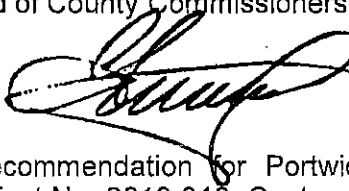


# Memorandum



Date: February 19, 2020

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

From: Carlos A. Gimenez  
Mayor 

Subject: Contract Award Recommendation for Portwide Traffic Impact Study and Master Roadway Plan - Project No: 2019-010; Contract No: E18-SEA-05, to Kimley-Horn and Associates, Inc.

Agenda Item No. (8)(J)(1)

## RECOMMENDATION

This Recommendation for Award for Professional Services Agreement (PSA) Contract Number E18-SEA-05 between Kimley-Horn and Associates, Inc. and Miami-Dade County (County) has been prepared by PortMiami, and is recommended for approval for a total contract amount not to exceed \$3,300,000.00, inclusive of a contingency allowance amount of \$300,000.00.

## SCOPE

This PSA is necessary to provide non-exclusive professional services for the development of a Transportation Master Plan, which shall consist of two elements: a Traffic Impact Study, and a Conceptual Roadway Plan. The Consultant shall design the PortMiami ultimate roadway network, site circulation and access to meet future transportation needs for all modes, including cars, cargo trucks, rail, pedestrians, and transit.

The requested professional traffic planning services shall include, but not be limited to review of the existing roadway network, evaluation of expected traffic impacts due to future developments, identification of transportation network improvements, and development of a conceptual roadway network design to meet the needs of PortMiami's users and customers. In addition, services shall include any supportive ancillary tasks to the primary scope of services that may include, but is not limited to cost estimating and constructability review.

## Traffic Impact Study

The Traffic Impact Study should include at a minimum:

- a) Analysis Years. The analysis years should be: 1) Existing conditions (Year 2019); 2) Short-term analysis (Year 2023) for roadways; and 3) Long-term analysis (Year 2033).
- b) Existing Conditions. Identify the physical characteristics of the roadway network adjacent to and within the study area, and determine the traffic operating conditions of the roadway network using the County's adopted level of service (LOS) standards.
- c) Future Conditions.
  1. Background Traffic. The expected increase in traffic from anticipated cruise and cargo growth should be accounted for in the short-term, and long-term analyses.
  2. Address the need for new facilities, expansion of existing facilities, or any mobility improvements necessary to provide a safe and efficient transportation network, enhance mobility, and maintain the adopted LOS standards through the short-term (concurrency) and long-term time frames.
  3. Evaluate parking needs and access, including users, customers, provisioning, taxis, etc., as part of the analysis.

- d) Mitigation Analysis. This analysis is to determine if the proposed mitigation measures are sufficient to maintain the adopted LOS standards, and to indicate if the proposed improvements will operate as anticipated.
  - 1. The mitigation plans should consider phasing of the proposed development, funding requirements, and potential improvements projects.

Conceptual Roadway Plan

The Conceptual Roadway Plan Design should include at a minimum:

- a) Incorporate all data, cruise operations, cargo operations, traffic circulations, and flows as provided by the staff of PortMiami.
- b) Provide for a design that addresses site circulation and access, and accommodates the highest traffic capacity based on passenger counts, and cargo capacity at peak times. Such design must incorporate parking for all Port-related needs.
- c) Provide for efficiencies, but not incorporate unnecessary movements that use valuable port land. Recommend design controls (such as intersections, flyovers, stop signs, and signalization) that are appropriate to handling capacity while not over designing the system.
- d) Provide a pedestrian access and mobility plan that promotes pedestrian safety, and enhances the pedestrian environment (sidewalks, lighting, and access to/from terminals, and parking facilities).
- e) Provide phasing plans if necessary to address traffic needs with no interruption to PortMiami's operations.

**BACKGROUND**

PortMiami is experiencing new growth in both cruise and cargo operations. As such, both a master traffic impact study, and a master conceptual roadway plan for PortMiami are needed, which will design the traffic circulation for cargo and cruise business, including planned future developments. Such professional services include the review of roadways system, evaluation of traffic impacts from the additional capacity expected to be added to the system, and design of a conceptual plan for the roadway system servicing all Port customers.

**FISCAL IMPACT/FUNDING SOURCE**

<b><u>FUNDING SOURCE:</u></b>	<b><u>SOURCE</u></b>	<b><u>PROJECT NUM</u></b>	<b><u>SITE #</u></b>	<b><u>AMOUNT</u></b>
	Seaport Revenues	2000001290	3002393	\$3,300,000.00
<b>OPERATIONS COST IMPACT / FUNDING:</b>	Not Applicable, this is a PSA for Portwide Traffic Impact Study and Master Roadway Plan.			
<b>MAINTENANCE COST IMPACT / FUNDING:</b>	Not Applicable, this is a PSA for Portwide Traffic Impact Study and Master Roadway Plan.			
<b>LIFE EXPECTANCY OF ASSET:</b>	Not Applicable, this is a PSA for Portwide Traffic Impact Study and Master Roadway Plan.			

PTP FUNDING: No

GOB FUNDING: No

ARRA FUNDING: No

<b>CAPITAL BUDGET PROJECTS:</b>	<b>CAPITAL BUDGET PROJECT # - DESCRIPTION</b>	<b><u>AWARD ESTIMATE</u></b>
	2000001290 - Infrastructure Improvements – Cruise Campus Book Page: 168 Funding Year: Proposed Budget and Multi-Year Capital Plan for FY 2019 – 20, FY 2019 - 20 (Future Financing)	\$1,650,000.00
	2000001290 - Infrastructure Improvements – Cruise Campus Book Page: 168 Funding Year: Proposed Budget and Multi-Year Capital Plan for FY 2019 – 20, FY 2020 – 21 (Future Financing)	<u>\$1,650,000.00</u>

CAPITAL BUDGET PROJECTS TOTAL: \$3,300,000.00

<b>PROJECT TECHNICAL CERTIFICATION REQUIREMENTS:</b>	<b><u>TYPE</u> <u>CODE</u> <u>DESCRIPTION</u></b>
	Prime 1.04 TRANSPORTATION PLANNING - PORT AND WATERWAY SYSTEMS PLANNING
	Prime 3.02 HIGHWAY SYSTEMS - MAJOR HIGHWAY DESIGN
	Other 1.01 TRANSPORTATION PLANNING - URBAN AREA AND REGIONAL TRANSPORTATION PLANNING
	Other 1.02 TRANSPORTATION PLANNING - MASS AND RAPID TRANSIT PLANNING
	Other 2.02 MASS TRANSIT SYSTEMS - MASS TRANSIT FEASIBILITY & TECHNICAL STUDIES
	Other 3.01 HIGHWAY SYSTEMS - SITE DEVELOPMENT AND PARKING LOT DESIGN
	Other 3.03 HIGHWAY SYSTEMS - BRIDGE DESIGN
	Other 3.04 HIGHWAY SYSTEMS - TRAFFIC ENGINEERING STUDIES
	Other 3.05 HIGHWAY SYSTEMS - TRAFFIC COUNTS
	Other 3.06 HIGHWAY SYSTEMS - TRAFFIC CALMING
	Other 3.07 HIGHWAY SYSTEMS - TRAFFIC SIGNAL TIMING
	Other 3.08 HIGHWAY SYSTEMS - INTELLIGENT TRANSPORTATION SYSTEMS ANALYSIS, DESIGN, AND IMPLEMENTATION
	Other 3.09 HIGHWAY SYSTEMS - SIGNING, PAVEMENT MARKING, AND CHANNELIZATION
	Other 3.11 HIGHWAY SYSTEMS - SIGNALIZATION
	Other 11.00 GENERAL STRUCTURAL ENGINEERING
	Other 15.01 SURVEYING AND MAPPING - LAND SURVEYING

Other 16.00 GENERAL CIVIL 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

**SEA LEVEL RISE (Ord. No. 14-79):** The scope of work is for a study; therefore, there will be no design work.

**NTPC'S DOWNLOADED:** 21

**PROPOSALS RECEIVED:** 3

**TOTAL CONTRACT PERIOD:** 730 Days. Excludes Warranty Administration Period.

**CONTINGENCY PERIOD:** 73 Days. Based on the two year term of the contract.

**IG FEE INCLUDED IN BASE CONTRACT:** Yes

**ART IN PUBLIC PLACES:** No

**BASE ESTIMATE:** \$3,000,000.00

**BASE CONTRACT AMOUNT:** \$3,000,000.00

CONTINGENCY ALLOWANCE (SECTION 2-8.1 MIAMI DADE COUNTY CODE):	TYPE	PERCENT	AMOUNT	COMMENT
	PSA	10%	\$300,000.00	

**TOTAL DEDICATED ALLOWANCE:** \$0.00

**TOTAL AMOUNT:** \$3,300,000.00

**DELEGATED 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. Additional delegation of authorities requested for this contract are as follows:

Authority to exercise the time extension and allowance account options limited to ten percent of the contract term and amount;

Authority to exercise the cancellation provisions in the contract;

Section IX of the PSA stipulates that any and all disputes shall be decided by the Director of PortMiami; and

Authority to exercise all other provisions and County rights contained in the contract.

**TRACK RECORD/MONITOR**

**SBD HISTORY OF VIOLATIONS:** None

**EXPLANATION:**

A Notice to Professional Consultants (NTPC) was advertised on April 18, 2019. Three proposals were submitted on June 7, 2019, in response to the NTPC. All three respondents were found in compliance with the Technical Certification requirements established for this solicitation.

The Competitive Selection Committee (CSC) appointed by the County Mayor conducted a First Tier Meeting on July 17, 2019, 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. Local Preference was applied to the First-Tier Evaluation; however, had no effect on the ranking, because all three proposers were local. Therefore, the final ranking was based on the total ordinal scores. The final ordinal rankings for the three firms were as follows: Firm No. 1, Kimley-Horn and Associates, Inc., received four points; Firm No. 2, Gannett Fleming, Inc., received five points; and Firm No. 3, T.Y. Lin International, received nine points.

Based on the CSC's professional expertise, the information provided in the proposals was deemed sufficient to determine the qualifications of the teams. As a result of said determination, and by a majority vote, the CSC decided to forego Second Tier proceedings. Based on the above results, the CSC recommended that negotiations be conducted with Kimley-Horn and Associates, Inc. The County Mayor's Designee, the Director of the Internal Services Department (ISD), concurred with the CSC and on September 11, 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 traffic planning service.

Pursuant to Resolution R-187-12, and in accordance with ISD's Procurement Guidelines, PortMiami staff exercised due diligence to determine Consultant responsibility for Kimley-Horn and Associates,

Inc. 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. In addition, PortMiami staff compiled information regarding Kimley-Horn and Associates, Inc.'s prior experience with the County. There are 30 evaluations on record for Kimley-Horn and Associates, Inc. in the Capital Improvements Information System, with an average rating of 3.5 out of a possible 4.0 points. Based on the above, it is recommended that this Agreement be awarded in the not to exceed amount of \$3,300,000.00, to Kimley-Horn and Associates, Inc.

**SUBMITTAL DATE:** 6/7/2019

**ESTIMATED NOTICE TO PROCEED:** 2/10/2020

**PRIME CONSULTANT:** Kimley-Horn and Associates, Inc.

**COMPANY PRINCIPAL:** Jill Capelli P.E.

**COMPANY QUALIFIERS:** Jill Capelli P.E.

**COMPANY EMAIL ADDRESS:** Jill.Capelli@kimley-horn.com

**COMPANY STREET ADDRESS:** 600 North Pine Island Road, Suite 450

**COMPANY CITY-STATE-ZIP:** Plantation, FL. 33324

**YEARS IN BUSINESS:** 52

**PREVIOUS EXPERIENCE WITH COUNTY IN THE LAST FIVE YEARS:** According to the Firm History Report, as provided by the Division of Small Business Development, within the last three years, Kimley-Horn and Associates, Inc. has held eight Contracts, three through the Equitable Distribution Program, with a total value of \$11,734,330.45. There were no change orders.

**SUBCONSULTANTS:** Biscayne Engineering Company, Inc.  
Caltran Engineering Group, Inc.  
Premiere Design Solutions, Inc.  
Trace Consultants, Inc.  
National Data and Surveying Services, Inc.

**MINIMUM QUALIFICATIONS EXCEED LEGAL REQUIREMENTS:** Yes

The consultants proposing on this solicitation are preferred to have five years of experience for similar work as described above with a completion of a minimum of three comparable traffic impact studies as well as extensive relevant experience designing traffic circulation and roadways for seaport transportation hubs with a completion of a minimum of five

comparable highway designs. This expertise must be met by qualified individual(s) of the Prime Consultant's team. Interested Professional Firms (Consultants) shall be certified by the County at the time of qualifications submittal in the Technical Certification Categories identified above.

**REVIEW COMMITTEE:**      **MEETING DATE:** 11/28/2018    **SIGNOFF DATE:**      12/6/2018  
**RESUBMIT DATE:** 1/4/2019    **RESUBMIT SIGNOFF:** 1/8/2019

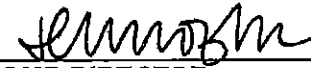

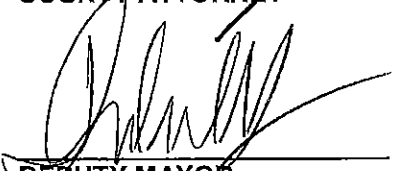
**APPLICABLE WAGES:**      N/A  
(RESOLUTION No. R-54-10)

<b>REVIEW COMMITTEE ASSIGNED CONTRACT MEASURES:</b>	<b>ESTIMATED TYPE GOAL VALUE</b>	<b>COMMENT</b>
	SBE- 18.00% \$594,000.00 A&E	

**MANDATORY CLEARING  
HOUSE:**      N/A

**CONTRACT MANAGER  
NAME / PHONE / EMAIL:**      Gyselle Pino      305 347-4833      gmf@miamidade.gov

**PROJECT MANAGER  
NAME / PHONE / EMAIL:**      Elizabeth Ogden, R.A.      305 347-5521      eogden@miamidade.gov

BUDGET APPROVAL FUNDS AVAILABLE:	 _____ OMB DIRECTOR	12/10/19 DATE
<i>PK KC</i>		
APPROVED AS TO LEGAL SUFFICIENCY:	 _____ COUNTY ATTORNEY	12/20/19 DATE
	 _____ DEPUTY MAYOR	12/20/19 DATE

CLERK DATE \_\_\_\_\_  
DATE





**MEMORANDUM**  
(Revised)

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

**DATE:** February 19, 2020

**FROM:** Abigail Price-Williams  
County Attorney

**SUBJECT:** Agenda Item No. 8(J)(1)

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) \_\_\_\_ to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 8(J)(1)  
2-19-20

RESOLUTION NO. \_\_\_\_\_

RESOLUTION APPROVING PROFESSIONAL SERVICES AGREEMENT BETWEEN MIAMI-DADE COUNTY AND KIMLEY-HORN AND ASSOCIATES, INC. FOR PROFESSIONAL TRAFFIC PLANNING SERVICES FOR PORTWIDE TRAFFIC IMPACT STUDY AND MASTER ROADWAY PLAN IN AN AMOUNT NOT TO EXCEED \$3,300,000.00, INCLUSIVE OF A CONTINGENCY ALLOWANCE OF \$300,000.00; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SAME, TO EXERCISE ANY CANCELLATION AND OTHER PROVISIONS CONTAINED THEREIN, AND TO APPROVE THE CONTINGENCY TIME EXTENSION AND CONTINGENCY EXPENDITURE LIMITED TO TEN PERCENT OF THE BASE CONTRACT AMOUNT

**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 Kimley-Horn and Associates, Inc. for Professional Traffic Planning Services for Portwide Traffic Impact Study and Master Roadway Plan in an amount not to exceed \$3,300,000.00, inclusive of the contingency allowance of \$300,000.00, in substantially the form attached hereto and made part hereof.

**Section 2.** Authorizes the County Mayor or County Mayor's designee to execute the Professional Services Agreement after review and approval by the County Attorney's Office; and to exercise any cancellation and other provisions contained therein; and to approve the contingency time extension and contingency account expenditure limited to ten percent of the base contract amount.

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

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

The Chairperson thereupon declared the resolution duly passed and adopted this 19<sup>th</sup> day of February, 2020. 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

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

Approved by County Attorney as  
to form and legal sufficiency.

MAG

Miguel A. Gonzalez

PORTMIAMI  
NON-EXCLUSIVE PROFESSIONAL SERVICES AGREEMENT  
TRAFFIC IMPACT STUDY AND MASTER ROADWAY PLAN

CONTRACT NO. E18-SEA-05

OCTOBER 2019



Carlos A. Gimenez, Mayor

BOARD OF COUNTY COMMISSIONERS

Barbara J. Jordan  
District 1  
Jean Monestime  
District 2  
Audrey M. Edmonson, Chairwoman  
District 3  
Sally A. Heyman  
District 4  
Eileen Higgins  
District 5  
Rebeca Sosa, Vice Chairwoman  
District 6  
Xavier L. Suarez  
District 7

Daniella Levine Cava  
District 8  
Dennis C. Moss  
District 9  
Senator Javier D. Souto  
District 10  
Joe A. Martinez  
District 11  
Jose "Pepe" Diaz  
District 12  
Esteban L. Bovo, Jr.  
District 13

Harvey Ruvlin, Clerk of Courts  
Jack Osterholt, Deputy Mayor  
Abigail Price-Williams, County Attorney

Miami-Dade County provides equal access and equal opportunity  
In employment and services and does not discriminate on the basis of handicap.

This document is exempt from public disclosure in accordance with House Bill 735, Chapter 2002-67. No part of the document may be used, reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying or otherwise, without the prior written consent of PortMiami.

PORTMIAMI  
NON-EXCLUSIVE PROFESSIONAL SERVICES AGREEMENT  
TRAFFIC IMPACT STUDY AND MASTER ROADWAY PLAN  
CONTRACT NO. E18-SEA-05

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**NON-EXCLUSIVE PROFESSIONAL SERVICE AGREEMENT**

THIS NON-EXCLUSIVE PROFESSIONAL SERVICES AGREEMENT (the "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between Miami-Dade County, a political subdivision of the State of Florida, hereinafter referred to as the "COUNTY", and KIMLEY-HORN AND ASSOCIATES INC., a NORTH CAROLINA corporation authorized to do business in the State of FLORIDA with offices in MIAMI, Florida, hereinafter referred to as the "CONSULTANT".

**W I T N E S S E T H :**

For and in consideration of the mutual agreements hereinafter contained, the COUNTY hereby retains the CONSULTANT and the CONSULTANT hereby covenants to provide the professional services prescribed herein in connection with the TRAFFIC IMPACT STUDY AND MASTER ROADWAY PLAN, Contract No. E18-SEA-05 / Project No. 2019-010, as more specifically described in SECTION II- PROFESSIONAL SERVICES of this Agreement for the Dante B. Fascell Port of Miami-Dade, hereinafter referred to as the "PROJECT".

**SECTION I – COUNTY OBLIGATIONS**

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

The Director of the Miami-Dade County Seaport Department or his/her designee, hereinafter referred to as the "Director", reserves the right to guarantee the accuracy of information provided by the COUNTY to the CONSULTANT. When such guarantee is provided in writing, the CONSULTANT shall not be compensated for independent verification of said information.

The Director shall issue written authorization to proceed to the CONSULTANT for each section of the work to be performed hereunder. These authorizations are referred to as Work Orders. In case of emergency, the Director reserves the right to issue oral authorization to the CONSULTANT with the understanding that written confirmation shall follow immediately thereafter.

The CONSULTANT shall submit a proposal, in a form acceptable to the COUNTY, upon the Director'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 Director shall confer with the CONSULTANT before any Work Order is issued to discuss and agree upon the scope, time for completion, and fee for services to be rendered pursuant to this Agreement.

The Director reserves the right to assign the CONSULTANT's design work to another CONSULTANT, including but not limited to a CONSULTANT on a previous, successor or concurrent contract and further reserves the right to assign another CONSULTANT's design work to CONSULTANT. CONSULTANT shall not be responsible for the design work assigned to another CONSULTANT if the design work is not 100% completed by the CONSULTANT and submitted as final documents by the CONSULTANT and accepted by the COUNTY.

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



## SECTION II – PROFESSIONAL SERVICES

Upon receipt of authorization to proceed from the Director, the CONSULTANT agrees to perform professional services associated with the requested work in accordance with the negotiated terms of the applicable Work Order. Said services may include, but not be limited to:

Provide traffic planning services for the development of a Transportation Master Plan, which shall consist of two elements: a Traffic Impact Study and Conceptual Roadway Plan. The Consultant shall design the PortMiami ultimate roadway network, site circulation and access to meet future transportation needs for all modes, including cars, cargo trucks, rail, pedestrians, and transit.

The requested professional traffic planning services shall include, but not be limited to review of the existing roadway network, evaluation of expected traffic impacts due to future developments, identification of transportation network improvements, and development of a conceptual roadway network design to meet the needs of all PortMiami users and customers. In addition, services shall include any supportive ancillary tasks to the primary scope of services that may include, but is not limited to cost estimating and constructability review.

### Traffic Impact Study

The Traffic Impact Study should include at a minimum:

a) Analysis Years. The analysis years should be: 1) Existing conditions (Year 2019); 2) Short-term analysis (Year 2023) for roadways; and 3) Long-term analysis (Year 2033).

b) Existing Conditions. Identify the physical characteristics of the roadway network adjacent to and within the study area and determine the traffic operating conditions of the roadway network using the County's adopted level of service (LOS) standards.

c) Future Conditions.

1. Background Traffic. The expected increase in traffic from anticipated cruise and cargo growth should be accounted for in the short-term and long-term analyses.

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2. Address the need for new facilities, expansion of existing facilities, or any mobility improvements necessary to provide a safe and efficient transportation network, enhance mobility, and maintain the adopted LOS standards through the short-term (concurrency) and long-term time frames.

3. Evaluate parking needs and access, including users, customers, provisioning, taxis, etc., as part of the analysis.

d) Mitigation Analysis. This analysis is to determine if the proposed mitigation measures are sufficient to maintain the adopted LOS standards and to indicate if the proposed improvements will operate as anticipated.

1. The mitigation plans should consider phasing of the proposed development, funding requirements, and potential improvements projects.

#### Conceptual Roadway Plan

The Conceptual Roadway Plan Design should include at a minimum:

a) Incorporate all data, cruise operations, cargo operations, traffic circulations and flows as provided by PortMiami staff.

b) Provide for a design that addresses site circulation and access and accommodates the highest traffic capacity based on passenger counts and cargo capacity at peak times. Such design must incorporate parking for all Port-related needs.

c) Provide for efficiencies, but not incorporate unnecessary movements that use valuable port land. Recommend design controls (such as intersections, flyovers, stop signs, and signalization) that are appropriate to handling capacity while not over designing the system.

d) Provide a pedestrian access and mobility plan that promotes pedestrian safety and enhances the pedestrian environment (sidewalks, lighting, and access to/from terminals and parking facilities).

e) Provide phasing plans if necessary to address traffic needs with no interruption to PortMiami operations.

For a more detailed description of the list of compensation rates, please refer to Attachment "A", KIMLEY-HORN AND ASSOCIATES INC.'s Schedule of Rates.

- A. In connection with professional services to be rendered pursuant to this Agreement, the CONSULTANT further agrees to provide complete engineering services to: Maintain an adequate staff of qualified personnel on the project at all times to complete the scope in accordance with the terms 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 judgment, 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. The CONSULTANT shall submit a list of employees intended to be engaged in the work under this Agreement, including their classification and salary rates, as reported to the Internal Revenue Service (I.R.S.), as Attachment "A" to this agreement and made a part hereof.
- B. Comply with all federal, state and local laws, regulations, codes, ordinances, resolutions and administrative orders applicable to the work.
- C. Cooperate fully with the COUNTY in the scheduling and coordination of all phases of the work.
- D. Report the status of the work to the Director upon request and hold pertinent data, calculations, field notes, records, sketches, and other products open to the inspection of the Director at any time. The CONSULTANT shall reference all correspondence and work with the Work Order Number.
- E. Submit for COUNTY review, work schedules, cost estimates, design computations, drawings, 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 for

COUNTY approval the final work products upon incorporation of any modifications requested by the COUNTY during any previous review. Drawings shall be in AutoCAD format in a version acceptable to the Department. Upon finalization of work the CONSULTANT shall submit hard copy reproducible as well as editable final product disks to the COUNTY.

- F. Confer with the COUNTY at any time during the further development and implementation of improvements for which the CONSULTANT has provided design or other services as to interpretation of plans and other documents, correction of errors and omissions and preparation of any necessary revisions thereof. The CONSULTANT shall not be compensated for the correction of CONSULTANT'S errors and omissions.
- G. Prior to final approval of work by the Director, the CONSULTANT shall complete a preliminary check of any documents submitted for compliance with all county, city, state, and federal agencies as required.
- 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 X – OWNERSHIP OF DOCUMENTS hereof such data or information is the property of the COUNTY.

### SECTION III – TIME FOR COMPLETION

The services to be rendered by the CONSULTANT for each section of the work shall commence upon receipt of a written Work Order from the Director 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 on the part of the COUNTY in fulfilling its part of the Agreement or should a Force Majeure, as defined in Section IV hereof, render performance of the CONSULTANT's duties impossible. Such extensions of time shall not be cause for any claim by the CONSULTANT for extra compensation.

#### **SECTION IV- 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 V – 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 Multiple of Direct Salary Cost and Fixed Hourly Rate

The fee for 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 negotiated multipliers of 2.85 for Office Personnel, 2.25 for Field Personnel and/or personnel on loan, which shall mean that they are under the direct supervision of the COUNTY's Seaport Department and the Department provides office space, computers and communication equipment (excludes cellular phones). Office Personnel shall mean personnel that are located in the home offices of the CONSULTANT and or Sub-consultant(s).

Field Personnel/personnel on loan shall mean personnel that are performing duties in the field, outside of the home offices of the CONSULTANT and or Sub-consultant(s), and at County Offices a minimum of 24 hours per week (which shall mean that they are under the direct supervision of the COUNTY's Seaport Department and the Department provides office space, computers and communication equipment, excluding cellular phones), for more than 30 days. Time worked by the CONSULTANT and/or Sub-consultant(s) for this entire period shall be at the Field/on loan personnel rate. This fee shall constitute full compensation to the CONSULTANT for costs incurred in the performance of the work such as overhead, fringe benefits, operating margin and all other costs not covered by reimbursable expenses.

Furthermore, the maximum raw hourly rates, per classification, for the Consultant and Sub-consultants are capped and set not to exceed as follows:

\$85.00	Senior Project Manager
\$75.00	Project Manager and Registered Technical Experts
\$55.00	Non-Registered Technical Staff
\$35.00	Support Staff/Field Staff/CADD/Graphics Staff/Inspector
\$30.00	Clerical/Administrative Staff

The COUNTY has the right to verify these multipliers through an audit.

1. The CONSULTANT and its Sub-consultants shall be compensated at the flat rate of \$130 per hour for the time of principals engaged directly in the work. This rate shall not be subject to the negotiated multiplier and shall be applied to the time spent on requested work by the following principal(s).

**KIMLEY-HORN AND ASSOCIATES INC.**

John Atz

**BISCAYNE ENGINEERING CO, INC.**

Mike Bartholomew, PSM

**CALTRAN ENGINEERING GROUP, INC.**

Juan S. Calderon, PE

**PREMIERE DESIGN SOLUTIONS, INC.**

Luis J. Jurado, PE

Jaime Jurado

**TRACE CONSULTANTS, INC.**

Frank Panellas, PE

David A. Lavevde, PE

**NATIONAL DATA SURVEYING SERVICES (NDS)**

Abraham Tashman

Michael Blitz

The COUNTY reserves the right to substitute principals in its sole discretion upon request by the CONSULTANT.

2. Overtime work considered necessary and previously authorized by the Director 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 project engineer or project architect, as defined by the Director. Overtime is defined as work in excess of 40 hours per week. Principals shall not receive additional compensation for performance of overtime work.
3. Labor rates shall be in accordance with the list of rates per classification supplied by the CONSULTANT and its sub-consultants, and made a part hereof as Attachment "A".
4. The CONSULTANT and its sub-consultants shall not invoice the COUNTY for charges for office, rent or overhead expenses of any kind, including but not limited to, insurance, local telephone (including cellular service) and utility charges, office/drafting supplies, depreciation of equipment, professional dues, subscriptions, computer software/hardware, reproduction of drawings and/or specifications, mailing, stenographic, clerical, nor shall it invoice for other employee time or travel and substance not directly related to the work. The multiple factor set forth above shall cover all such costs pertinent to the work.
5. All payments to Sub-consultant(s) employed hereunder shall be the sole responsibility of the CONSULTANT unless otherwise provided for herein or within a Work Order. The CONSULTANT shall not submit invoices, which include charges for services by Sub-consultant(s), unless such services have been performed satisfactorily and the charges are, in the opinion of the CONSULTANT, payable to such Sub-consultant(s). The CONSULTANT shall promptly make all payments to such Sub-consultant(s) following receipt by the CONSULTANT of corresponding payment from the COUNTY. Prior to any payments to Sub-consultant(s), the CONSULTANT shall, if



requested by the Director, furnish to the COUNTY a copy of the agreement(s) providing for such payments. Compensation rate to Sub-consultant(s) authorized by the Director as services shall not exceed the CONSULTANT's rates above unless otherwise approved in advance by the Director.

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 by the Director and the CONSULTANT and stated in the written Work Order. Lump sum fees may or may not include reimbursable expenses.

C. Reimbursable Expenses

The CONSULTANT shall be compensated on a direct reimbursement basis for certain work-related expenditures not covered by fees for consulting services, provided such expenditures are reasonable and previously authorized by the Director. Reimbursable expenses may include:

1. 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 purchased instruments remain the property of the COUNTY upon work completion. These expenses shall be reimbursed on a direct cost basis. No separate additional payment shall be authorized for the use of CADD workstations (computers).
2. Expenses for travel (except commuting), transportation and subsistence by CONSULTANT's personnel in the furtherance of the work outside Miami-Dade County will be reimbursed according to the provisions of Florida Statutes Section 112.061 and Miami-Dade County Administrative Order 6-1, as presently written or hereafter amended. The CONSULTANT shall obtain prior authorization from the Director or his/her designee, for all travel expenses. Failure to obtain such prior authorization shall

be grounds for nonpayment of travel expenses. To be compensated for travel within Miami-Dade County, the CONSULTANT shall maintain accurate mileage records, in ink, and submit them with their invoices.

D. Maximum Compensation

The maximum compensation for the services included shall be the NOT TO EXCEED amount of \$3,000,000.00 so long as the performance of additional services, as outlined in Section VI hereof, is not necessary and authorized by the Director. It is understood that any unspent portion of the contract ceiling is to remain with the COUNTY.

E. Compensation for Other 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:

1. Land and Engineering Field Survey

In the event supplementary field survey work is required during design of the project 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 V(A) hereof. The surveying rates shall not exceed the negotiated rates under the latest Miami-Dade County Public Works & Waste Management Department's Professional Services Agreement for General Land and Engineering Surveying Services, currently established as Contract No. 20160196.

2. Geotechnical Engineering

In the event supplementary geotechnical engineering work is required during design of the project 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 V(A) hereof. The geotechnical engineering rates shall not exceed the negotiated rates under the latest Miami-Dade County Public Works & Waste Management Department's

Professional Services Agreement for Soils, Foundations and Geotechnical Testing Services, current established as Contract No. 20160209.

F. COUNTY Discretion to Negotiate

Notwithstanding and prevailing over any other provision of this section, the COUNTY reserves the right in its sole discretion, through the Seaport Director or his designee, to negotiate fees and rates with CONSULTANT, mutually acceptable to COUNTY and CONSULTANT, that are less than those set forth herein for particular projects, including but not limited to lower multiplier and hourly rates.

**SECTION VI – ADDITIONAL SERVICES (ALLOWANCE ACCOUNT)**

In the event that a contingency necessitates the performance of additional services by the CONSULTANT after the \$3,000,000.00 maximum compensation limit of the Agreement has been encumbered, the Director shall have the right to authorize performance of additional services provided that compensation for such services does not exceed ten percent (10%) of the Agreement's maximum compensation limit or \$300,000.00. It is understood that any unspent portion of the allowance account is to remain with the COUNTY.

**SECTION VII – METHODS OF PAYMENT**

The COUNTY agrees to make monthly payments to the CONSULTANT, based on properly submitted invoices, for all authorized work performed during the previous calendar month or other mutually agreed invoicing period. The CONSULTANT agrees submit invoices within 30 days from the completion of the executed work and to provide with every invoice copies of any records necessary to substantiate payment requests to the COUNTY such as timesheets, detailing the task where the time has been spent, monthly progress reports and hours/cost expenditure reports, in a format acceptable to the COUNTY. Invoice received more than 90 days from the completion of the executed work may be subject to \$5,000 audit fee, which audit fee represents a reasonable estimate (and not a penalty) of the

cost of labor that must be expended by the COUNTY staff to review the overdue invoice, and/or may be rejected by the Director. The CONSULTANT shall submit duly certified invoices in triplicate to the Director in a form acceptable to the Director. 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 timesheets and/or reimbursable expenses incurred to date in connection with authorized work, less previous payments.

Pursuant to Administrative Order (A.O.) 3-32 Community Business Enterprise (CBE) Program, Administrative Order (A.O.) 3-41 Small Business Enterprise (SBE) Program and/or A.O. 3-39 for the Resolution Repealing County Administrative Orders 3-33, 3-14 and 3-28 and establishing Administrative Order 3-39 Standard Process for Construction of Capital Improvements, Acquisition of Professional Services, Construction Contracting, Change Orders and Reporting, the CONSULTANT is required to file utilization reports with the Miami-Dade County contracting department monthly, unless designated otherwise.

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 the following methods, as identified in the work order:

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

The amounts due for professional services and/or reimbursable expenses shall be calculated in accordance with Subsections V-A and V-C hereof, respectively. 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.

**SECTION VIII – SCHEDULE OF WORK**

The Director shall have the sole right to determine on which parts or phases of the work the CONSULTANT shall proceed and in what order. The Work Order(s) issued by the Director 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 part or phase of work.

**SECTION IX – RIGHT OF DECISIONS AND DISPUTE RESOLUTION**

All services shall be performed by the CONSULTANT to the reasonable satisfaction of the Director who shall decide all questions, difficulties, and disputes of whatever nature which may arise under or by reason of this Agreement, the prosecution and fulfillment of the services hereunder, and the character, quality, amount and value thereof.

In the event the CONSULTANT and COUNTY are unable to resolve their differences concerning any determination made by staff 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 Seaport Director, functioning as the Contracting Officer or his/her designee, to decide 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 and this decision shall be conclusive, final and binding on the parties, subject only to the limited right of review specified below. The parties hereto further agree that, upon timely request under this Section, both the CONSULTANT and COUNTY are entitled to a hearing before the Contracting Officer, or his/her 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.

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 and 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 X – OWNERSHIP OF DOCUMENTS**

All notes, correspondence, documents, designs, drawings, cost estimates, renderings, calculations, specifications, models, photographs, reports, surveys, 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 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 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 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. All drawings shall be AutoCAD format in a version acceptable to the Department, produced by computer in files maintained on disks. 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 Director. Nothing contained herein shall be deemed to exclude any document from Chapter 119 of the Florida Statutes.

#### **SECTION XI – REUSE OF DOCUMENTS**

The CONSULTANT may reuse data where appropriate from other sections of the work included in this Agreement provided irrelevant material is deleted. The COUNTY shall not be re-invoiced for such reused data. The Director shall not accept any reused data containing an excess of irrelevant material, which has no connection with the applicable portion of the work. The COUNTY shall not re-use design documents on other projects not contemplated under this Agreement. Any such re-use shall be at the COUNTY's sole risk without legal liability to the CONSULTANT.

#### **SECTION XII – NOTICES**

Any notices, reports or other written communications from the CONSULTANT shall be considered delivered, when delivered by certified mail, electronic media, or delivered in person to the Director. Any notices, reports or other communications from the COUNTY to the CONSULTANT shall be considered delivered when delivered 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.

**SECTION XIII – ABANDONMENT**

In the event the COUNTY causes abandonment, cancellation, or suspension of the projects or parts thereof, the CONSULTANT shall be compensated for all services rendered consistent with the terms of this Agreement up to the time the CONSULTANT receives written notification of such abandonment, cancellation or suspension. This compensation shall be determined on the basis of the percentage of the total services which have been performed at the time of the CONSULTANT receives such notice. 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 such sums are due.

**SECTION XIV – AUDIT RIGHTS**

The COUNTY reserves the right to audit the records of the CONSULTANT related to this Agreement at any time during the prosecution of the work included herein and for a period of three (3) years after final payment is made. The CONSULTANT agrees to provide copies of any records necessary to substantiate payment requests to the COUNTY, including but not limited to audited financial statements, balance sheets and other financial records. In the event an audit undertaken pursuant to this section reveals improper, inadvertent, or mistaken payments to the CONSULTANT, the CONSULTANT shall remit such payments to the COUNTY. The COUNTY shall retain all legal and equitable rights with respect to recovery of payments.

**SECTION XV – SUBCONTRACTING AND ASSIGNMENT**

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 Director. When applicable and upon receipt of such consent in writing, the CONSULTANT shall cause the names of firms responsible for portions of each specialty of the work to be inserted in the pertinent documents or data.



No assignment or transfer of work will be allowed. Nothing contained in this Agreement shall create any contractual relationship between the COUNTY and the Sub-consultant(s).

In addition, and as applicable, the CONSULTANT agrees to comply with the Miami-Dade COUNTY Ordinance 01-103 and Administrative Order 3-32 regarding the Community Business Enterprise (CBE) program. The COUNTY has established a participation goal of 18.00% based on the total amount of compensation authorized under this Agreement.

A. Sub-consultant(s)

The compensation for services rendered by the Sub-consultant(s) shall be in accordance with this Section and Section V - COMPENSATION. The Sub-consultant(s) authorized to perform professional services associated with this Agreement are:

BISCAYNE ENGINEERING CO, INC.

CALTRAN ENGINEERING GROUP, INC.

PREMIERE DESIGN SOLUTIONS, INC.

TRACE CONSULTANTS, INC.

NATIONAL DATA SURVEYING SERVICES (NDS)

In no case the maximum rate of compensation, per classification, including multiples of direct salary for services rendered by the Sub-consultant(s) personnel, principals excluded, shall exceed the rate stipulated, per classification, in Section V of this agreement.

All services provided by the Sub-consultant(s) shall be pursuant to appropriate agreements between the CONSULTANT and the Sub-consultant(s) which shall contain provisions that preserve and protect the rights of the COUNTY under this Agreement, and indemnify and hold harmless the COUNTY.

Sub-consultant(s) other than those listed above may not be utilized on the work unless their utilization has been approved in advance by the COUNTY in writing. The COUNTY

reserves the right at any time to withdraw the approval of a Sub-consultant, if it decides that the services performed by the Sub-consultant, are not acceptable to the COUNTY.

The CONSULTANT shall not change any Sub-consultant without prior approval of the COUNTY in response to a written request from the CONSULTANT stating the reasons for any proposed substitution.

### **SECTION XVI - CERTIFICATION**

The CONSULTANT certifies that no companies or persons, other than bonafide employees working solely for the CONSULTANT or the CONSULTANT's COUNTY approved Sub-consultant(s), 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 full-time or part-time employees, has or shall be retained or employed in any capacity, by the CONSULTANT or the CONSULTANT's COUNTY approved Sub-consultant(s), to accomplish the work contemplated under the terms of this Agreement. For breach or violation of this Certification, the Director shall have the right to annul this Agreement without liability.

### **SECTION XVII - TERMINATION OF AGREEMENT**

It is expressly understood and agreed that the Director may terminate this Agreement, in total or in part, without cause or penalty, by thirty (30) days prior written notification in writing from the Director or by declining to issue Work Orders, as provided in Section VIII; in which event the COUNTY's sole obligation to the CONSULTANT shall be payment, in accordance with Section V - Compensation, for those units or sections of work previously authorized. Such payment shall be determined on the basis of the hours or percentage of work performed by the 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.

### SECTION XVIII - DURATION OF AGREEMENT

This Agreement shall remain in full force and effect for a period of two (2) years effective term after its date of execution and upon issuance of Notice to Proceed to its first work order provided that the maximum compensation set forth in Section V(D) is not reached by the completion of the effective term (although actual completion of the services hereunder may extend beyond such term) or until depletion of the funds allocated to pay for the cost of said services, whichever occurs first, unless the contract is terminated by mutual consent of the parties hereto or as provided in Section XIII, Section XVI, Section XVII, Section XIX, Section XXIII, and Section XXV hereof. The performance of specifically and properly authorized services which may extend beyond the Agreement's effective term shall be compensated in accordance to Section V hereof.

This Contract 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 Sections III and IV, that affects the critical path schedule of the Contract or any previously approved changes; written documentation that supports the justification of a time extension, review and concurrence by the department A/E, 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 XIX – DEFAULT

In the event the CONSULTANT fails to materially comply with the provisions of this Agreement, the Director may declare the CONSULTANT in default by thirty (30) days prior written notification, unless CONSULTANT commences correction of such material non-compliance within five (5) days of such written notification and diligently completes the correction within thirty (30) days thereafter, unless an extension of such thirty (30) day period is granted by the COUNTY. In such event, the CONSULTANT shall only be compensated for any professional services completed as of the date written notice of default is served. In the event partial payment has been made for 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 not be compensated for professional services, which have been performed but not completed by the time the Director declares a default. In the event the COUNTY prevails in litigation to enforce the provisions of the Agreement, the COUNTY shall be compensated by the CONSULTANT for reasonable attorney's fees and court costs.

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 XX – INDEMNIFICATION AND INSURANCE**

Consultant, in accordance with Section 725.08, Florida Statutes, shall indemnify and hold harmless the County, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance of this Agreement.

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 agrees and recognizes that the Owner shall not be held liable or responsible for any claims, which may result from any negligent reckless, or intentionally wrongful actions, errors or omissions of the consultant in which the Owner participated either through review or concurrence of the Consultant's actions. In reviewing, approving or rejecting any submissions by the Contractor or other acts of the Consultant , the Owner in no way assumes or shares any responsibility or liability of the Consultant or Sub-consultants, the registered professionals (architects and/or Consultant s) under this agreement.

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 or designer, or any of their heirs, successors or assigns, be individually held liable for negligence.

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 Miami-Dade County, c/o Miami-Dade Seaport Department, 1015 N. America Way, Second Floor, Miami, FL 33132 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 including coverage under the U.S. Longshoremen and Harbor Workers' Act (USLH) and Jones Act.
- B. Commercial General Liability Insurance in an amount not less than \$1,000,000 per occurrence. **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.
- E. Protection and Indemnity Insurance, in the name of the Consultant or subcontractor, in an amount not less than \$1,000,000 per occurrence. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**

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.

**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 the liabilities and obligations under this Section or under any other portion of this Agreement.

### **SECTION XXI – 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 5(a), the CONSULTANT hereby certifies and warrants that wage rates and other factual unit costs, as submitted in support of the compensation provided in Section V, 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 XXII – APPLICABLE LAWS**

The CONSULTANT agrees 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, 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 include but are not 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 MDC 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.
- C. The CONSULTANT shall comply with the requirements of MDC Code Section 2-1076 – Office of the Miami-Dade County Inspector General (IG).
- D. The CONSULTANT shall comply with the procedures contained in the FALSE CLAIMS Ordinance MDC Code Article XV Sections 21-255 through 21-266; prohibiting presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade 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.
- E. The CONSULTANT shall comply with the financial disclosure requirements of Ordinance No. 77-13, as amended, by having on file or filing within thirty (30) days of the execution of this Agreement one of the following with the Supervisor of the Miami-Dade County Elections Department, P.O. Box 521550, Miami, FL 33152-1550:
  - (1) A source of income statement;
  - (2) A current certified financial statement;
  - (3) A copy of the CONSULTANT'S Current Federal Income Tax Return.



- F. E-VERIFY - The attention of the Consultant is hereby directed to the requirements of the State of Florida Office of the Governor Executive Order No. 11-02. The Consultant hereby agrees to utilize the U.S. Department of Homeland Security's E-Verify system, in accordance with the terms governing use of the system, to confirm the employment eligibility of all persons assigned or authorized by the Consultant to perform work pursuant to the Contract with the County.
- G. Ordinance 07-65 (Sustainability Building Program) -- IF APPLICABLE - The primary mechanism for determining compliance with the Sustainable Building Program shall be the U. S. Green Building Council's Leadership in Energy and Environmental Design (LEED) Rating System. All construction projects are required to meet the standards delineated in Ordinance 07-65. Compliance shall be determined by completing a formal certification process with the U.S. Green Building Council, or as otherwise directed by the County's Sustainability Manager.
1. New Construction (NC): All new construction projects shall be required to attain "Silver" or higher level rating under the LEED-NC Rating System.
  2. Major Renovations and Remodels: All major renovations and remodels shall attain "Certified" or higher level rating under the LEED-NC Rating System.
  3. Non-Major Renovations and Remodels: All non-major renovations and remodels shall attain "Certified" or higher level rating under the appropriate LEED Rating System such as LEED-NC, LEED-Existing Building (EB) or LEED-Commercial Interior (CI).
  4. Renovations, remodels, and other building upgrades not meeting the above criteria are encouraged to incorporate the maximum number of LEED approved green building practices as are feasible from a practical and fiscal perspective; however, LEED certification will not be required.

H. Energy Efficient Building Tax Credit (IF APPLICABLE) – The Energy Policy Act (EP Act) of 2005 (Section 1331) as established IRS Section 179D, allows taxpayers to accelerate depreciation on the cost of qualified energy efficient commercial building property placed-in-service after December 31, 2005. This incentive was recently extended by the Emergency Economic Stabilization Act of 2008, to include improvements placed-in-service before January 1, 2014. The returns may be amended going back three tax years, so projects that come on line in 2007 or afterwards are eligible.

The Consultant is designated as the Designer/Construction Manager (“the Designer”) for the energy efficient improvements incorporated in the Energy Consumption Reduction Project (“the Project”) for:

1. The purposes of allocating accelerated depreciation benefits pursuant to Section 179D of the Internal Revenue Code of 1986, as amended (the “Code”).
2. If County and the Internal Revenue Service (IRS) determine that the Consultant is eligible and shall receive accelerated depreciation benefits as a “Designer” for the purposes of Section 179D of the Code or that the Consultant shall otherwise benefit financially from the monetization of the accelerated depreciation benefit, the Consultant hereby agrees to discount its contract price or provide a cash rebate to County (the determination of rebate versus discount to be determined by County in its sole discretion) in an amount equal to the total financial benefit realized by the Consultant; at the time the financial benefit to the Consultant becomes ascertainable.
3. County reserves the right to retain a third party consultant (the “Consultant”) – to manage and administer the process of obtaining and monetizing the accelerated depreciation benefit derived from the Project and to designate the “Consultant”

as the "Designer" of the energy efficient improvements for the purposes of Section 179D of the Code.

4. The County agrees to cooperate in all reasonable respects with the Consultant's efforts to obtain and monetize any such benefits derived from the Project on behalf of County.

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

The Contractor shall comply with the Public Records Laws of the State of Florida, including but not limited to, (1) Keep and maintain public records required by the public agency to perform the service. (2) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law. (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.; and (4) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public

agency.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (305) 347-4827; SEAPORT: LUIS.GONZALEZ4@MIAMIDADE.GOV; 1007 NORTH AMERICA WAY, 2<sup>nd</sup> FLOOR, MIAMI, FLORIDA 33132.**

**SECTION XXIII – OFFICE OF MIAMI-DADE COUNTY INSPECTOR GENERAL**

According to Section 2-1076 of the Code of Miami-Dade County, Miami-Dade County has established the Office of the Inspector General (IG) which may, on a random basis, perform audits, inspections, and reviews of all County/Trust contracts. This random audit is separate and distinct from any other audit by the County. To pay for the functions of the Office of the Inspector General, any and all payments to be made to the Contractor/Consultant under this contract will be assessed one quarter (1/4) of one (1) percent of the total amount of the payment, to be deducted from each progress payment as the same becomes due unless, as stated in the Special Conditions, this Contract is federally or state funded where federal or state law or regulations preclude such a charge. **The Contractor/Consultant shall in stating its agreed process be mindful of this assessment, which will not be separately identified, calculated or adjusted in the proposal or bid form.** The audit cost shall also be included in all change orders/amendments and all contract renewals and extensions.

The Miami-Dade Office of Inspector General is authorized to investigate County affairs and empowered to review past, present and proposed County and Public Health Trust programs, accounts, records, contracts and transactions. In addition, the Inspector General has the power to subpoena

witnesses, administer oaths, require the production of witnesses and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of the (Contractor/ Vendor/ Consultant), its officers, agents and employees, lobbyists, County and Public Health Trust staff and elected officials in order to ensure compliance with contract specifications and to detect fraud and corruption.

Upon ten (10) days written notice to the (Contractor/ Vendor/ Consultant) shall make all requested records and documents available to the Inspector General for inspection and copying. The Inspector General shall have the right to inspect and copy all documents and records in the (Contractor/Vendor/Consultant's) possession, custody or control which in the Inspector General's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements from and with successful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, (bid/proposal) and contract documents, back-change documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records and supporting documentation for the aforesaid documents and records.

The (Contractor/ Vendor/ Consultant) shall make available at its office at all reasonable times the records, materials, and other evidence regarding the acquisition (bid preparation) and performance of this contract, for examination, audit, or reproduction, until three (3) years after final payment under this contract or for any longer period required by statute or by other clauses of this contract. In addition:

1. If this contract is completely or partially terminated, the (Contractor/ Vendor/ Consultant) shall make available records relating to the work terminated until three (3) years after any resulting final termination settlement; and
2. The (Contractor/ Vendor/ Consultant) shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

The provisions in this section shall apply to the (Contractor/Vendor/Consultant), its officers, agents, employees, subcontractors/subconsultants and suppliers. The (Contractor/Vendor/Consultant) shall incorporate the provisions in this section in all subcontracts and all other agreements executed by the (Contractor/Vendor/Consultant) in connection with the performance of this contract.

Nothing in this section shall impair any independent right to the County to conduct audits or investigative activities. The provisions of this section are neither intended nor shall they be construed to impose any liability on the County by the (Contractor/Vendor/Consultant) or third parties.

Exception: The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Trust; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order 3-2; (m) federal, state and local government-funded grants; and (n) interlocal agreements. Notwithstanding the foregoing, the Trust may authorize the inclusion of the fee assessment of one-quarter (1/4) of one percent in any exempted contract at the time of award.

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all Trust contracts including, but not limited to, those contracts specifically exempted above.

INDEPENDENT PRIVATE SECTOR INSPECTOR GENERAL: The attention of the Contractor/Consultant is hereby directed to the requirements of AO 3-20 and R-516-96; the County shall have the right but not the obligation to retain the services of an independent private-sector inspector general (IPSIG) who may be engaged to audit, investigate, monitor, oversee, inspect and review the operations, activities and performance of the Contractor/Consultant and County in connection with this contract/agreement. The scope of services performed by an IPSIG may include, but are not limited to, monitoring and investigating compliance with Contract Specifications; project costs; and investigating and preventing corruption and fraud.

The IPSIG may perform its services at all levels of the contracting and procurement process, including but not limited to project design, establishment of bid specifications, bid submittals, activities of Contractor/Consultant, its officers, agents and employees, lobbyists, County staff and elected officials.

Upon (10) ten days written notice to Contractor/Consultant from an IPSIG, the Contractor/Consultant shall make all requested records and documents available to the IPSIG for inspection and copying. The IPSIG shall have the right to examine all documents and records in the Contractor's/Consultant's possession, custody or control which, in the IPSIG's sole judgment pertain to performance of the Contract, including but not limited to, original estimate files; change order estimate files; worksheets; proposals and agreements from and with successful and unsuccessful subcontractors/subconsultants and suppliers; all project-related correspondence, memoranda, instructions, financial documents, construction documents, bid and contract documents, back-charge document; all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received; payroll and personnel records; and supporting documentation for the aforesaid documents and records.

The provisions in this Section shall apply to the Contractor/Consultant, its officers, agents and employees. The Contractor/Consultant shall incorporate the provisions in this section in all

subcontracts and all other agreements executed by the Contractor/Consultant in connection with the performance of this agreement. Nothing in this contract shall impair any independent right of the County to conduct audit or investigative activities. The provisions of this Section are neither intended nor shall they be construed to impose any liability on the County by the Contractor/Consultant or third parties.

#### **SECTION XXIV – AFFIRMATIVE ACTION**

The CONSULTANT'S Affirmative Action Plan submitted pursuant to Miami-Dade County Code Section 2-8.1.5, as approved by the Department of Small Business Development, and any approved update thereof, are hereby incorporated as contractual obligations of the CONSULTANT to Miami-Dade County hereunder. The CONSULTANT shall undertake and perform the affirmative actions specified herein. The Director may declare the CONSULTANT in default of this Agreement for failure of the CONSULTANT to comply with the requirements of this paragraph.

#### **SECTION XXV – PROMPT PAYMENT TO SMALL BUSINESS SUBCONSULTANTS**

The CONSULTANT's attention is directed to Miami-Dade County Section 2-8.1.4, providing for expedited payments to small businesses by county agencies and the Public Health Trust; creating dispute resolution procedures for payment of county and Public Health Trust obligations; and requiring the prime contractor to issue prompt payments, and have the same dispute resolution procedures as the COUNTY, for all small business subcontractors. Failure to the prime contractor to issue prompt payment to small businesses, or to adhere to its dispute resolution procedures, may be cause for suspension, termination, and debarment, in accordance with the terms of the county contract or Public Health Trust contract and debarment procedures of the COUNTY.



**SECTION XXVI - 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 XXVII – BUSINESS APPLICATION AND FORMS**

The CONSULTANT shall be a registered vendor with the COUNTY – Department of Procurement Management, for the duration of this Agreement. It is the responsibility of the CONSULTANT to update and file the Vendor Registration Package, including a Uniform Affidavit Packet (Affidavit form) with the Department of Procurement Management (DPM), Vendor Assistance Unit for any changes for the duration of this Agreement, including any option years.

The Proposer is responsible for obtaining the Vendor Registration Package, including all affidavits by downloading from the DPM website at [www.miamidade.gov](http://www.miamidade.gov) or from the Vendor Assistance Unit at 111 N.W. 1<sup>st</sup> Street, 13<sup>th</sup> Floor, Miami, FL 33128.

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.

**SECTION XXVIII – ERRORS AND OMISSIONS**

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

A. Errors

It is specifically agreed that any construction changes identified by the COUNTY as an error in the bid documents that were prepared by the CONSULTANT may constitute an additional cost to the COUNTY that would not have been incurred without the error. The CONSULTANT agrees to be responsible for direct damages to the COUNTY, to the extent such damages were caused by the CONSULTANT'S negligence.

B. Omissions

It is further specifically agreed for purposes of this agreement that any construction changes identified by the COUNTY as an omission in the bid documents that were prepared by the CONSULTANT may constitute an additional cost to the COUNTY that would not have been incurred without the omission. The CONSULTANT agrees to be responsible for direct damages to the COUNTY, to the extent such damages were caused by the CONSULTANT'S negligence.

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

To obtain recovery for errors and/or omissions covered in paragraphs A and B above, 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 specifically agree to the reasonableness of these damage calculations and to the COUNTY'S right to recover same as stated above provided, however, the Parties agree that in no event shall CONSULTANT be responsible for the cost of construction changes to the extent that such changes are determined to be a betterment to the COUNTY. The recovery of additional costs to the COUNTY under this Section shall not preclude or limit in any way the CONSULTANT'S indemnification obligations to the COUNTY pursuant to Section XX of this Agreement, or preclude or limit in any way recovery for other separate and/or additional damages that the COUNTY may otherwise incur."

**SECTION XXIX – ENTIRETY OF AGREEMENT**

This writing and its attachments 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 modifications of the terms of this Agreement shall be valid unless made in writing, signed by both parties hereto, and approved by the Board of County Commissioners.

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

IN WITNESS WHEREOF the parties hereto have executed these presents this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_.

ATTEST:  
HARVEY RUVIN, CLERK OF THE BOARD

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

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

By: \_\_\_\_\_  
County Mayor

ATTEST \_\_\_\_\_

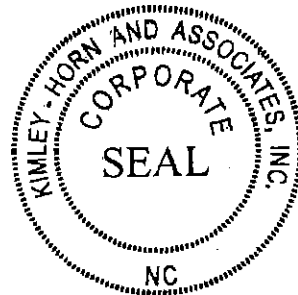
KIMLEY-HORN AND ASSOCIATES,  
INC.

By: \_\_\_\_\_  
Corporate Secretary

By: *Jill Capelli*  
President or Designee

(Corporate Seal)

Approved as to form  
and legal sufficiency: \_\_\_\_\_  
Assistant County Attorney



**ATTACHMENT "A"**

**KIMLEY-HORN AND ASSOCIATES, INC.'S**  
**SCHEDULE OF RATES DATED OCTOBER 3, 2019**

# Kimley»»Horn

October 3, 2019

Amado Gonzalez  
A/E Consultant Selection Coordinator  
Miami-Dade County-ISD Strategic Procurement Division  
111 N.W. 1<sup>st</sup> Street, Suite 1300  
Miami, FL 33128

**RE: ISD Project No. E18-SEA-05 – Traffic Impact Study and Master Roadway Plan**

Based on the Negotiation Meeting conducted on September 11, 2019, Kimley-Horn and Associates Inc. agrees to the following Proposed Multipliers and Maximum Raw Rates.

## Multipliers

- Office Employees 2.85%
- Field Employees 2.25%
- Employees working in County offices 2.25%

## Rates

The maximum rate compensation, raw rates, shall not exceed:

Title	Raw Rate
Principal	\$130.00 (full rate)
Senior Project Manager	\$85.00
Registered Technical Experts	\$75.00
Non-Registered Technical Staff	\$55.00
Support Staff/Field Staff	\$35.00
Clerical, Administrative Staff	\$30.00

Please contact me at [jill.capelli@kimley-horn.com](mailto:jill.capelli@kimley-horn.com) should you have any questions.

Sincerely,



Jill Capelli, P.E.  
Vice President