and Florida Statute Section 112, as presently written or hereafter amended. The CONSULTANT shall obtain prior authorization from the COUNTY for all travel expenses. Failure to obtain such prior authorization may be grounds for nonpayment of travel expenses. To be compensated for travel within the County, the CONSULTANT shall maintain accurate mileage records electronically and include original signatures upon submittal, along with their invoices.

COUNTY compensation for Subconsultant work shall be in accordance with this Section and Section XII- SUBCONTRACTING.

**D. FIXED FEE**

The fixed fee which was negotiated at 10.00% is the operating margin (profit) paid to the CONSULTANT for the professional services described in this agreement. The fixed fee shall remain fixed unless there is an increase in scope. If the scope is increased, the fixed fee may be modified through the allowance account if it has not been depleted or by a supplemental agreement. For any changes in the scope, the fixed fee shall be computed as 10.00% of the burdened direct labor. The fixed fee will be paid on the basis of the percentage of completion of the work as determined by the COUNTY.

**E. GEOTECHNICAL TESTING SERVICES**

The COUNTY shall compensate other services or goods provided by the CONSULTANT and others working in conjunction with the CONSULTANT as stipulated by the following:

In the event supplementary geotechnical engineering work is required and such work is authorized by the Director, the CONSULTANT shall be compensated for performance of said work in accordance with the provisions of Section IV(A) hereof. The geotechnical engineering rates shall not exceed the negotiated rates under the latest DTPW's Professional Services Agreement for Soils, Foundations and Geotechnical Testing Services, current established as Contract No. 20160209.

**F. MAXIMUM COMPENSATION**

Although the COUNTY makes no assurances that any work orders will be issued to the CONSULTANT, the total payments to the CONSULTANT pursuant to this Agreement shall not exceed \$2,475,000 (inclusive of base and contingency allowance account).

**G. EXCEEDING EXPENDITURES**

If at any time the CONSULTANT has reason to believe that the expenditures, in the next 60 days, will exceed 75% of the Maximum Compensation amount for any work order, the CONSULTANT shall immediately notify the COUNTY in writing to that effect. Failure to comply with this requirement may forfeit payments for authorized overruns. The CONSULTANT shall also provide a revised estimate to complete the work under the applicable work order. The CONSULTANT shall not be obligated to incur costs in excess of the maximum Contract ceiling except at the request of the COUNTY and proper execution of a Supplemental Agreement.

**H. SUBCONSULTANT COMPENSATION**

COUNTY compensation for Subconsultant work shall be in accordance with Section XII SUBCONTRACTING.

## **SECTION V - METHOD OF PAYMENT**

The COUNTY agrees to make monthly or partial payments to the CONSULTANT, based on properly submitted invoices, for all authorized work performed during the previous month or other mutually agreed invoicing period. The CONSULTANT agrees to provide with every invoice copies of any records necessary to substantiate payment requests to the COUNTY such as time sheets, detailing the task where the time has been spent, monthly progress reports and hours/costs expenditure reports, in a format acceptable to the COUNTY. The CONSULTANT shall submit duly certified invoices in duplicate and one electronic format to the COR in a format acceptable to the COUNTY. Each invoice shall make reference to the particular Work Order which authorized the services performed and/or expenses incurred. The amount of invoices submitted shall be comprised of the amounts due for all services performed including time sheets and/or reimbursable expenses incurred to date in connection with authorized work, less previous payments.

The CONSULTANT shall report via the Business Management Workforce System (BMWS) all sub-consultants' agreements entered into listing award amounts or percentage for this Agreement. Additionally, the Consultant shall report all payments made to each sub-consultant participating on the project and verification of payments received must be confirmed by the subconsultants via BMWS. For additional information regarding online BMWS registration, managing County contracts, and to track compliance with SBE program measures, please contact Small Business Development, at (305) 375-3111 or via email at [SBDmail@miamidade.gov](mailto:SBDmail@miamidade.gov).

Payments shall be made in accordance with one of the following methods, as identified in each Work Order.

**A. TIME & MATERIALS**

The amounts due for professional services and/or reimbursable expenses shall be calculated in accordance with Subsection IV. Invoiced reimbursable expenses must be substantiated with copies of receipts and other documentation as necessary.

**B. LUMP SUM FEE**

The amount due of invoices submitted shall be calculated by applying the percentage of the total work completed to date to the authorized lump sum, and subtracting any previous payments and retainage.

**SECTION VI - SCHEDULE OF WORK**

The COUNTY shall have the sole right to determine on which units or sections of the work the CONSULTANT shall proceed and in what order. A work order issued by the COR shall cover in detail the scope, specific deliverables, time for completion, method of payment and compensation for the professional services requested in connection with each unit or section of work.

**SECTION VII - RIGHT OF DECISIONS AND DISPUTE RESOLUTION**

All services shall be performed by the CONSULTANT to the Standard of Care as referenced in Section XXIX (B) and to the satisfaction of the COR who shall decide on 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.

In the event the CONSULTANT and COR are unable to resolve their differences concerning any determination made by the COR or any dispute or claim arising under or relating to the Contract, either the CONSULTANT or COUNTY may initiate a dispute in accordance with the procedure set forth in this Section. Exhaustion of these procedures shall be a precondition to any lawsuit permitted hereunder.

The parties to this contract hereby authorize the DTPW Director, functioning as the Contracting Officer or designee, to decide on all questions, disputes or claims of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Contract except issues or disputes related to the CONSULTANT's performance evaluation and his decision shall be conclusive, final and binding on the parties, subject only to the limited right of review specified below. The CONSULTANT and the COUNTY are entitled to a hearing before the Contracting Officer, or his designee, at which both CONSULTANT and the COUNTY may present evidence and live testimony, in accordance with the Florida Rules of Evidence, and the right to cross-examine each other's witnesses. No depositions will be taken.

If either party wishes to protest the determination of the Contracting Officer, such party may commence an appeal in a Court of competent jurisdiction no later than 30 calendar days from the issuance of the Contracting Officer's written decision, it being understood that the review of the Court shall be limited to the question of whether or not the Contracting Officer's determination was arbitrary or capricious, unsupported by any competent evidence, or so grossly erroneous to evidence bad faith.

Pending final decision of a dispute hereunder, the CONSULTANT shall proceed diligently with the performance of the Contract and in accordance with the COR's interpretation.

## **SECTION VIII - OWNERSHIP OF DOCUMENTS**

All notes, correspondence, documents, drawings, renderings, calculations, models, photographs, reports, investigations, and any other documents and copyrights thereto for services performed or produced in the performance of this Agreement, whether in paper or other hard copy medium or in electronic medium, except with respect to pre-existing copyrighted standard details and designs owned by the CONSULTANT or owned by a third party and licensed to the CONSULTANT for use and reproduction, shall become the property of the COUNTY upon CONSULTANT receiving payment in

full for services satisfactorily performed, without restrictions or limitations. However, the COUNTY may grant an exclusive license of the copyright to the CONSULTANT for reusing and reproducing copyrighted materials or portions thereof as authorized by the COUNTY in advance and in writing. In addition, the CONSULTANT shall not disclose, release, or make available any document to any third party without prior written approval from the COUNTY. The CONSULTANT shall warrant to the COUNTY that he/she has been granted a license to use and reproduce any standard details and designs owned by a third party and used or reproduced by the CONSULTANT in the performance of this Agreement. Nothing contained herein shall be deemed to exclude any document from Chapter 119 of the Florida Statutes. When each individual section of work requested pursuant to this Agreement is completed and accepted, all of the above data shall be delivered to the COR.

#### **SECTION IX - REUSE OF DOCUMENTS**

The CONSULTANT may reuse data from other sections of the work included in this Agreement provided irrelevant material is deleted. The COR shall not accept any reused data containing an excess of irrelevant material which has no connection with the applicable portion of the work. The CONSULTANT will not be liable for reuse by the COUNTY of plans, documents, studies, or other data for any purpose other than that intended by the terms and conditions of this Agreement.

#### **SECTION X – OFFICIAL NOTICES**

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

The CONSULTANT designates the following individual as the Project Manager to act as the point-of-contact with the COUNTY and is authorized by the CONSULTANT to receive official notices and submit invoices:

**Project Manager:** Jose A. Gonzalez  
**Address:** 7420 SW 33 Street  
Miami, Florida 33155  
**Telephone:** (954) 581-1881 Ext. 101  
**Email:** joseagonzalez@cimaeng.com

## **SECTION XI - AUDIT RIGHTS**

The CONSULTANT hereby agrees that the COUNTY may perform audits of the CONSULTANT's books of accounts and records related to the work. Such audits may be performed at the COUNTY'S discretion.

Such audits may be performed by the COUNTY or may be arranged by the COUNTY through the auspices of the United States Department of Transportation (USDOT). Alternatively, the COUNTY may cause an independent certified public accounting firm to perform the audit within the time herein described below. The CONSULTANT shall maintain all books of accounts, records, documents and other evidence of accounting procedures and practices sufficient to properly document all expenses incurred and anticipated to be incurred in the performance of this Contract, including justification of the negotiated overhead rates and direct labor rates. The materials described above shall be made available at the office of the CONSULTANT, at reasonable times, for inspection, audit or reproduction, within three (3) years following final payment under this Contract and the closing of all other pending matters.

In addition to the above requirements, the Secretary of the USDOT, the Comptroller General of the United States, the State of Florida, or their authorized designee, shall have the right to audit the CONSULTANT's books of accounts and records relating to performance of this Contract at any time within three (3) years following final payment under this Contract and the closing of all other pending matters.

For purposes of verifying the certified cost or pricing data submitted or identified by the CONSULTANT in conjunction with the negotiation of this Agreement or any modification/change order to this Agreement, the CONSULTANT shall, for a period of three (3) years after Final Acceptance under this Agreement:

- A. Maintain such certified cost of pricing data, including books, records, documents, papers, computations, projections and other supporting data. All such certified cost or pricing data shall be clearly identified, readily accessible and, to the extent feasible, kept separate and apart from all unrelated documents.
- B. Permit an authorized representative of the COUNTY, State of Florida, USDOT, and Comptroller of the United States to examine such books, records, documents, papers, computations, projections and other supporting data.
- C. In the event any information provided by the CONSULTANT during initial contract negotiations or any supplemental agreement negotiations or any other information is later determined by the COUNTY not to have been complete, accurate or current at the time of the submittal, the COUNTY shall be entitled to an appropriate correction of the total compensation amount. If this determination is made by the COUNTY after final payment, the COUNTY shall use all available means to recover said funds including withholding funds due the CONSULTANT on other COUNTY contracts.

The CONSULTANT agrees to insert these audit clauses in all of his subcontracts.

## **SECTION XII - SUBCONTRACTING**

The CONSULTANT shall not assign or transfer any portion of the work under this Agreement other than as provided for herein without the prior written consent of the COUNTY. Subconsultants included in CONSULTANT's proposal are deemed to be approved by the COUNTY.

The CONSULTANT may, if they so desire and if approved by the COUNTY, employ Special Professional CONSULTANTS to assist in performing specialized portions of the work. Payment of such Special Professional CONSULTANTS employed at the option of the CONSULTANT and subject to written approval by the COUNTY shall be the responsibility of the CONSULTANT and shall not be cause for any increase in compensation to the CONSULTANT for the performance of the work included in the Work Order.

The COUNTY may, if it deems such action necessary to the satisfactory and expeditious completion of the authorized work, direct the CONSULTANT to engage the services of a Designated Professional CONSULTANT(s) to assist the CONSULTANT in the performance of specialized portions of the services. The CONSULTANT shall comply with such directive. Employment of such a Designated Professional CONSULTANT(s) at the direction of the COUNTY by Work Order shall constitute additional services under the provisions of this Agreement and the CONSULTANT shall be reimbursed therefore in accordance with negotiated fees at the time such additional services are requested by the COUNTY.

Failure to obtain COR approval of a Subconsultant prior to commencement of that Subconsultant's services may be grounds for non-payment of any services performed prior to approval.

#### **A. SUBCONSULTANTS**

1. The compensation for services rendered by the Subconsultant's personnel, Principals excluded, shall be computed based on the direct salary cost, as reported to the IRS, for all time said personnel engaged directly in the work, times the following multipliers:

FIRMS	OHR	OFFICE OP MARGIN	MULTIPLIER	OHR	FIELD OP MARGIN	MULTIPLIER
305 Consulting Engineers, LLC	201.26%	10.00%	3.3139			
GCES Engineering Services, LLC	167.77%	10.00%	2.9455			
Louis J. Aguirre & Associates, P.A.	78.30%	10.00%	1.9613			

<sup>1</sup> Independent Audit in accordance with applicable Sections of Part 31, FAR.

<sup>2</sup> Considered for minor role only

NOTE #1 : Tasks involving a very small dollar amount will be considered miscellaneous services.

The County may negotiate consultant fees for these services based on County's cost and price analysis.

NOTE #2 : The CONSULTANT shall be compensated for Geotechnical Testing Services based on negotiated rates established in the most recent contract with the DTPW.

2. The table of overhead rates is based on information provided by the Subconsultant during initial contract negotiations. The COUNTY has the right to request that the Subconsultant submit independent audit in accordance with Part 31 of the Federal Acquisition Regulations accepted by a Federal or State agency, or an independent audit from a Certified Public Accountant (C.P.A.), to set multipliers. Once approved, and until a revision is accepted by the COR, these multipliers shall constitute full compensation to the Subconsultant for costs incurred in the performance of the work such as overhead, fringe benefits, profit and all other costs not covered by reimbursable expenses.
3. In addition, the CONSULTANT is required to submit a statement indicating that it has reviewed the Subconsultants' overhead rates and confirms that these rates have been substantiated by an independent audit from a C.P.A. The aforementioned documentation

must be updated and provided by the CONSULTANT once, annually from the effective date of the contract, when it requests any overhead rate revisions for Subconsultants in order to be accepted by the COR.

4. The maximum direct hourly rates, per classification, excluding overhead, allowed under this contract shall not exceed the caps listed in EXHIBIT F – MAXIMUM DIRECT HOURLY RATES PER CLASSIFICATION unless authorized by the COR in writing, and shall apply to all employees.
5. The burdened direct labor charges shall constitute full compensation to the Subconsultant for costs incurred in the performance of the work such as labor, overhead, fringe benefits and all other costs not covered by reimbursable expenses or fixed fee.
6. Overtime work considered necessary and previously authorized by the COR in writing shall be compensated at time-and-a-half of the rate established by Subsection IV-A(1) hereof for personnel below the level of Senior Inspector, unless classified as exempt. Overtime is defined as work in excess of 40 hours per week.
7. Labor rates supplied by the CONSULTANT on behalf of the Subconsultant at the work order level shall be consistent with prevailing local wage rates paid for similar work to similar employees classifications and subject to COUNTY approval prior to starting work. Subconsultants are permitted to submit a written request for wage increases for its employees once annually from the effective date of the contract, for review and approval by the COR. Annual wage increases for these employees shall be no higher than five percent (5%) and shall be consistent with other similar employees unless otherwise approved by the COR.

8. All services provided by the Subconsultants shall be pursuant to appropriate agreements between the CONSULTANT and the Subconsultants which shall contain provisions that preserve and protect the rights of the COUNTY under this Agreement, and indemnify and hold harmless the COUNTY and the services shall be compensated in accordance with Section IV-COMPENSATION. Nothing contained in this Agreement shall create any contractual relationship between the COUNTY and the Subconsultants.
9. Subconsultants may not be utilized on the work unless their utilization has been approved in advance by the COUNTY in writing. Subconsultants included in CONSULTANT's Proposal are deemed to be approved by the County. The COUNTY reserves the right at any time to withdraw the approval of such Subconsultant, if it decides that the services performed by the Subconsultant, are not acceptable to the COUNTY.
10. The CONSULTANT shall not change any Subconsultant without prior approval of the COUNTY in response to a written request from the CONSULTANT stating the reasons for any proposed substitution. Any request to add a Subconsultant shall include substantiation of Subconsultant's overhead acceptable to the COUNTY.
11. PRINCIPALS

Subconsultants shall be compensated at the following rate for the time of principals engaged directly in the work. Subconsultants are permitted to submit a written request for annual wage increases for its principals once annually from the effective date of the contract, for review and approval by the COR. Annual rate increases for Principals shall be at a maximum of 5% per year and subject to approval by the COR in writing, approval of which shall not be unreasonably withheld. This rate shall not be subject to the overhead

rates or fee and shall be applied to the time spent on requested work by the following Principals.

FIRM	PRINCIPALS	FLAT HOURLY RATE
305 Consulting Engineers, LLC	Enrique M. Zuniga, P.E.	\$165.00
GCES Engineering Services, LLC	Alejandro Montenegro	\$165.00
Louis J. Aguirre & Associates, P.A.	Louis J. Aguirre	\$165.00

Note: CONSULTANT shall not bill for more than 40 hours per year. Additional hours must be previously authorized by the COR.

The Maximum compensable hours for the Principal shall not exceed 40 hours annually from the effective date of the contract. Additional hours must be previously authorized by the COR in writing.

**B. NON-EXCLUSIVITY**

Notwithstanding any provision of this non-exclusive agreement, the COUNTY is not precluded from retaining or utilizing any other CONSULTANT to perform any professional services as defined herein and the CONSULTANT waives any claim it might have against the COUNTY as a result of the COUNTY electing to retain or utilize such other CONSULTANT to perform any such professional services, except that if the COUNTY retains or utilizes such other CONSULTANT to perform such services subsequent to the starting date and before the completion date of the agreement of the CONSULTANT, and if the new CONSULTANT is directed to perform the same services, the CONSULTANT shall be entitled to compensation as provided in this Section.

### **SECTION XIII - CERTIFICATION**

The CONSULTANT certifies that no companies or persons, other than bonafide employees working solely for the CONSULTANT or the CONSULTANT'S County-approved 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 CONSULTANT also certifies that no COUNTY personnel, whether a full-time or part-time employee, has or shall be retained or employed in any capacity, by the CONSULTANT or the CONSULTANT'S County-approved Subconsultants, to accomplish the work contemplated under the terms of this Agreement. For breach or violation of this Certification, the County Mayor or his designee shall have the right to annul this Agreement without liability.

### **SECTION XIV - TERMINATION OF AGREEMENT**

It is expressly understood and agreed that the COR may terminate this Agreement, in whole or in part, without cause or penalty, by thirty (30) days prior written notification in writing from the COR or by declining to issue Work Orders, as provided in Section VI; in which event the COUNTY's sole obligation to the CONSULTANT shall be payment in accordance with Section IV - COMPENSATION, for those units or sections of work previously authorized plus reasonable costs of termination. Such payment shall be determined on the basis of the hours or percentage of work performed by the CONSULTANT, found acceptable to the COUNTY, up to the time of termination. In the event partial payment has been made for professional services not performed, the CONSULTANT 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 CONSULTANT, elect to employ other persons to perform the same or similar services.

3/6

**SANCTIONS FOR CONTRACTUAL VIOLATIONS** - Proposal and contract documents shall provide that, notwithstanding any other penalties for firms that have discriminated in violation of Article VII of Chapter 11A of the Code, the COUNTY may terminate the contract or require the termination or cancellation of the sub-consultant contract. In addition, a violation by a respondent or sub-consultant to the respondent, or failure to comply with the Administrative Order (A.O.) 3-39 may result in the imposition of one or more of the sanctions listed in the A.O.

#### **SECTION XV - DURATION OF AGREEMENT**

This Agreement shall remain in full force and effect for a period of five years (1,825 Calendar Days) after its date of execution, or until depletion of the funds allocated to pay for the cost of the services described in the Agreement; whichever occurs first, unless terminated by mutual consent of the parties hereto or as provided in SECTION XIII, SECTION XIV and SECTION XVI hereof. The performance of specifically and properly authorized services which may extend beyond the Agreement's five (5) years effective term shall be compensated in accordance to Section IV hereof..

Actual completion of the services hereunder may extend beyond such term provided that action is taken in accordance with any of the methods described under Subsections A through C below:

(A) Method One – A time extension is provided for additional unforeseen work performed outside the scope of the original Agreement that affects the work schedule or previously approved changes using contingency time allocated in the Contract award memo.

(B) Method Two – A time extension is provided for additional unforeseen work performed outside the scope of the original Agreement that affects the work schedule or previously approved changes and is approved via a formal Supplemental Agreement.

(C) Method Three – A work order (or multiple work orders) has been issued prior to the Agreement’s original expiration date that clearly states the tasks, method of payment, dollar amount, and work order expiration date.

Once a revised Agreement or a new work order expiration date has been approved in accordance with one of the methods described above, the Agreement completion date shall be based on either the revised expiration date or the date that all funding has been expended, whichever occurs first.

#### **SECTION XVI - DEFAULT**

In the event the CONSULTANT fails to comply with the provisions of this Agreement, the COR may declare the CONSULTANT in default by thirty (30) days prior written notification. In such event, the CONSULTANT shall only be compensated for any completed professional services as of the date written notice of default is served. In the event partial payment has been made for such professional services not completed, the CONSULTANT shall return such sums to the COUNTY within ten (10) days after receipt of written notice that said sums are due. The CONSULTANT shall be compensated on a percentage of the professional services which have been performed and found acceptable to the County prior to the time the COR declares a default. Any dispute arising out of this Section shall be resolved in accordance with Section VII – RIGHT OF DECISIONS AND DISPUTE RESOLUTION.

#### **SECTION XVII - INDEMNIFICATION AND INSURANCE**

CONSULTANT, in accordance with Section 725.08, Florida Statutes, shall indemnify and hold harmless the COUNTY and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys’ fees and costs of defense, which the COUNTY or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature to the extent arising out of, relating to or resulting from the negligent

performance of this Agreement by the CONSULTANT or its employees, agents, servants, partners principals or SUBCONSULTANTS. CONSULTANT shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the COUNTY, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. CONSULTANT expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by CONSULTANT shall in no way limit the responsibility to indemnify, keep and save harmless and defend the COUNTY or its officers, employees, agents and instrumentalities as herein provided.

The CONSULTANT 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.

The CONSULTANT shall furnish to the COUNTY, c/o DTPW, 701 N.W. 1<sup>st</sup> Court, 15<sup>th</sup> Floor, Miami, FL 33136, Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

- A. Worker's Compensation Insurance for all employees of the CONSULTANT as required by Florida Statute 440.
- B. Commercial General Liability Insurance on a comprehensive basis in an amount not less than \$1,000,000 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.**
- C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
- D. Professional Liability Insurance in an amount not less than \$1,000,000 per claim.

All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "A-" as to management, and no less than "Class VII" as to financial strength by Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

or

The company 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 Financial Services.

**NOTE: CERTIFICATE HOLDER MUST READ: MIAMI-DADE COUNTY**  
**111 NW 1<sup>st</sup> STREET**  
**SUITE 2340**  
**MIAMI, FL 33128**

Compliance with the foregoing requirements shall not relieve the CONSULTANT of his liability and obligation under this section or under any other section of this agreement.

#### **SECTION XVIII-ORDINANCES, RESOLUTIONS AND OTHER REQUIREMENTS**

The CONSULTANT and Subconsultants agree to abide and be governed by all Applicable Laws. Applicable Laws shall mean, whether singular or plural, all federal, state, county and local statutes, codes, laws, rules, regulations, ordinances, orders and standards applicable to the Agreement, and any other such law hereafter enacted, and any rules adopted pursuant thereto, as all such laws and rules may be amended from time to time. Applicable local laws and ordinances which may have a bearing on the work contemplated hereunder, include, but are not necessarily limited to the following, all as they may be amended from time to time:

- A. Ordinance No. 72-82 (Conflict of Interest), as amended by Ordinances 00-01,00-46.
- B. The CONSULTANT shall comply with the requirements of COUNTY Code Sections 2-10.4.01 and 10-38, and Implementing Order No. 3-32; COMMUNITY BUSINESS ENTERPRISE (CBE-A/E) PROGRAM FOR THE PURCHASE OF ARCHITECTURAL, LANDSCAPE ARCHITECTURAL, ENGINEERING, OR SURVEYING AND MAPPING SERVICES, when applicable.
- C. The CONSULTANT shall comply with the procedures contained in the FALSE CLAIMS Ordinance COUNTY Code Article XV Sections 21-255 through 21-266; prohibiting presentation, maintenance, or prosecution of false or fraudulent claims against the COUNTY; requiring forfeiture of any claim containing false or fraudulent allegations or statements; imposing penalties for submission of false or fraudulent claims; providing both county and private enforcement.
- D. The CONSULTANT 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 Dade County Elections Department, P.O. Box 012241, Miami, FL 33101:
  - (1) A source of income statement;
  - (2) A current certified financial statement;
  - (3) A copy of the CONSULTANT'S Current Federal Income Tax Return.

E. 1.49 PUBLIC RECORDS AND CONTRACTS FOR SERVICES PERFORMED ON BEHALF OF MIAMI-DADE COUNTY

The CONSULTANT shall comply with the Public Records Laws of the State of Florida, including but not limited to: (1) keeping and maintaining all public records that ordinarily and necessarily would be required by Miami-Dade County (COUNTY) in order to perform the service; (2) providing the public with access to public records on the same terms and conditions that the County would provide the records and at a cost that does not exceed the cost provided in Chapter 119, F.S.,

or as otherwise provided by law; (3) ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (4) meeting all requirements for retaining public records and transferring, at no cost, to the COUNTY all public records in possession of the CONSULTANT upon termination of the contract and destroying any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements upon such transfer. In addition, all records stored electronically must be provided to the COUNTY in a format that is compatible with the information technology systems of the COUNTY. Failure to meet any of these provisions or to comply with Florida's Public Records Laws as applicable shall be a material breach of the agreement and shall be enforced in accordance with the terms of the agreement.

**IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (305) 375-5773; ISD-VSS@MIAMIDADE.GOV; 111 NW 1 STREET, SUITE 1300, MIAMI, FLORIDA 33128.**

- F. The CONSULTANT further agrees to comply with the requirements of the County, State and Federal Ordinances, Resolutions and/or Regulations.

Refer to Exhibit "B" for Federal Requirements and Provisions.

The CONSULTANT further agrees to comply with any other Ordinance or Resolution of the County that may become effective before the execution by both parties of this Agreement. In the event any ordinance or resolution potentially impacting price is adopted by the Board subsequent to completions of negotiations but prior to adoption of this contract by the Board, CONSULTANT may seek adjustment of the contract price. Failure on the part of the CONSULTANT to notify the COUNTY

42

of its intent to seek an adjustment to the contract price prior to the Contract approval of the the Board shall constitute a waiver of any such claims or adjustments.

## **SECTION XIX – TRUTH IN NEGOTIATION CERTIFICATION OF WAGE RATES**

Pursuant to AO 3-39 and Florida State Statutes Chapter 287.055 5(a): For all lump sum costs or costs plus a fixed fee contract in which a fee will exceed one hundred fifty thousand dollars (\$150,000; 287.017 -category four), the COUNTY will require the firm receiving the award to execute a Truth-In-Negotiation Certificate as required by Chapter 287, Florida Statutes. The language below suffices as the Truth-In-Negotiation Certificate when included in a contract in which a fee will exceed the above referenced amount:

In accordance with Florida Statute 287.055, the CONSULTANT hereby certifies and warrants that wage rates and other factual unit costs, as submitted in support of the compensation provided in Section IV, 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 three (3) years from the date of final billing or acceptance of the work by the COUNTY, whichever is later.

## **SECTION XX - EQUAL OPPORTUNITY**

### **A. EQUAL EMPLOYMENT OPPORTUNITY**

The CONSULTANT shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, ancestry, familial status, pregnancy, sexual orientation, marital status, disability, gender identity or gender express, place of birth or national origin, or status as victim of domestic violence, dating violence or stalking. The CONSULTANT 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, ancestry, sex, familial status, pregnancy, age, sexual orientation, marital status, physical handicap or national origin, gender identity or gender express, or status as victim of domestic violence, dating violence or stalking. Evidence of such actions shall be reported on forms supplied by the COUNTY.

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 CONSULTANT agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided by the COUNTY setting forth the provisions of this Equal Opportunity Clause.

The CONSULTANT shall comply with all applicable provisions of the Civil Rights Acts of 1964; Section 11A of the Miami-Dade County Code; 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; Sections 112.041, 112.042 and 112.0113, Florida Statutes, Chapter 760 (Florida Civil Rights Act of 1992, as amended) and Miami-Dade County Ordinance 75-46, effective June 28, 1975.

## **B. NONDISCRIMINATION**

During the performance of this Agreement, the CONSULTANT agrees to state in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT 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 CONSULTANT shall furnish all information and reports required by Executive Order

11246 of September 24, 1965 as amended by Executive Order 11375 and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to their 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 CONSULTANT further agrees that he/she will comply with the requirements of the Americans with Disabilities Act.

**C. DISADVANTAGED BUSINESS ENTERPRISES SUBCONTRACTING PROGRAM**

The CONSULTANT must make a good faith effort to meet the race-neutral application for certified Disadvantaged Business Enterprise (DBE) firms who by reason of their certification are ready, willing and able to provide the services identified in this Agreement to comply with all the provisions of the DBE Requirements Section made a part of this contract as Exhibit "A".

**D. SMALL BUSINESS ENTERPRISE-ARCHITECTURAL AND ENGINEERING  
(SBE-A/E) SUBCONTRACTING PROGRAM**

Work Orders utilizing local funds will be forwarded to the Internal Services Department's Division of Small Business Development (SBD) for review for processing through the Equitable Distribution Program (when applicable) or determination for small business measures. The CONSULTANT must make a good faith effort to meet the SBE-A/E measure established for the work order(s) and to comply with all the provisions of the SBE-A/E Requirements.

**SECTION XXI - AFFIRMATIVE ACTION PLAN REQUIREMENTS**

The CONSULTANT's Affirmative Action Plan, as approved by the DTPW's Office of Civil Rights, and any approved update thereof, is hereby incorporated as contractual obligations of the CONSULTANT to the COUNTY hereunder. The COR shall undertake and perform the affirmative actions

specified herein. The COR may declare the CONSULTANT in default of this agreement for failure of the CONSULTANT to comply with the requirements of this paragraph.

## **SECTION XXII – FEDERAL REQUIREMENTS AND PROVISIONS**

Refer to Exhibit “B” for Federal Requirements and Provisions.

## **SECTION XXIII – FORCE MAJEURE**

Force Majeure shall mean an act of God, epidemic, lightning, earthquake, fire, explosion, hurricane, flood or similar occurrence, strike, an act of a public enemy, or blockade, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, which has had or may reasonably be expected to have a material adverse effect on the rights and obligations under this Agreement, and which, by the exercise of due diligence, such parties shall not have been able to avoid. Such acts or events DO NOT INCLUDE inclement weather (except as noted above) or the acts or omissions of sub-consultants/subcontractors, third-party consultants/contractors, material men, suppliers, or their subcontractors, unless such acts or omissions are otherwise encompassed by the definition set forth above.

No party hereto shall be liable for its failure to carry out its obligations under the Agreement during a period when such party is rendered unable, in whole or in part, by Force Majeure to carry out such obligations, but the obligation of the party or parties relying on such Force Majeure shall be suspended only during the continuance of any inability so caused and for no longer period of said unexpected or uncontrollable event, and such cause shall, so far as possible, be remedied with all reasonable dispatch.

It is further agreed and stipulated that the right of any party hereto to excuse its failure to perform by reason of Force Majeure shall be conditioned upon such party giving, to the other party or parties, written notice of its assertion that a Force Majeure delay has commenced within ten (10) working days

after such commencement, unless there exists good cause for failure to give such notice, in which event, failure to give such notice shall not prejudice any party's right to justify any non-performance as caused by Force Majeure unless the failure to give timely notice causes material prejudice to the other party or parties.

#### **SECTION XXIV – PROMPT PAYMENT**

It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust shall be made in a timely manner and interest payments made on late payments. The CONSULTANT's attention is directed to Florida Statutes, Section 218.74 and Section 2-8.1.4 of the Miami-Dade County Code, 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 CONSULTANT to issue prompt payments, and have the same dispute resolution procedures as the COUNTY, for all small business subconsultants. Failure of the CONSULTANT to issue prompt payment to small business, 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. The CONSULTANT agrees to provide the COUNTY with a copy of its dispute resolution process.

#### **SECTION XXV – ESTIMATE TIME FOR CONTINGENCY**

This Agreement contains a Contingency Allowance time extension not to exceed ten percent (10%) of the original Contract Duration. Pursuant to a written request by the CONSULTANT for a time extension for reasons exhibited in Section XV – Duration of Agreement, that affects the critical path schedule of the Agreement or any previously approved changes; written documentation that supports the justification of a time extension, review and concurrence by the department project manager, a Contract Contingency Allowance Expenditure Authorization will be created for execution by all parties. Once executed the time extension will adjust the scheduled completion date. The cumulative total of all Contingency Allowance

time extensions shall not exceed ten percent (10%) of the original Contract Duration rounded off to the next whole number.

#### **SECTION XXVI - CONTINGENCY ALLOWANCE**

This project is a Professional Services Agreement; therefore, an estimated Allowance Account of \$225,000.00 is permissible, per Miami-Dade County Code Section 2-8.1. This Allowance Account will be used by Department of Transportation and Public Works for unforeseen conditions necessitating additional design, resulting in additions to the basic fee.

#### **SECTION XXVII - SCRUTINIZED COMPANY**

Scrutinized Companies - By executing this Agreement through a duly authorized representative, the CONSULTANT certifies that the CONSULTANT is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, as those terms are used and defined in sections 287.135 and 215.473 of the Florida Statutes. The County shall have the right to terminate this Agreement for default if the CONSULTANT is found to have submitted a false certification or to have been, or is subsequently during the term of the Agreement, placed on the Scrutinized Companies for Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

#### **SECTION XXVIII – ERRORS AND OMISSIONS**

The CONSULTANT, if Construction Engineering Inspection (CEI) services are exercised, shall maintain a record of all construction changes that shall be categorized according to the various types, causes, etc., that the COUNTY and/or CONSULTANT may determine are useful or necessary for its purposes. Among those categories are construction changes, design errors or omissions in the contract documents prepared by the CONSULTANT. For the purposes of this contract provision, errors and omissions shall be dealt with differently, as follows:

#### A. Errors

It is specifically agreed that any construction changes categorized by the COUNTY as an error in the contract documents prepared by the CONSULTANT will constitute an additional cost to the COUNTY that would not have been incurred without the error. The damages to the COUNTY for errors shall be calculated as one hundred percent (100%) of the total cost of the change and includes direct and indirect costs. The COUNTY shall obtain recovery of the additional cost of construction for all errors caused by the CONSULTANT should the sum of the total additional constructions for errors in total exceed five percent (5%) of the total construction cost. Indirect costs may include delay damages caused by the error.

#### B. Omissions

It is further specifically agreed for purposes of this agreement that any construction changes categorized by the COUNTY as an omission in the contract documents prepared by the CONSULTANT will constitute an additional cost to the COUNTY that would not have been incurred without the omission. The damages to the COUNTY for omissions shall be calculated as fifteen percent (15%) of the total direct cost of the change and one hundred percent (100%) of the indirect costs. Indirect costs may include delay damages caused by the omission.

To obtain such recovery, the COUNTY shall deduct from funds due the CONSULTANT in this or any other contract the CONSULTANT may or will have with the COUNTY up to the amount of the CONSULTANT's insurance deductible. Should the damages incurred by the COUNTY exceed the CONSULTANT's insurance deductible, the COUNTY shall look to the CONSULTANT and the CONSULTANT's insurer for the remaining amount of additional damages incurred by the COUNTY. In executing this agreement, the CONSULTANT and its insurer specifically agree to the reasonableness of these damage calculations and to the COUNTY'S right to recover same as stated above. The recovery of

additional costs to the COUNTY under this paragraph shall not limit or preclude recovery for other separate and/or additional damages that the COUNTY may otherwise incur.

The CONSULTANT shall participate in all negotiations with the Consultant related to this section. Such CONSULTANT participation shall be at no additional cost to the COUNTY. Failure by the CONSULTANT to participate in the negotiations with the Consultant related to this section shall constitute a waiver of CONSULTANT's rights to contest the appropriateness or amount of any settlements or change orders.

The extent of the CONSULTANT'S liability to the COUNTY shall be in accordance with Florida Statute 725.08.

## **SECTION XXIX - MISCELLANEOUS**

**A. Business Applications and Forms.** The CONSULTANT shall be a registered vendor with the COUNTY for the duration of this Agreement. It is the responsibility of the CONSULTANT to update and file the Vendor Registration Application on the COUNTY's Vendor Registration Site for any changes for the duration of this Agreement, including any option years. The Proposer is responsible for submitting the Vendor Registration Application on the COUNTY's Vendor Registration Site at <https://www.miamidade.gov/Vendor/NewVendor/Enrollment>.

Section 2-11.1(d) of Miami-Dade County Code, requires any county employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County from competing or applying for any such contract as it pertains to this solicitation, must first request a conflict of interest opinion from the COUNTY's Ethic Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or

indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County and that any such contract, agreement or business engagement entered in violation of this subsection, as amended, shall render this Agreement voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

**B. Standard of Care.** Notwithstanding any other provisions to the contrary, in the performance of its Services, CONSULTANT shall exercise that degree of care and skill customarily exercised by other professionals performing similar services in the same locality and time period. COUNTY recognizes that opinions relating to environmental, geologic, and geotechnical conditions are based on limited data and that actual conditions may vary from those encountered at the times and locations where the data are obtained, despite the use of due professional care. CONSULTANT is not responsible for designing or advising on or otherwise taking measures to prevent or mitigate the effect of any act of terrorism or any action that may be taken in controlling, preventing, suppressing or in any way relating to an act of terrorism.

**C. Responsibility for Others.** CONSULTANT shall be responsible to COUNTY for CONSULTANT Services and the services of CONSULTANT Subconsultants. CONSULTANT shall not be responsible for the acts or omissions of other parties engaged by COUNTY nor for their construction means, methods, techniques, sequences, or procedures, or their health and safety precautions and programs.

**D. Cost Estimates.** CONSULTANT's opinions of construction and materials costs estimates provided herein are to be made on the basis of CONSULTANT's experience and qualifications and represent CONSULTANT's best judgment as an experienced and qualified professional generally familiar with the industry. However, since CONSULTANT has no control over the costs of labor, materials, equipment, or services furnished by others, or over any CONSULTANT's methods of determining prices or over competitive bidding, or market conditions, CONSULTANT cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from the opinions prepared by CONSULTANT.

**E. No Third Party Rights.** This Agreement shall not create any rights or benefits to parties other than COUNTY and CONSULTANT.

**F. Right of Entry.** COUNTY grants to CONSULTANT, and, if the project site is not owned by COUNTY, warrants that permission has been granted for, a right of entry from time to time by CONSULTANT, its employees, agents and Subconsultants, upon the project site for the purpose of providing the Services. COUNTY recognizes that the use of investigative equipment and practices may unavoidably alter the existing site conditions and affect the environment in the area being studied, despite the use of reasonable care.

**G.** The Parties may from time to time by mutual agreement seek to modify, extend or enlarge the services under a Work Order ("Modification"). In the event the Parties agree to a Modification to add additional services, or to make other modifications to the services, CONSULTANT's compensation, the schedule and any other relevant terms and conditions to the applicable Work Order shall be equitably adjusted prior to performance of such services.

**H.** In no event shall either party, affiliates and subsidiaries or their respective director, officers or employees be liable to the other for any indirect, incidental, special consequential or punitive damages whatsoever (including, without limitations, lost profits, loss of revenue, loss of use or interruption of Business) arising out of or related to this agreement, even if advised of the possibility of such damages.

**I.** Pursuant to Florida Statute Section 558.0035, under no circumstances shall any present or future, direct or indirect, officers, directors, participants, advisors, managers, employees, agents or affiliates of designer, or any of their heirs, successors or assigns, be individually held liable for negligence.

### **SECTION XXX - ENTIRETY OF AGREEMENT**

Nothing in this Agreement shall be construed to make any party hereunder the agent, employee, partner or joint venturer of the other, nor will any CONSULTANT firm hereunder be considered the

52

beneficiary of any of the duties or rights created by this Agreement between the COUNTY and any other consulting firm hereunder.

This writing and its' Exhibits 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.

No alteration, change or modification of the terms of the Agreement shall be valid unless made in writing, signed by all parties hereto, and approved by the Board of County Commissioners.

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.

IN WITNESS THEREOF the parties hereto have executed these presents this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

ATTEST:

HARVEY RUVIN

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

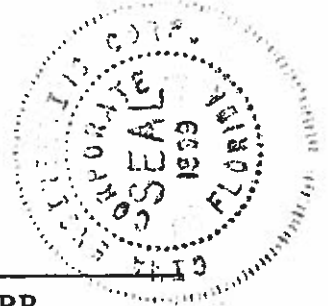
By: \_\_\_\_\_

By: \_\_\_\_\_  
COUNTY MAYOR

Approved by County Attorney

As to Form and Legal Sufficiency:

\_\_\_\_\_



ATTEST:

CIMA ENGINEERING CORP.  
(Corporate Seal)

By: \_\_\_\_\_

By: \_\_\_\_\_  
*[Handwritten Signature]*

**EXHIBIT F**  
**MAXIMUM DIRECT HOURLY RATES PER**  
**CLASSIFICATION**

CLASSIFICATION	MAXIMUM HOURLY RATE
Senior Project Manager	\$67.04
Project Admin / Project Engineer	\$48.56
Senior Inspector	\$32.95
Inspector	\$24.11
Building Inspector	\$32.53
Structural Inspector	\$34.69
Mechanical Inspector	\$38.00
Electrical Inspector	\$38.00
LAP Coordinator (Resident Compliance Specialist)	\$25.00
Clerical / Administrative	\$22.33



## Memorandum



**To:** Honorable Chairwoman Audrey M. Edmonson  
and Members, Board of County Commissioners

**From:** Javier A. Betancourt, Executive Director *JB*

**Date:** July 26, 2019

**Re: CITT AGENDA ITEM 5C:**

RESOLUTION BY THE CITIZENS' INDEPENDENT TRANSPORTATION TRUST RECOMMENDING THE BOARD OF COUNTY COMMISSIONERS (BCC) AWARD A PROFESSIONAL SERVICES AGREEMENT BETWEEN MIAMI-DADE COUNTY AND CIMA ENGINEERING CORP. FOR CONSTRUCTION, ENGINEERING AND INSPECTION SERVICES FOR DEPARTMENT OF TRANSPORTATION AND PUBLIC WORKS, CONTRACT NO. CIP190-DTPW17-CEI (2), IN AN AMOUNT NOT TO EXCEED **\$2,475,000.00**, INCLUSIVE OF A CONTINGENCY ALLOWANCE OF \$225,000.00; AUTHORIZE THE USE OF CHARTER COUNTY TRANSPORTATION SURTAX FUNDS IN THE AMOUNT OF **\$1,398,277.00** FOR SUCH PURPOSES; AND AUTHORIZE THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE TO EXECUTE SAME AND TO EXERCISE THE RIGHTS CONTAINED THEREIN (DTPW – BCC Legislative File No. 191603) **SURTAX FUNDS REQUESTED**

On July 24, 2019, the CITT voted (7-0) to forward a favorable recommendation to the Board of County Commissioners (BCC) for the approval of the above referenced item, CITT Resolution No. 19-047. The vote was as follows:

Glenn J. Downing, CFP®, Chairperson – Absent  
Joseph Curbelo, 1<sup>st</sup> Vice Chairperson – Aye  
Alfred Holzman, 2<sup>nd</sup> Vice Chairperson – Aye

Oscar Braynon – Aye  
Prakash Kumar – Aye  
Jonathan Martinez – Absent  
Marilyn Smith – Aye

Evan Fancher – Absent  
Hon. Anna E. Lightfoot-Ward, Ph.D. – Aye  
Miles E. Moss, P.E. – Absent  
L. Elijah Stiers, Esq. – Aye

cc: Jennifer Moon, Deputy Mayor  
Bruce Libhaber, Assistant County Attorney

57