

A G R E E M E N T  
Between  
BROWARD COUNTY  
and  
HAZEN AND SAWYER, P.C.  
for  
CONSULTANT SERVICES FOR  
ENGINEERING SERVICES FOR FINE BUBBLE AERATION BASIN CONVERSION  
IN BROWARD COUNTY, FLORIDA  
RFP # R1061305P1

**INDEX**

<b><u>ARTICLE</u></b>	<b><u>PAGE</u></b>
1 DEFINITIONS AND IDENTIFICATIONS .....	2
2 PREAMBLE.....	3
3 SCOPE OF SERVICES.....	3
4 TIME FOR PERFORMANCE; CONTRACTOR DAMAGES; LIQUIDATED DAMAGES.....	4
5 COMPENSATION AND METHOD OF PAYMENT .....	6
6 ADDITIONAL SERVICES; CHANGES IN SCOPE OF SERVICES .....	10
7 COUNTY'S RESPONSIBILITIES .....	11
8 INSURANCE .....	12
9 EEO AND CBE COMPLIANCE.....	12
10 MISCELLANEOUS.....	16
EXHIBIT "A" SCOPE OF SERVICES	
EXHIBIT "B" SALARY COSTS	
EXHIBIT "C" LETTERS OF INTENT	
EXHIBIT "C-1" SCHEDULE OF SUBCONSULTANTS	
EXHIBIT "D" INSURANCE CERTIFICATE	

A G R E E M E N T  
  
Between  
  
BROWARD COUNTY  
  
and  
  
HAZEN AND SAWYER, P.C.  
  
for  
  
CONSULTANT SERVICES FOR  
  
ENGINEERING SERVICES FOR FINE BUBBLE AERATION BASIN CONVERSION  
  
IN BROWARD COUNTY, FLORIDA  
  
RFP # R1061305P1

This is an Agreement between: BROWARD COUNTY, a political subdivision of the State of Florida, its successors and assigns, hereinafter referred to as "COUNTY," through its Board of County Commissioners,

AND

HAZEN AND SAWYER, P.C., a foreign profit corporation, authorized to conduct business in the State of Florida, hereinafter referred to as "CONSULTANT."

W I T N E S S E T H

WHEREAS, COUNTY issued RFP No. R1061305P1 for professional engineering services for conversion of existing aeration basins from mechanical aeration to fine bubble aeration at the North Regional Wastewater Treatment Plant (NRWWTP); and

WHEREAS, CONSULTANT represents that it is experienced in providing a full range of engineering services, for all engineering disciplines, to design (including related engineering reports), procure permits, negotiate and provide support related to environmental regulations, prepare construction contract documents, and provide engineering services during construction, related to the conversion of the existing aeration basins; and

WHEREAS, COUNTY wishes to engage CONSULTANT to provide professional engineering services for the conversion of existing aeration basins at the NRWWTP; and

WHEREAS, negotiations pertaining to this Project were undertaken between COUNTY and CONSULTANT, and this Agreement incorporates the results of such negotiations; NOW THEREFORE,

In consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, COUNTY and CONSULTANT agree as follows:

ARTICLE 1  
DEFINITIONS AND IDENTIFICATIONS

For purposes of this Agreement, reference to one gender shall include the other, use of the plural shall include the singular, and use of the singular shall include the plural. The following definitions and identifications set forth below apply unless the context in which the word or phrase is used requires a different definition:

- 1.1 **Agreement**: means this document, Articles 1 through 10, inclusive. Other terms and conditions are included in the exhibits and documents that are expressly incorporated by reference.
- 1.2 **Board**: The Board of County Commissioners of Broward County, Florida, which is the governing body of the Broward County government created by the Broward County Charter.
- 1.3 **CONSULTANT**: The architect or engineer selected to perform the services pursuant to this Agreement.
- 1.4 **Contract Administrator**: The Director of Water and Wastewater Engineering Division, or Assistant Director of Water and Wastewater Engineering Division, who is the representative of the County concerning the Project. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services.
- 1.5 **Contractor**: The person, firm, corporation or other entity who enters into an agreement with COUNTY to perform the construction work for the Project.
- 1.6 **County Administrator**: The administrative head of COUNTY pursuant to Sections 3.02 and 3.03 of the Broward County Charter.
- 1.7 **County Attorney**: The chief legal counsel for COUNTY who directs and supervises the Office of the County Attorney pursuant to Section 2.10 of the Broward County Charter.
- 1.8 **County Business Enterprise or "CBE"**: A small business located in Broward County, Florida, which meets the criteria and eligibility requirements of Broward

County's CBE Program and must be certified by Broward County's Office of Economic and Small Business Development.

- 1.9 **Notice To Proceed:** A written authorization to proceed with the Project, phase, or task thereof, issued by the Contract Administrator.
- 1.10 **Project:** The Project consists of the conversion of existing aeration basins from mechanical aeration to fine bubble aeration, including any repair work on the concrete basins, piping, and related blower equipment and controls, located at the North Regional Wastewater Treatment Plant (NRWWTP).
- 1.11 **Subconsultant:** A firm, partnership, corporation, independent contractor (including 1099 individuals), or combination thereof providing services to the County through the Consultant for all or any portion of the advertised work or who furnishes skills or materials worked into a special design according to the plans and specifications for such work, but not those who merely furnish equipment or materials required by the plans and specifications.

## ARTICLE 2 PREAMBLE

In order to establish the background, context, and frame of reference for this Agreement and to generally express the objectives and intentions of the respective parties hereto, the following statements, representations, and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions which follow and may be relied upon by the parties as essential elements of the mutual considerations upon which this Agreement is based.

- 2.1 COUNTY has budgeted funds for the Project. This Project is funded with COUNTY funds.
- 2.2 COUNTY has met the requirements of Section 287.055, Florida Statutes, the Consultants' Competitive Negotiation Act, and has selected CONSULTANT to perform the services hereunder.
- 2.3 Negotiations pertaining to the services to be performed by CONSULTANT were undertaken with CONSULTANT, and this Agreement incorporates the results of such negotiations.

## ARTICLE 3 SCOPE OF SERVICES

- 3.1 CONSULTANT's services shall consist of the phases set forth in Exhibit "A," attached hereto and made a part hereof, and shall include design and related engineering reports, permitting, negotiation and support related to environmental

regulations, construction contract documents, bid and award assistance, and engineering services during construction, with coordination required among multiple engineering disciplines (such as, civil, structural, mechanical, and electrical engineering, architectural services, and other professional design services), as applicable for the Project. CONSULTANT shall provide all services as set forth in Exhibit "A" including all necessary, incidental, and related activities and services required by the Scope of Services and contemplated in CONSULTANT's level of effort.

- 3.2 The Scope of Services does not delineate every detail and minor work task required to be performed by CONSULTANT to complete the Project. If, during the course of the performance of the services included in this Agreement, CONSULTANT determines that work should be performed to complete the Project which is in CONSULTANT's opinion outside the level of effort originally anticipated, whether or not the Scope of Services identifies the work items, CONSULTANT shall notify Contract Administrator in writing in a timely manner before proceeding with the work. If CONSULTANT proceeds with said work without notifying the Contract Administrator, said work shall be deemed to be within the original level of effort, whether or not specifically addressed in the Scope of Services. Notice to Contract Administrator does not constitute authorization or approval by COUNTY to CONSULTANT to perform the work. Performance of work by CONSULTANT outside the originally anticipated level of effort without prior written COUNTY approval is at CONSULTANT's sole risk.
- 3.3 Exhibit "A" is for the first portion of services related to the Project and that additional negotiations will be required for subsequent phases or for additional services except as otherwise provided herein. COUNTY and CONSULTANT may negotiate additional scopes of services, compensation, time of performance, and other related matters for future phases of Project. If COUNTY and CONSULTANT cannot contractually agree, COUNTY shall have the right to immediately terminate negotiations at no cost to COUNTY and procure services for future Project phases from another source.
- 3.4 CONSULTANT shall pay its subconsultants, subcontractors, and suppliers, within fifteen (15) days following receipt of payment from COUNTY for such subcontracted work or supplies. CONSULTANT agrees that if it withholds an amount as retainage from subconsultants, subcontractors, or suppliers that it will release such retainage and pay same within fifteen (15) days following receipt of payment of retained amounts from COUNTY.

ARTICLE 4  
TIME FOR PERFORMANCE; CONTRACTOR DAMAGES;  
LIQUIDATED DAMAGES

- 4.1 CONSULTANT shall perform the services described in Exhibit "A" within the time periods specified in the Project Schedule included in Exhibit "A"; said time

periods shall commence from the date of the Notice to Proceed for such services.

- 4.2 Prior to beginning the performance of any services under this Agreement, CONSULTANT must receive a Notice to Proceed. CONSULTANT must receive a Notice to Proceed from the Contract Administrator prior to beginning the performance of services in any subsequent phases of this Agreement. Prior to granting approval for CONSULTANT to proceed to a subsequent phase, the Contract Administrator may, at his or her sole option, require CONSULTANT to submit the itemized deliverables and documents identified in Exhibit "A" for the Contract Administrator's review.
- 4.3 In the event CONSULTANT is unable to complete the above services because of delays resulting from untimely review by COUNTY or other governmental authorities having jurisdiction over the Project, and such delays are not the fault of CONSULTANT, or because of delays which were caused by factors outside the control of CONSULTANT, COUNTY shall grant a reasonable extension of time for completion of the services and shall provide reasonable compensation, if appropriate. It shall be the responsibility of CONSULTANT to notify the Contract Administrator promptly in writing whenever a delay in approval by a governmental agency is anticipated or experienced, and to inform the Contract Administrator of all facts and details related to the delay.
- 4.4 In the event Contractor fails to substantially complete the Project on or before the substantial completion date specified in its agreement with COUNTY or if Contractor is granted an extension of time beyond said substantial completion date, and CONSULTANT's services are extended beyond the substantial completion date, through no fault of CONSULTANT, CONSULTANT shall be compensated in accordance with Article 5 for all services rendered by CONSULTANT beyond the substantial completion date.
- 4.5 In the event Contractor fails to substantially complete the Project on or before the substantial completion date specified in its agreement with COUNTY, and the failure to substantially complete is caused in whole or in part by CONSULTANT, then CONSULTANT shall pay to COUNTY its proportional share of any claim or damages to Contractor arising out of the delay. By reference hereto, the provisions for the computation of delay costs/damages and any amounts included therein, whether direct or indirect, in the agreement between the Contractor and COUNTY are incorporated herein. This provision shall not affect the rights and obligations of either party as set forth in Section 10.7, INDEMNIFICATION OF COUNTY.
- 4.6 [Intentionally Left Blank.]
- 4.7 [Intentionally Left Blank.]

ARTICLE 5  
COMPENSATION AND METHOD OF PAYMENT

5.1 AMOUNT AND METHOD OF COMPENSATION

5.1.1 Maximum Amount Not-To-Exceed Compensation

Compensation to CONSULTANT for the performance of Basic Services identified in Exhibit "A," Tasks 1 – 3, as payable on a "Maximum Amount Not-To-Exceed" basis, and as otherwise required by this Agreement, shall be based upon the Salary Costs as described in Section 5.2 up to a maximum amount not-to-exceed of \$3,696,976. CONSULTANT shall perform all services designated as Maximum Amount Not-To-Exceed set forth herein for total compensation in the amount of or less than that stated above.

5.1.2 [Intentionally Left Blank.]

5.1.3 Optional Additional Service

COUNTY has established an amount of \$150,000 for the performance of additional Basic Services as identified in Task 4 of Exhibit "A." Services provided under Task 4 shall be payable on a "Maximum Amount Not-To-Exceed" basis or an agreed upon "Lump Sum" basis, based upon the Salary Costs as described in Section 5.2, up to the specified amount. Services performed under this task must be initiated by a separate written Notice to Proceed issued by the Contract Administrator. Any unused amounts shall be retained by COUNTY.

5.1.4 Reimbursable Expenses

COUNTY has established a maximum amount not-to-exceed of \$54,312 for potential reimbursable expenses which may be utilized pursuant to Section 5.3. Unused amounts of those monies established for reimbursable expenses shall be retained by COUNTY.

5.1.5 Salary Rate

The maximum hourly rates payable by COUNTY for each of CONSULTANT's employee categories are shown on Exhibit "B" and are further described in Section 5.2. COUNTY shall not pay CONSULTANT any additional sum for reimbursable expenses, additional or optional services, if any, unless otherwise stated in Section 5.3 and Article 6.

If, for services designated as payable on a Maximum Amount Not-To-Exceed, CONSULTANT has "lump sum" agreements with any



subconsultant(s), then CONSULTANT shall bill all "lump sum" subconsultant fees with no "markup." Likewise, CONSULTANT shall bill, with no mark-up, all maximum not to exceed subconsultant fees using the employee categories for Salary Costs on Exhibit "B" as defined in Section 5.2 and Reimbursables defined in Section 5.3. All Subconsultant fees shall be billed in the actual amount paid by CONSULTANT.

5.1.6 [Intentionally Left Blank.]

5.1.7 The dollar limitation set forth in Sections 5.1 is a limitation upon, and describes the maximum extent of, COUNTY's obligation to CONSULTANT, but does not constitute a limitation, of any sort, upon CONSULTANT's obligation to incur such expenses in the performance of services hereunder.

5.2 SALARY COSTS

The term Salary Costs as used herein shall mean the hourly rate actually paid to all personnel engaged directly on the Project, as adjusted by an overall multiplier which consists of the following: 1) a fringe benefits factor; 2) an overhead factor; and 3) an operating profit margin as set forth on Exhibit "B." Said Salary Costs are to be used only for time directly attributable to the Project. The fringe benefit and overhead factors shall be certified by an independent Certified Public Accountant in accordance with the Federal Acquisition Regulation ("FAR") guidelines. Said certification shall be dated within one hundred eighty (180) days after CONSULTANT's most recently completed fiscal year. If the certification is not available at the time of contracting, the certification shall be provided when it becomes available; provided, however, CONSULTANT certifies that the rates and factors set forth herein are accurate, complete, and consistent with the FAR guidelines at the time of contracting.

5.2.1 CONSULTANT shall require all of its subconsultants to comply with the requirements of Section 5.2. Subconsultants may be exempted from the FAR audit requirements of Section 5.2 upon application to, and written approval by, the County Auditor.

5.2.2 Salary Costs for CONSULTANT and subconsultants as shown in Exhibit "B" are the Maximum Billing Rates which are provisional, subject to audit of actual costs, and if the audit discloses that the actual costs are less than the costs set forth on Exhibit B for the CONSULTANT or any subconsultant, the CONSULTANT shall reimburse the COUNTY based upon the actual costs determined by the audit.

5.2.3 Unless otherwise noted, the Salary Costs stated above are based upon the CONSULTANT's 'home office' rates. Should it become appropriate during the course of the agreement that a 'field office' rate be applied, then

it is incumbent upon the CONSULTANT to submit a supplemental Exhibit "B" reflective of such rates for approval by Contract Administrator and invoice the COUNTY accordingly.

- 5.2.4 The total hours payable by the COUNTY for any "exempt" or "non-exempt" personnel shall not exceed forty (40) hours in any week. In no event shall CONSULTANT be paid additional compensation for exempt employees. In the event the work requires non-exempt personnel to work in excess of 40 hours per week (overtime), any additional hours must be authorized in advance, in writing, by the Contract Administrator. In such an event, Salary Costs for overtime hours shall be payable at no more than one and one half of the maximum hourly rate as shown on Exhibit "B," adjusted by a multiplier reflective of applicable overhead and fringe costs, if any, and the agreed upon operating profit margin.
- 5.2.5 Notwithstanding the Salary Costs (formula and requirements) set forth in Section 5.2 above, hourly rates have been negotiated with CONSULTANT utilizing a method and factors agreed to by CONSULTANT and the Contract Administrator which do not comply with Section 5.2. The method and factors utilized to determine the hourly rates are set forth on Exhibit "B," attached hereto.

### 5.3 REIMBURSABLES

- 5.3.1 In accordance with and pursuant to the Broward County Procurement Code, direct nonsalary expenses, entitled Reimbursables, directly attributable to the Project, and as not otherwise specified in Exhibit A, may be charged at actual cost with prior written approval by the Contract Administrator, and shall be limited to the following:
- a) Transportation expenses, subject to the limitations of Section 112.061, Florida Statutes to locations outside the Miami-Dade-Broward-Palm Beach County area or from locations outside Miami-Dade-Broward-Palm Beach County.
  - b) Per diem, meals and lodgings, taxi fares and miscellaneous travel-connected expenses for CONSULTANT's personnel subject to the limitations of Section 112.061 Florida Statutes. Meals for class C travel inside Broward County will not be reimbursed. Meals and lodging expenses will not be reimbursed for temporarily relocating CONSULTANT's employees from one of CONSULTANT's offices to another office if the employee is relocated for more than ten (10) consecutive working days.
  - c) Cost of printing, reproduction, or photography.

- d) Testing costs.
- e) All fees paid to regulatory agencies, excluding those permits required for the Contractor.
- f) Other miscellaneous expenses.

Reimbursable subconsultant expenses are limited to the items described above when the subconsultant agreement provides for reimbursable expenses.

#### 5.4 METHOD OF BILLING

##### 5.4.1 For Maximum Amount Not-To-Exceed Compensation under Section 5.1.1

CONSULTANT shall submit billings which are identified by the specific project number on a monthly basis in a timely manner for all Salary Costs and Reimbursables attributable to the Project. These billings shall identify the nature of the work performed, the total hours of work performed, and the employee category of the individuals performing same. Billings shall itemize and summarize Reimbursables by category and identify same as to the personnel incurring the expense and the nature of the work with which such expense was associated. Where prior written approval by Contract Administrator is required for Reimbursables, a copy of said approval shall accompany the billing for such reimbursable. Billings shall also indicate the cumulative amount of CBE participation to date. The statement shall show a summary of Salary Costs and Reimbursables with accrual of the total and credits for portions paid previously. External Reimbursables and subconsultant fees must be documented by copies of invoices or receipts which describe the nature of the expenses and contain a project number or other identifier which clearly indicates the expense is identifiable to the Project. Subsequent addition of the identifier to the invoice or receipt by CONSULTANT is not acceptable except for meals and travel expenses. Internal expenses must be documented by appropriate CONSULTANT's cost accounting forms with a summary of charges by category. When requested, CONSULTANT shall provide backup for past and current invoices that records hours and Salary Costs by employee category, Reimbursables by category, and subcontractor fees on a task basis, so that total hours and costs by task may be determined.

##### 5.4.2 For Lump Sum Compensation under Section 5.1.2

CONSULTANT shall submit billings which are identified by the specific project number on a monthly basis in a timely manner. These billings shall identify the nature of the work performed, the phase of work, and the

estimated percent of work accomplished. Billings for each phase shall not exceed the amounts allocated to said phase. Billings shall also indicate the cumulative amount of CBE participation to date. The statement shall show a summary of fees with accrual of the total and credits for portions paid previously. When requested, CONSULTANT shall provide backup for past and current invoices that record hours, salary costs, and expense costs on a task basis, so that total hours and costs by task may be determined.

## 5.5 METHOD OF PAYMENT

5.5.1 COUNTY shall pay CONSULTANT within thirty (30) calendar days from receipt of CONSULTANT's proper statement, as defined by COUNTY's Prompt Payment Ordinance, ninety percent (90%) of the total shown to be due on such statement. When the services to be performed on each phase of the Project are fifty percent (50%) complete and upon written request by CONSULTANT and written approval by the Contract Administrator that the Project is progressing in a satisfactory manner, the Contract Administrator, in his or her sole discretion, may authorize that subsequent payments for each phase may be increased to ninety-five percent (95%) of the total shown to be due on subsequent statements. No amount shall be withheld from payments for Reimbursables or for services performed during the construction phase.

5.5.2 Upon CONSULTANT's satisfactory completion of each phase and after the Contract Administrator's review and approval, COUNTY shall remit to CONSULTANT that ten percent (10%) or five percent (5%) portion of the amounts previously withheld. Final payment for the Project must be approved by the Director of the Broward County Purchasing Division.

5.5.3 Payment will be made to CONSULTANT at:

Hazen and Sawyer, P.C.  
4000 Hollywood Blvd., Suite 750N  
Hollywood, FL 33021

## ARTICLE 6 ADDITIONAL SERVICES; CHANGES IN SCOPE OF SERVICES

6.1 COUNTY or CONSULTANT may request changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement. Such changes must be made in accordance with the provisions of the Broward County Procurement Code and must be contained in a written amendment, executed by the parties hereto, with the same formality and of equal dignity herewith, prior to any deviation from the terms of this Agreement, including the initiation of any Additional Services.

- 6.2 Costs of Additional Services identified by the Contract Administrator during the life of this Agreement and as contained in a written amendment will be compensated on an hourly basis, or an agreed upon lump sum, or as a reimbursable as provided in Article 5. Additional Services authorized by the Contract Administrator shall include a required completion date for CONSULTANT's performance of those additional services.
- 6.3 In the event a dispute between the Contract Administrator and CONSULTANT arises over whether requested services constitute additional services and such dispute cannot be resolved by the Contract Administrator and CONSULTANT, such dispute shall be promptly presented to COUNTY's Director of Purchasing for resolution. The Director's decision shall be final and binding on the parties. The resolution shall be set forth in a written document in accordance with Section 6.1 above, if applicable. During the pendency of any dispute, CONSULTANT shall promptly perform the disputed services.
- 6.4 As provided in Section 9.2, each proposed contract modification request that, by itself or aggregated with previous modification requests, increases the contract value by ten percent (10%) or more of the initial contract value shall be reviewed by COUNTY for opportunities to include or increase CBE participation. CONSULTANT shall demonstrate good faith efforts to include CBE participation in change order work and shall report such efforts to the Office of Economic and Small Business Development.

#### ARTICLE 7 COUNTY'S RESPONSIBILITIES

- 7.1 COUNTY shall assist CONSULTANT by placing at CONSULTANT's disposal all information COUNTY has available pertinent to the Project including previous reports and any other data relative to design or construction of the Project.
- 7.2 COUNTY shall arrange for access to, and make all provisions for, CONSULTANT to enter upon public and private property as required for CONSULTANT to perform its services.
- 7.3 COUNTY shall review the itemized deliverables/documents identified in Exhibit "A" of CONSULTANT and respond in writing with any comment within the time set forth on the approved Project Schedule.
- 7.4 COUNTY shall give prompt written notice to CONSULTANT whenever COUNTY observes or otherwise becomes aware of any development that affects the scope or timing of CONSULTANT's services or any defect in the work of the Contractor.

ARTICLE 8  
INSURANCE

- 8.1 CONSULTANT shall maintain at its sole expense, at all times during the term of this Agreement (unless a different time period is otherwise stated herein), at least the minimum insurance coverage designated in Exhibit "D" in accordance with the terms and conditions stated in this Article.
- 8.2 Such policies shall be issued by companies authorized to do business in the State of Florida, with a minimum AM Best financial rating of A-. Coverage shall be provided on forms no more restrictive than the latest edition of the applicable form filed by the Insurance Services Office. CONSULTANT shall name Broward County as an additional insured under the primary and non-contributory Commercial General Liability policy, Business Automobile Liability policy as well as on any Excess Liability policy. The official title of the Certificate Holder is Broward County. This official title shall be used in all insurance documentation.
- 8.3 Within fifteen (15) days of notification of award, CONSULTANT shall provide to COUNTY proof of insurance in the form of Certificate(s) of Insurance and applicable endorsements, Declaration pages, or insurance policies evidencing all insurance required by this Article. COUNTY reserves the right to obtain a certified copy of any policies required by the Article upon request. Coverage is not to cease and is to remain in force until the COUNTY determines all performance required of CONSULTANT is completed. For Professional Liability Insurance, coverage shall remain in force for two (2) years after the completion of services unless a different time period is stated in Exhibit "D." COUNTY shall be notified of any restriction or cancellation of coverage within thirty (30) days. If any of the insurance coverage will expire prior to the completion of the work, proof of insurance renewal shall be provided to COUNTY upon expiration.
- 8.4 COUNTY reserves the right to review and revise any insurance requirements at the time of renewal or amendment of this Agreement, including, but not limited to, deductibles, limits, coverage, and endorsements.
- 8.5 If CONSULTANT uses a subconsultant or subcontractor, CONSULTANT shall ensure that each subconsultant or subcontractor names "Broward County" as an additional insured under the subconsultant's or subcontractor's Commercial General Liability, Business Automobile Liability, and Excess/Umbrella policies.

ARTICLE 9  
EEO AND CBE COMPLIANCE

- 9.1 No party to this Agreement may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this contract. CONSULTANT shall comply with all applicable requirements of the

Broward County Business Enterprise ("CBE") Program in the award and administration of this Agreement. Failure by CONSULTANT to carry out any of these requirements shall constitute a material breach of this Agreement, which shall permit COUNTY, to terminate this Agreement or to exercise any other remedy provided under this Agreement, under the Broward County Code of Ordinances, or Administrative Code, or under applicable law, with all of such remedies being cumulative.

CONSULTANT shall include the foregoing or similar language in its contracts with any subconsultants, subcontractors or suppliers, except that any project assisted by the U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 C.F.R. Parts 23 and 26, as amended. Failure to comply with the foregoing requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as COUNTY deems appropriate.

CONSULTANT shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement and shall not otherwise unlawfully discriminate in violation of the Broward County Code, Chapter 16½, as may be amended from time to time. CONSULTANT shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by COUNTY, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, CONSULTANT shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

By execution of this Agreement, CONSULTANT represents that it has not been placed on the discriminatory vendor list (as provided in Section 287.134, Florida Statutes, as may be amended from time to time). COUNTY hereby materially relies on such representation in entering into this Agreement. An untrue representation of the foregoing shall entitle COUNTY to terminate this Agreement and recover from CONSULTANT all monies paid by COUNTY pursuant to this Agreement, and may result in debarment from COUNTY's competitive procurement activities.

- 9.2 The CBE Program, which is implemented under the Broward County Business Opportunity Act of 2012 (Broward County Ordinance No. 2012-33 as may be amended from time to time), referred to as the "Act," provides for the establishment and implementation of CBE participation goals, initiatives, and other opportunities for COUNTY contracts. In completing this Project, CONSULTANT agrees to and shall comply with all applicable requirements of the CBE Program in the award and administration of the Agreement. CONSULTANT acknowledges that the Broward County Board of County Commissioners, acting by and through the Director of the Broward County Office of Equal Opportunity, may make minor administrative modifications to the CBE Program which shall

become applicable to this Agreement if the administrative modifications are not unreasonable. Written notice of any such modification shall be provided to CONSULTANT and shall include a deadline for CONSULTANT to notify COUNTY if CONSULTANT concludes that the modification exceeds the authority of this section of this Agreement. Failure of CONSULTANT to timely notify COUNTY of its conclusion that the modification exceeds such authority shall be deemed acceptance of the modification by CONSULTANT.

The COUNTY shall have the right to review each proposed amendment, extension, modification, or change order to this Agreement that, by itself or aggregated with previous amendments, extensions, modifications, or change orders increases the initial Agreement price by ten percent (10%), for opportunities to include or increase the participation of CBE firms already involved in this Agreement. CONSULTANT shall make a good faith effort to include CBE firms in work resulting from any such amendment, extension, modification, or change order and shall report such efforts, along with evidence thereof, to the Office of Economic and Small Business Development.

- 9.3 The Parties acknowledge that subcontract awards to CBE firms are crucial to the achievement of the Project's CBE participation goal. CONSULTANT understands that each CBE firm utilized on the Project to meet the participation goal must be certified by the Broward County Office of Economic and Small Business Development. In an effort to assist COUNTY in achieving its established goal for this Project, CONSULTANT agrees to meet the following CBE participation goal by utilizing the CBE firms for the work and the percentage of work amounts described in Section 9.4:

Total CBE Goal	22%
----------------	-----

CONSULTANT may not terminate for convenience a CBE firm listed as a subcontractor in the CONSULTANT's bid or offer without the County's prior written consent, which consent shall not be unreasonably withheld. CONSULTANT shall inform COUNTY immediately when a CBE firm is not able to perform or if CONSULTANT believes the CBE firm should be replaced for any other reason, so that the Office of Economic and Small Business Development may review and verify the good faith efforts of CONSULTANT to substitute the CBE firm with another CBE firm. Whenever a CBE firm is terminated for any reason, including for cause, CONSULTANT shall with notice to and concurrence of the Broward County Office of Economic and Small Business Development Division, substitute another CBE firm in order to meet the level of CBE participation provided herein. Such substitution shall not be required in the event the termination results from COUNTY changing the Scope of Work hereunder and there is no available CBE to perform the new Scope of Work.

- 9.4 In performing services for this Project, the Parties hereby incorporate CONSULTANT's participating CBE firms, addresses, scope of work, and the



percentage of work amounts identified on each Letter of Intent into this Agreement (Exhibit "C"). Upon execution of this Agreement by COUNTY, CONSULTANT shall enter into a formal contract with the CBE firms CONSULTANT selected to fulfill the CBE participation goal for this Agreement and agrees to provide copies of its contracts with such firms to the Contract Administrator and the Broward County Office of Economic and Small Business Development.

- 9.5 CONSULTANT shall allow COUNTY to engage in on-site reviews to monitor CONSULTANT's progress in achieving and maintaining its contractual and CBE Program obligations. Such review and monitoring shall be by the Contract Administrator in conjunction with the Office of Economic and Small Business Development. COUNTY shall have access, without limitation, to CONSULTANT's books and records, including payroll records, tax returns and records, and books of account, on five (5) business days' notice, to allow COUNTY to determine CONSULTANT's compliance with its commitment to the CBE participation goal and the status of any CBE firm performing any portion of this Agreement.
- 9.6 CONSULTANT understands that it is the responsibility of the Contract Administrator and the Broward County Office of Economic and Small Business Development to monitor compliance with the CBE requirements. In that regard, CONSULTANT shall report monthly regarding compliance with its CBE obligations in accordance with Section 5.4 of this Agreement.
- 9.7 In the event of CONSULTANT's noncompliance with its participation commitment to a CBE firm (including without limitation the unexcused reduction of the CBE firm's participation), the affected CBE firm shall have the right to the following remedies if the noncompliance is or was alleged to be due to no fault of the CBE firm, and alleged to be due to the willful action or omission of CONSULTANT:
  - 9.7.1 The affected CBE firm shall be entitled to damages pursuant to its agreement with CONSULTANT.
  - 9.7.2 If the CBE firm has the right to arbitrate and institutes arbitration proceedings claiming non-compliance with the Act by CONSULTANT, then in such event the CBE firm may submit the dispute to arbitration. However, arbitration shall not be available as to any dispute between CONSULTANT and COUNTY; nor shall COUNTY incur any cost, fee, or liability relative to any arbitration proceeding.
  - 9.7.3 Nothing under this Section 9.7 shall be construed to limit the rights of and remedies available to COUNTY, including the right to seek its own damages pursuant to this Agreement.

- 9.8 Nonpayment of a CBE subconsultant, subcontractor or supplier as required by Section 3.4 of this Agreement shall be a material breach of this Agreement and that COUNTY's Contract Administrator may, at its option, increase allowable retainage or withhold progress payments unless and until CONSULTANT demonstrates timely payments of sums due to such subconsultant, subcontractor or supplier. CONSULTANT agrees that the presence of a "pay when paid" provision in its contract with a CBE firm shall not preclude COUNTY or its representatives from inquiring into allegations of nonpayment. The foregoing remedies under this Section 9.8 shall not be employed when CONSULTANT demonstrates that failure to pay results from a bona fide dispute with its CBE subconsultant, subcontractor, or supplier.
- 9.9 If CONSULTANT fails to comply with the requirements of this Agreement, or the requirements of the Broward County Business Opportunity Act of 2012, COUNTY shall have the right to exercise any administrative remedies provided by the Broward County Business Opportunity Act of 2012, or any other right or remedy provided in the Administrative Procedures of the Office of Economic and Small Business Development, this Agreement, or under applicable law, with all such rights and remedies being cumulative.

## ARTICLE 10 MISCELLANEOUS

### 10.1 OWNERSHIP OF DOCUMENTS

All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, specifications and reports prepared or provided by CONSULTANT in connection with this Agreement shall become the property of COUNTY, whether the Project for which they are made is completed or not, and shall be delivered by CONSULTANT to Contract Administrator within fifteen (15) days of the receipt of the written notice of termination. If applicable, COUNTY may withhold any payments then due to CONSULTANT until CONSULTANT complies with the provisions of this section.

### 10.2 TERMINATION

- 10.2.1 This Agreement or any Work Authorization issued under this Agreement may be terminated for cause by the aggrieved party if the party in breach has not corrected the breach within ten (10) days after written notice from the aggrieved party identifying the breach. This Agreement may also be terminated for convenience by the Board. Termination for convenience by the Board shall be effective on the termination date stated in written notice provided by the COUNTY, which termination date shall be not less than thirty (30) days after the date of such written notice. If this Agreement or Work Authorization was entered into on behalf of COUNTY by someone other than the Board, termination by COUNTY may be by action of the

County Administrator or the COUNTY representative (including his or her successor) who entered in this Agreement on behalf of COUNTY. This Agreement may also be terminated by the County Administrator upon such notice as the County Administrator deems appropriate under the circumstances in the event the County Administrator determines that termination is necessary to protect the public health or safety. The parties agree that if the COUNTY erroneously, improperly or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.

10.2.2 This Agreement may be terminated for cause for reasons including, but not limited to, CONSULTANT's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to suitably perform the work; or failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement or Work Authorization. The Agreement may also be terminated for cause if the CONSULTANT is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes, as amended or if the CONSULTANT provides a false certification submitted pursuant to Section 287.135, Florida Statutes, as amended. This Agreement or a Work Authorization may also be terminated by the Board:

10.2.2.1 Upon the disqualification of CONSULTANT as a CBE by COUNTY's Director of the Office of Economic and Small Business Development if CONSULTANT's status as a CBE was a factor in the award of this Agreement or the Work Authorization, and such status was misrepresented by CONSULTANT;

10.2.2.2 Upon the disqualification of CONSULTANT by COUNTY's Director of the Office of Economic and Small Business Development due to fraud, misrepresentation, or material misstatement by CONSULTANT in the course of obtaining this Agreement or the Work Authorization, or attempting to meet the CBE contractual obligations;

10.2.2.3 Upon the disqualification of one or more of CONSULTANT's CBE participants by COUNTY's Director of the Office of Economic and Small Business Development if any such participant's status as a CBE firm was a factor in the award of this Agreement or the Work Authorization, and such status was misrepresented by CONSULTANT or such participant;

10.2.2.4 Upon the disqualification of one or more of CONSULTANT's CBE participants by COUNTY's Director of the Office of Economic and Small Business Development if such CBE participant attempted to meet its CBE contractual obligations through fraud, misrepresentation, or material misstatement; or

10.2.2.5 If CONSULTANT is determined by COUNTY's Director of the Office of Economic and Small Business Development to have been knowingly involved in any fraud, misrepresentation, or material misstatement concerning the CBE status of its disqualified CBE participant.

10.2.3 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement except that notice of termination by the County Administrator which the County Administrator deems necessary to protect the public health or safety may be verbal notice that shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.

10.2.4 In the event this Agreement or a Work Authorization issued under this Agreement is terminated for convenience, CONSULTANT shall be paid for any services properly performed under the Agreement or Work Authorization through the termination date specified in the written notice of termination. CONSULTANT acknowledges and agrees that it has received good, valuable and sufficient consideration from COUNTY, the receipt and adequacy of which are hereby acknowledged by CONSULTANT, for COUNTY's right to terminate this Agreement for convenience.

10.2.5 In the event this Agreement or a Work Authorization is terminated, for any reason, any amounts due CONSULTANT shall be withheld by COUNTY until all documents are provided to COUNTY pursuant to Section 10.1 of Article 10.

### 10.3 PUBLIC RECORDS

COUNTY is a public agency subject to Chapter 119, Florida Statutes. As required by Chapter 119, Florida Statutes, CONSULTANT and all its subconsultants and subcontractors shall comply with Florida's Public Records Law. To the extent CONSULTANT is a contractor acting on behalf of the COUNTY pursuant to Section 119.0701, Florida Statutes, CONSULTANT and its subconsultants and subcontractors shall:

10.3.1 Keep and maintain public records that ordinarily and necessarily would be required by COUNTY in order to perform the service;

10.3.2 Provide the public with access to such public records on the same terms and conditions that COUNTY would provide the records and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

10.3.3 Ensure that public records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by law; and

10.3.4 Meet all requirements for retaining public records and transfer to COUNTY, at no cost, all public records in its possession upon termination of the applicable contract and destroy any duplicate public records that are exempt or confidential and exempt. All records stored electronically must be provided to COUNTY in a format that is compatible with the information technology systems of COUNTY.

The failure of CONSULTANT to comply with the provisions set forth in this Section shall constitute a default and breach of this Agreement, and COUNTY shall enforce the default in accordance with the provisions set forth in Section 10.2.

#### 10.4 PUBLIC ENTITY CRIME ACT

CONSULTANT represents that the execution of this Agreement will not violate Section 287.133, Florida Statutes, the Public Entity Crimes Act, which essentially provides that a person or affiliate who is a contractor, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to COUNTY, may not submit a bid on a contract with COUNTY for the construction or repair of a public building or public work, may not submit bids on leases of real property to COUNTY, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with COUNTY, and may not transact any business with COUNTY in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto, and may result in debarment from COUNTY's competitive procurement activities.

In addition to the foregoing, CONSULTANT further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether CONSULTANT has been placed on the convicted vendor list.

## 10.5 SUBCONSULTANTS

10.5.1 CONSULTANT shall utilize the subconsultants identified in the proposal that were a material part of the selection of CONSULTANT to provide the services for this Project. CONSULTANT shall obtain written approval of Contract Administrator prior to changing or modifying the list of subconsultants submitted by CONSULTANT. Where CONSULTANT's failure to use subconsultant results in CONSULTANT's noncompliance with CBE participation goals, such failure shall entitle the affected CBE firm to damages available under this Agreement and under local and state law. The list of subconsultants is provided on Exhibit C-1, Schedule of Subconsultants as attached hereto and made a part hereof.

10.5.2 CONSULTANT shall bind in writing each and every approved subconsultant to the terms stated in this Agreement, provided that this provision shall not, in and of itself, impose the insurance requirements set forth in Article 8 on CONSULTANT's subconsultants.

## 10.6 ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered without the written consent of the other party and CONSULTANT shall not subcontract any portion of the work required by this Agreement except as authorized pursuant to Section 10.5. COUNTY shall have the right to terminate this Agreement, effective immediately, if there is an assignment, or attempted assignment, transfer, or encumbrance, of this Agreement or any right or interest herein by CONSULTANT without COUNTY's written consent.

CONSULTANT represents that all persons delivering the services required by this Agreement have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in the Scope of Services and to provide and perform such services to COUNTY's satisfaction for the agreed compensation.

CONSULTANT shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of CONSULTANT's performance and all interim and final product(s) provided to or on behalf of COUNTY shall be comparable to the best local and national standards.

## 10.7 INDEMNIFICATION OF COUNTY

CONSULTANT shall indemnify and hold harmless COUNTY, 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 CONSULTANT, and other

persons employed or utilized by CONSULTANT in the performance of this Agreement. The provisions of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by Contract Administrator and County Attorney, any sums due CONSULTANT under this Agreement may be retained by COUNTY until all of COUNTY's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by COUNTY.

PURSUANT TO SECTION 558.0035, FLORIDA STATUTES, A DESIGN PROFESSIONAL WHO IS AN INDIVIDUAL EMPLOYEE OR AGENT OF CONSULTANT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE OCCURRING WITHIN THE COURSE AND SCOPE OF THIS PROFESSIONAL SERVICES AGREEMENT.

10.8 REPRESENTATIVE OF COUNTY AND CONSULTANT

10.8.1 The parties recognize that questions in the day-to-day conduct of the Project will arise. The Contract Administrator, upon CONSULTANT's request, shall advise CONSULTANT in writing of one (1) or more COUNTY employees to whom all communications pertaining to the day-to-day conduct of the Project shall be addressed.

10.8.2 CONSULTANT shall inform the Contract Administrator in writing of CONSULTANT's representative to whom matters involving the conduct of the Project shall be addressed.

10.9 ALL PRIOR AGREEMENTS SUPERSEDED

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein; and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.

10.10 AMENDMENTS

No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

#### 10.11 NOTICES

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following as the respective places for giving of notice:

FOR COUNTY:

Director, Broward County Water and Wastewater Engineering Division  
2555 W. Copans Road  
Pompano Beach, FL 33069

FOR CONSULTANT:

Patrick A. Davis, P.E.  
Hazen and Sawyer, P.C.  
4000 Hollywood Blvd., Suite 750N  
Hollywood, FL 33021

#### 10.12 TRUTH-IN-NEGOTIATION CERTIFICATE

CONSULTANT's signature on this Agreement shall act as the execution of a truth-in-negotiation certificate stating that wage rates, unit costs, and any other representations supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which COUNTY determines the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates, unit costs, and any other representations. All such contract adjustments shall be made within one (1) year following the end of this Agreement. For this purpose, the end of the Agreement is the date of final billing or acceptance of the work, whichever is later.

#### 10.13 INTERPRETATION

The language of this Agreement has been agreed to by both parties to express their mutual intent and no rule of strict construction shall be applied against either party hereto. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other



gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a Section or Article of this Agreement, such reference is to the Section or Article as a whole, including all of the subsections of such Section, unless the reference is made to a particular subsection or subparagraph of such Section or Article.

#### 10.14 CONSULTANT'S STAFF

CONSULTANT will provide the key staff identified in their proposal for Project as long as said key staff are in CONSULTANT's employment.

CONSULTANT will obtain prior written approval of Contract Administrator to change key staff. CONSULTANT shall provide Contract Administrator with such information as necessary to determine the suitability of proposed new key staff. Contract Administrator will be reasonable in evaluating key staff qualifications.

If Contract Administrator desires to request removal of any of CONSULTANT's staff, Contract Administrator shall first meet with CONSULTANT and provide reasonable justification for said removal.

#### 10.15 DRUG-FREE WORKPLACE

It is a requirement of COUNTY that it enter into contracts only with firms that certify the establishment of a drug-free work place in accordance with Section 21.31(a) of the Broward County Procurement Code. Execution of this Agreement by CONSULTANT shall also serve as CONSULTANT's required certification that it either has or that it will establish a drug-free work place in accordance with Section 21.31(a) of the Broward County Procurement Code.

#### 10.16 [Intentionally Left Blank.]

#### 10.17 INDEPENDENT CONTRACTOR

CONSULTANT is an independent contractor under this Agreement. Services provided by CONSULTANT shall be subject to the supervision of COUNTY. In providing the services, CONSULTANT or its agents shall not be acting and shall not be deemed as acting as officers, employees, or agents of COUNTY, except as authorized by the Contract Administrator for permitting, licensing, or other regulatory requirements.

#### 10.18 THIRD PARTY BENEFICIARIES

Except as provided under Section 9.7, neither CONSULTANT nor COUNTY intend to directly or substantially benefit a third party by this Agreement. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement.

#### 10.19 CONFLICTS

Neither CONSULTANT nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with CONSULTANT's loyal and conscientious exercise of judgment related to its performance under this Agreement.

CONSULTANT agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against COUNTY in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process, nor shall such persons give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of COUNTY or in connection with any such pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding.

In the event CONSULTANT is permitted to utilize subcontractors to perform any services required by this Agreement, CONSULTANT agrees to prohibit such subcontractors, by written contract, from having any conflicts as within the meaning of this section.

#### 10.20 CONTINGENCY FEE

CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For a breach or violation of this provision, Board shall have the right to terminate this Agreement without liability at its discretion, or to deduct from the Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

#### 10.21 MATERIALITY AND WAIVER OF BREACH

COUNTY and CONSULTANT agree that each requirement, duty, and obligation set forth herein was bargained for at arms-length and is agreed to by the parties in exchange for quid pro quo, that each is substantial and important to the formation of this Agreement and that each is, therefore, a material term hereof.

COUNTY's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

#### 10.22 COMPLIANCE WITH LAWS

CONSULTANT shall comply with all federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations related to this Agreement.

#### 10.23 SEVERANCE

In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless COUNTY or CONSULTANT elects to terminate this Agreement. The election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

#### 10.24 JOINT PREPARATION

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

#### 10.25 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 10 of this Agreement shall prevail and be given effect.

#### 10.26 LAW, JURISDICTION, VENUE, WAIVER OF JURY TRIAL

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. All Parties acknowledge and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. **BY ENTERING INTO THIS AGREEMENT, CONSULTANT AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

#### 10.27 INCORPORATION BY REFERENCE

The attached Exhibits A, B, C, C-1, and D are incorporated into and made a part of this Agreement.

#### 10.28 RE-USE OF PROJECT

COUNTY may, at its option, re-use (in whole or in part) the resulting end-product or deliverables resulting from CONSULTANT's professional services (including, but not limited to, drawings, specifications, other documents, and services as described herein and in Exhibit A, Scope of Services); and CONSULTANT agrees to such re-use in accordance with this provision.

If the Contract Administrator elects to re-use the services, drawings, specifications, and other documents, in whole or in part, prepared for this Project for other projects on other sites, CONSULTANT will be paid a re-use fee to be negotiated between CONSULTANT and COUNTY's Purchasing Negotiator, subject to approval by the proper awarding authority.

Each re-use shall include all Basic Services and modifications to the drawings, specifications, and other documents normally required to adapt the design documents to a new site. This re-use may include preparation of reverse plans, changes to the program, provision for exceptional site conditions, preparation of documents for off-site improvements, provisions for revised solar orientation,

provisions for revised vehicular and pedestrian access, and modifications to building elevations, ornament, or other aesthetic features. In all re-use assignments, the design documents shall be revised to comply with building codes and other jurisdictional requirements current at the time of re-use for the new site location.

The terms and conditions of this Agreement shall remain in force for each re-use project, unless otherwise agreed by the parties in writing.

#### 10.29 PAYABLE INTEREST

10.29.1 Payment of Interest. Except as required by the Broward County Prompt Payment Ordinance, COUNTY shall not be liable for interest for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof CONSULTANT waives, rejects, disclaims and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim based on or related to this Agreement.

10.29.2 Rate of Interest. In any instance where the prohibition or limitations of Section 10.29.1 are determined to be invalid or unenforceable, the annual rate of interest payable by COUNTY under this Agreement, whether as prejudgment interest or for any other purpose, shall be .025 percent simple interest (uncompounded).

#### 10.30 REPRESENTATION OF AUTHORITY

Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full and legal authority.

#### 10.31 MULTIPLE ORIGINALS

Multiple copies of this Agreement may be executed by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

#### 10.32 DOMESTIC PARTNERSHIP REQUIREMENT

CONSULTANT certifies and represents that it will comply with COUNTY's Domestic Partnership Act (Section 16½-157 of the Broward County Code of Ordinances, as amended) during the entire term of the Agreement. The failure of CONSULTANT to comply shall be a material breach of the Agreement, entitling COUNTY to pursue any and all remedies provided under applicable law including, but not limited to (1) retaining all monies due or to become due

CONSULTANT until CONSULTANT complies; (2) termination of the Agreement; and (3) suspension or debarment of CONSULTANT from doing business with COUNTY.

#### 10.33 AUDIT RIGHTS AND RETENTION OF RECORDS

CONSULTANT shall preserve all Contract Records (as defined below) for a minimum period of three (3) years after expiration or termination of this Agreement or until resolution of any audit findings, whichever is longer. Contract Records shall, upon reasonable notice, be open to COUNTY inspection and subject to audit and reproduction during normal business hours. COUNTY audits and inspections pursuant to this Section may be performed by any COUNTY representative (including any outside representative engaged by COUNTY). COUNTY may conduct audits or inspections at any time during the term of this Agreement and for a period of three years after the expiration or termination of the Agreement (or longer if required by law). COUNTY may, without limitation, verify information, payroll distribution, and amounts through interviews, written affirmations, and on-site inspection with CONSULTANT's employees, Subconsultants, vendors, or other labor.

Contract Records include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, drawings, receipts, vouchers and memoranda, and any and all other documents that pertain to rights, duties, obligations or performance under this Agreement. Contract Records include hard copy and electronic records, written policies and procedures, time sheets, payroll records and registers, cancelled payroll checks, estimating work sheets, correspondence, invoices and related payment documentation, general ledgers, insurance rebates and dividends, and any other records pertaining to rights, duties, obligations or performance under this Agreement, whether by CONSULTANT or Subconsultants.

COUNTY shall have the right to audit, review, examine, inspect, analyze, and make copies of all Contract Records at a location within Broward County. COUNTY reserves the right to conduct such audit or review at CONSULTANT's place of business, if deemed appropriate by COUNTY, with seventy-two (72) hours' advance notice. CONSULTANT agrees to provide adequate and appropriate work space. CONSULTANT shall provide COUNTY with reasonable access to the CONSULTANT's facilities, and COUNTY shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Agreement.

CONSULTANT shall, by written contract, require its Subconsultants and subcontractors to agree to the requirements and obligations of this Section.

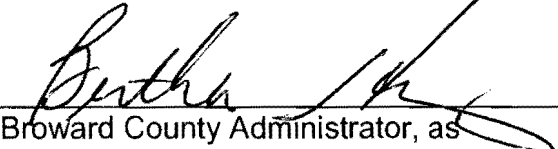
Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for COUNTY's disallowance and recovery of any payment reliant upon such entry. If an audit or inspection in accordance with this Section discloses overpricing or overcharges to COUNTY of any nature by the CONSULTANT or its Subconsultants in excess of five percent (5%) of the total contract billings reviewed by COUNTY, the reasonable actual cost of the COUNTY's audit shall be reimbursed to the COUNTY by the CONSULTANT in addition to making adjustments for the overcharges. Any adjustments and/or payments due as a result of such audit or inspection shall be made within thirty (30) days from presentation of COUNTY's findings to CONSULTANT.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement: BROWARD COUNTY, through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the 10<sup>th</sup> day of February, 2015, and HAZEN AND SAWYER, P.C., signing by and through its Vice President, duly authorized to execute same.

COUNTY

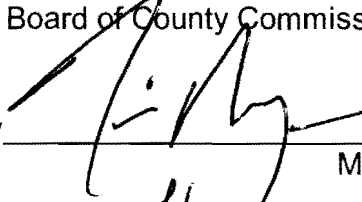
ATTEST:

  
Broward County Administrator, as  
Ex-Officio Clerk of the Broward County  
Board of County Commissioners



Insurance requirements ★  
approved by Broward County  
Risk Management Division

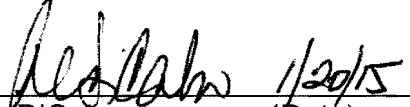
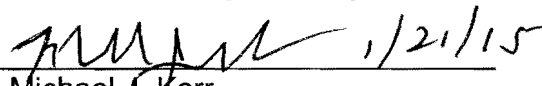
BROWARD COUNTY, by and through  
its Board of County Commissioners

By   
Mayor  
10<sup>th</sup> day of February, 2015

Approved as to form by  
Joni Armstrong Coffey  
Broward County Attorney  
Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600  
Telecopier: (954) 357-7641

By  1/14/15  
Risk Management Division (Date)

Jacqueline A. Binns  
Print Name and Title above  
Risk Insurance and  
Contracts Manager

By  1/20/15  
Al A. DiCalvo (Date)  
Assistant County Attorney  
 1/21/15  
Michael J. Kerr  
Chief Trial Counsel

AAD  
Hazen&Sawyer-EnginSvcFineBubbleAerationBasinConv(RFP-R1061305P1)\_v2Final-011215.a01  
1/12/15  
#13-077.16



AGREEMENT BETWEEN BROWARD COUNTY AND HAZEN AND SAWYER, P.C.,  
FOR CONSULTANT SERVICES FOR ENGINEERING SERVICES FOR FINE BUBBLE  
AERATION BASIN CONVERSION IN BROWARD COUNTY, FLORIDA, RFP #  
R1061305P1

CONSULTANT

ATTEST:

HAZEN AND SAWYER, P.C.

Patrick A. Davis  
Secretary

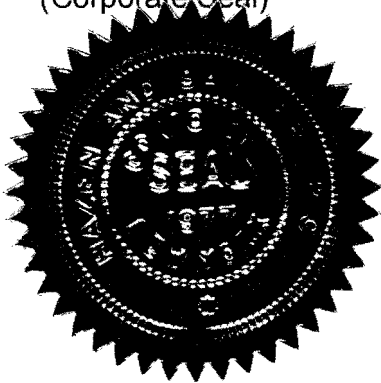
By Albert Muniz  
President/Vice President

Patrick A Davis Vice President  
(Print/Type Name)

Albert Muniz / Vice President  
(Print/Type Name and Title)

(Corporate Seal)

13<sup>th</sup> day of January, 2015.



**EXHIBIT “A”  
SCOPE OF SERVICES  
RFP No. R1061305P1**

**ENGINEERING SERVICES FOR FINE BUBBLE AERATION BASIN CONVERSION  
December 23, 2014**

**PREAMBLE**

The North Regional Wastewater Treatment Plant (NRWWTP) has 20 basins arranged in five modules. Two of the modules are equipped with fine bubble aeration systems (Module E constructed new and Module C retrofitted from mechanical aeration in 2004). The remaining three modules (A, B, and D), are equipped with the original mechanical aerators. The purpose of this Scope is for CONSULTANT to provide the engineering services necessary for design, permitting and engineering services during construction for the conversion of the mechanical aeration systems with Modules A, B, and D of the NRWWTP to fine bubble aeration systems.

**SCOPE OF WORK**

**PHASE I – DESIGN PHASE SERVICES**

**Phase IA – Preliminary Design**

**Task IA.1 – Project Kick-Off Meeting / Design Preference Review Meeting**

CONSULTANT shall conduct a project kick-off meeting within two weeks after receiving the Notice to Proceed. The purpose of this task is to identify project protocols, establish coordination between CONSULTANT and COUNTY staff, and collect available documents from COUNTY on the existing facilities and the functional requirements for the proposed facilities. CONSULTANT shall prepare an agenda prior to the meeting and prepare and electronically distribute meeting minutes following the meeting.

At the kickoff meeting, the CONSULTANT shall also review with COUNTY specific objectives of project, discuss design criteria, as well as confirm specific equipment preferences of COUNTY. Items to be addressed shall include, as applicable:

- Tie-ins for foul air conveyance
- Blower equipment manufacturer preferences
- Diffuser equipment manufacturer preferences
- Modifications to existing plant and ancillary systems/structures (including electrical tie-ins)
- Instrumentation and control preferences
- Electrical system modifications and improvements, including the new Electrical Building AB to house switchgear for the new Module A and B Blower Facility and duct banks. (Module D blower switchgear will be housed in the existing Module E Blower and Electrical Building.)

- Instrumentation and control modifications and improvements interfaced with the COUNTY's existing supervisory control and data acquisition (SCADA) system
- Conceptual construction cost – review of budget assumptions

## **Task IA.2 – Technical Memorandum**

Following completion of the Kickoff Meeting/Design Preference Review Meeting, the CONSULTANT shall prepare a technical memorandum (TM) to summarize the design. The TM shall be based on previously developed documents and shall include a summary of the following:

- COUNTY treatment goals for the fine bubble aeration conversion of Modules A, B and D at the NRWWTP
- An updated process schematic for fine bubble aeration conversion of Modules A, B and D depicting associated equipment, showing interconnections to existing plant piping and/or equipment
- A preliminary site layout showing the approximate locations of proposed major process components, including storm water improvements to accommodate the new Module A and B Blower Facility. Site layout shall also include proposed foul air piping.
- Preliminary equipment layout plans for process equipment.
- A brief discussion of proposed preliminary designs for each major component (blowers, diffusers), including design criteria, materials selections, recommended manufacturers, and specific recommended design features.
- A discussion of the structural basis of design outlining the structural design criteria for the proposed structures. This discussion shall include applicable design standards and building codes, design loads, descriptions and properties of building materials, type of construction, soil and foundation design parameters, existing site conditions, constructability issues (if any), and preliminary structural layouts of the proposed structures.
- A quantification of electrical loading from the intended conversion of Modules A, B and D of the NRWWTP to fine bubble aeration and evaluation of any needed improvements relative to proposed electrical loading.
- A summary of instrumentation and control requirements for the fine bubble aeration conversion of Modules A, B and D relative to the COUNTY's existing systems at NRWWTP.
- An updated opinion of construction costs for the proposed improvements.

To maintain the project within the County's established construction budget, the fine bubble aeration conversions will generally follow the design established under the Module C fine bubble conversion project. Select revisions based on NRWWTP operational experience, particularly with regard to the addition of a fourth aeration zone (drop leg) and targeted automation of anoxic zone aeration control (bumping) may be incorporated into the design.

It is assumed that the blower design will general comply with Alternative 3 Blower Layouts as developed under NRWWTP Cogeneration Project (9111) predesign efforts. This will include a new five blower facility to service Modules A and B, plus two additional blowers installed at the existing Module E Blower Facility to service Module D.

CONSULTANT shall prepare and submit the TM electronically. It is assumed that the COUNTY will review the draft TM submittal, compile all COUNTY comments and meet with CONSULTANT to discuss comments within 14 days of delivery of the draft TM to the COUNTY. Following this review meeting, CONSULTANT shall address COUNTY comments and deliver final TM electronically to the COUNTY. CONSULTANT shall deliver ten copies of the final TM to the COUNTY.

## **Phase IB – Detailed Design**

### **Task IB.1 – Final Design**

CONSULTANT shall prepare contract drawings and specifications for delivery to COUNTY at the 50% and 90% milestones. Each milestone submittal shall be delivered both electronically and as four bound copies to COUNTY. It is assumed that COUNTY will review each submittal for no longer than two weeks. CONSULTANT shall meet with COUNTY to review comments. CONSULTANT shall prepare meeting minutes and submit electronically to COUNTY.

### **Task IB.2 – Probable Construction Cost Estimate**

CONSULTANT shall develop an opinion of probable cost of construction based on the 50% and 90% design milestone stages of the project.

At the 50% design milestone, CONSULTANT shall provide a Class 3 Opinion of Probable construction cost as defined by the Association for Advancement of Cost Engineering International (AACE International). Major equipment costs shall be obtained from approved vendors. The opinion of probable cost shall be provided at the 50% review meeting.

At the 90% design milestone, CONSULTANT shall update the 50% opinion of probable construction cost to be a Class 2 AACE Opinion of Probable Cost. Major equipment costs shall be reviewed with vendors and updated to reflect revisions. The updated opinion of probable cost shall be provide at the 90% review meeting.

### **Task IB.3 - Permitting**

Following the 90% review meeting, CONSULTANT shall incorporate review comments and submit the design documents to the permitting agencies listed below for review or permit issuance as noted.

- Florida Department of Environmental Protection
- Broward County Department of Environmental Protection and Growth Management

## **PHASE II - BID PHASE SERVICES**

### **Phase IIA - Final Contract Documents**

Prepurchasing Review: CONSULTANT shall provide COUNTY with construction contract documents that incorporate final comments received from COUNTY during the 90% design review meeting, information received from permitting agencies, and COUNTY's front end documents. CONSULTANT shall submit specifications and drawings (as .pdfs) electronically for COUNTY final check review.

**Purchasing Review:** Following receipt of prepurchasing review comments from COUNTY, CONSULTANT shall revise documents and resubmit to COUNTY electronically for purchasing review.

**Final Bid Set:** Following receipt of purchasing review comments from COUNTY, CONSULTANT shall revise documents and resubmit to COUNTY electronically for bidding.

## **Phase IIB - Bidding and Award**

CONSULTANT shall assist the COUNTY in bidding and award of the contract. CONSULTANT shall attend one prebid meeting and one site visit prior to bid with COUNTY and prospective bidders.

CONSULTANT shall provide timely responses to the inquiries of prospective bidders by addenda. These queries shall be transmitted electronically to the CONSULTANT by COUNTY. CONSULTANT shall provide information electronically to COUNTY for incorporation into addenda by COUNTY.

COUNTY shall forward the lowest responsive bid to CONSULTANT. CONSULTANT shall assist in the evaluation of the bids for technical compliance and shall prepare a letter documenting the review to the COUNTY in regard to the award of the contract. CONSULTANT shall forward the evaluation form, as provided by the COUNTY, to up to six references for the CONTRACTOR for completion as reference checks. Non-technical bid requirements shall be evaluated by COUNTY. This Scope of Services does not include time for CONSULTANT to assist COUNTY in the event of a bid protest.

In addition, CONSULTANT shall provide limited procurement assistance related to two major pieces of equipment, blowers and diffusers. CONSULTANT shall develop a cost evaluation TM for the COUNTY to utilize in price negotiations for the diffusers. COUNTY will utilize previously developed TM for the price negotiations for the blowers.

CONSULTANT shall prepare five sets of as-bid sets for execution. As-bid sets shall include the addendum as bid inserted into the initial portion of the contract documents as well as the contract and specification as compiled during bidding.

## **PHASE III – CONSTRUCTION PHASE SERVICES**

### **Phase IIIA – Assistance to Contractor for Procuring Agency Permit and Approval**

The following services shall be provided by CONSULTANT between the issuance of Notice to Proceed 1 and Notice to Proceed 2.

**Building Department:** CONSULTANT shall provide assistance to the Contractor for procuring the Building Department permit from the City of Pompano Beach. CONSULTANT shall participate in up to two meetings with the Building Department to resolve outstanding issues. CONSULTANT shall address up to two sets of comments from the Building Department and prepare drawing modifications in response to these comments as required.

**Florida Power and Light:** CONSULTANT shall provide assistance for coordinating the activities of Florida Power and Light if required during construction. Services shall be limited to providing required electrical design drawings for FPL and attending one meeting on site to meet with COUNTY, FPL, and other parties involved in the construction.

## **Phase IIIB – Engineering Services During Construction**

### **Task IIIB.1- Construction Administration**

CONSULTANT shall provide construction administration services during the construction phase, including:

General Management – CONSULTANT shall provide necessary services for the management of the project during the construction phase. Such management activities shall include coordination and general correspondence with the COUNTY, Contractor and subcontractors as well as handling and processing of submittals. This task also includes requests for contract interpretations and clarifications required by the Contractor which do not result in the submittal of formal Requests for Information.

Contract Interpretations and Clarifications – CONSULTANT shall log requests for information and issue necessary technical interpretations and clarifications of the Contract Documents in a timely manner.

Change Orders - CONSULTANT shall provide technical input for requests for routine project cost and/or schedule changes from the Contractor. Changes may be the result of unforeseen conditions or interferences arising during routine progress of work or additional improvements requested by COUNTY after the project bid date. CONSULTANT shall evaluate the impact of the change request in terms of project cost and schedule. CONSULTANT shall prepare a recommendation of the change order request and if accepted, a statement noting that the requested cost / schedule impacts are fair and reasonable. CONSULTANT'S analysis of the change request shall be forwarded to COUNTY for processing.

### **Task IIIB.2 – Submittal Review**

CONSULTANT shall perform the submittal review tasks detailed below.

Pay Requests – The CONSULTANT shall review applications for payment and accompanying data, determine the amounts owed, and recommend approval of payments due the Contractor. It is understood that the CONSULTANT's recommendation of any payment requested in an application for payment constitutes a representation by the CONSULTANT to the COUNTY, based on CONSULTANT's on-site observations of construction in progress as an experienced and qualified professional and on the CONSULTANT's review of the application for payment and the accompanying data and schedules, that construction has progressed to the point indicated. In addition, it is understood that to the best of the CONSULTANT's knowledge, information and belief, the quality of construction is in substantial accordance with the Contract Documents; subject to an evaluation of construction upon substantial completion, to the results of any subsequent tests called for in the Contract Documents, and any qualifications stated in the recommendation; and that the Contractor is due the amount recommended.

Shop Drawings – CONSULTANT shall log, track, review and process shop drawings and any other submittals which the Contractor is required to submit within 21 working days of receipt of the submittal except for special items requiring longer review time if so noted in

the Contract Documents. The review shall be for conformance with the design intent and compliance with the information presented in the Contract Documents. CONSULTANT shall determine the acceptability of materials and equipment proposed by the Construction Contractor.

### **Task IIIB.3 – Construction Meetings**

CONSULTANT shall attend meetings as follows:

Preconstruction Conference – CONSULTANT's Resident Project Representative (RPR) shall conduct a preconstruction conference attended by representatives of COUNTY and by the construction contractor. CONSULTANT shall provide the attendees with a written summary of the meeting which will be distributed electronically.

Construction Progress Meetings – Twice per month, CONSULTANT's RPR shall conduct a progress meeting with the Construction Contractor and the COUNTY to review project status and identify issues that may affect the project schedule. CONSULTANT shall provide COUNTY with a written summary of each progress meeting which will be distributed electronically to the attendees, including updated versions of submittal and RFI logs.

Pre-Pour Concrete Conferences – CONSULTANT's RPR shall conduct pre-pour concrete conferences attended by the construction contractor and representatives of COUNTY. CONSULTANT shall provide the attendees with a written summary of the meetings which will be distributed electronically.

### **Task IIIB.4 – Field Observation Services**

CONSULTANT shall provide a Resident Project Representative (RPR) to provide field observation services of the proposed Work. The RPR will perform the following duties and responsibilities:

- Attend pre-construction conference, progress meetings and other job conferences.
- Serve as the construction liaison, working primarily with the Contractor(s) superintendent(s) and plant staff.
- Assist in obtaining additional details or information when required at the job site.
- Conduct on-site observations of construction in progress (including specialized field tests) to assist in determining if construction is proceeding in substantial accordance with the Contract Documents.
- Inform the Contractor whenever the RPR believes that construction is unsatisfactory, faulty or defective, does not conform to the Contract Documents, does not meet the requirements of any inspections, tests or approval required to be made, or has been damaged before final payment.
- Immediately inform the Contractor upon the commencement of any construction requiring a submittal, if the submittal has not been accepted.
- Visually review suitability and method of storage of materials, equipment and supplies delivered to the construction site.
- Verify that operating and maintenance procedures are available to the COUNTY before equipment start-up and operator training is conducted by the Contractor.

- Observe, record, and report appropriate details relative to testing and start-up procedures.
- Prepare daily reports and maintain a daily diary or log book, recording hours on the job site, weather conditions, data pertaining to questions of extras or deductions, list of visiting officials and representatives of manufacturers, fabricators, suppliers and distributors, daily activities, decisions, observations in general and specific observations in more detail as in observing test procedures. Record names, addresses and telephone numbers of Contractor, subcontractor and major supplier personnel. Provide electronically to COUNTY on a monthly basis.
- Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project(s), and record the outcome of these inspections in the daily report.
- Review applications for payment with the Contractor for accuracy, back-up detail and completeness.
- During the course of construction, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by the Contractor are applicable to the items actually installed.
- Before issuance of a determination of substantial completion, prepare a list of items requiring completion or correction, in concert with the COUNTY. Participate in the final inspection.
- Coordinate with the COUNTY and Contractor for necessary shutdowns and interruptions of COUNTY facilities.

It is important to note that in performance of the duties noted herein, the RPR shall not:

- Undertake any of the responsibilities of Contractor or its subcontractors, nor direct any of their work.
- Advise on or issue directions pertaining to any aspect of the means, method, techniques, sequences or procedures of construction unless such is specifically called for in the Contract Documents.
- Advise on, or issue directions about, safety precautions and programs related to the Contractor's Work.
- Approve any interruptions or modification of COUNTY's facilities without the approval of COUNTY.

#### **Task IIIB.5 – On-Site Startup Services**

CONSULTANT shall monitor startup activities and shall participate during the startup phase for each treatment module (A, B, and D). Participation shall include but not be limited to: blower startup, control valve startup, signal loop testing including electrical and instrumentation terminations; review of as-built documentation prior to startup; instrument calibrations; coordination of new signals with existing SCADA system; and process tuning during startup.

#### **Task IIIB.6 - Specialty Discipline Site Reviews**

CONSULTANT shall undertake periodic site reviews sufficient for all Engineers of Record to certify completion of the project for each discipline.



### **Task IIIB.7 – Project Closeout**

Upon receiving notice from the Contractor that the project is substantially complete, CONSULTANT, in conjunction with appropriate COUNTY staff, shall develop a “punch list” of the project. The “punch list” shall include items needing completion or correction prior to consideration of final acceptance. CONSULTANT shall develop the list with assistance from COUNTY. The list shall be forwarded to the Contractor by the COUNTY. Upon notification from the Contractor that all remaining “punch list” items have been resolved, CONSULTANT, in conjunction with appropriate COUNTY staff, shall perform a final review of the finished project. Based on successful completion of all outstanding work items by the Contractor, CONSULTANT shall assist in closing out the construction contract by certifying final construction to jurisdictional agencies. Final certifications include the following:

- DEP Form 62-620.910(12), Notification of Completion of Construction for Wastewater Facilities or Activities.

### **Task IIIB.8 – Record Drawings**

CONSULTANT shall prepare and distribute to the COUNTY within thirty days of the date of receipt of marked-up, red-lined field drawings from the Contractor and COUNTY, two sets of 22” x 34” signed and sealed prints. CONSULTANT shall also deliver the AutoCAD version of the record drawings electronically. The record drawings shall incorporate those changes made during the construction process, based on the marked-up prints, drawings and other data furnished by the Contractor and COUNTY to CONSULTANT.

### **Task IIIB.9 – O&M Manual Updates**

CONSULTANT shall prepare one Operation and Maintenance Manual (O&M) update for all of the new facilities and modifications constructed under this project, as applicable, in a format acceptable to COUNTY and as necessary to meet typical FDEP requirements for submittal in support of an operation permit application. Ten bound sets of the O&M Manual update shall be provided to COUNTY. An electronic copy shall also be provided. No revisions or changes to the existing O&M Manual are included under this task. The format of the new manual shall be consistent with the existing manual.

## **PHASE IV – OPTIONAL ADDITIONAL SERVICES**

CONSULTANT shall provide additional services, as identified by the Contract Administrator, which are related to but beyond the level of effort of the scope of work outlined above. Services provided under this Phase shall be billed on an hourly basis up to the specified amount as authorized by the Contract Administrator, subject to the limits set in the Agreement. Services performed under this Phase must be initiated by a separate written Notice to Proceed issued by the Contract Administrator.

## PROJECT SCHEDULE

The estimated schedule for the work performed under this scope of services is as follows.

Work Element	Approximate Schedule	Comments
Phase I – Design Phase Services	365 calendar days from NTP	Includes 14 days for County review of TM, 14 days for 50% design review and 14 days for 90% design review; also includes 30 days following 90% design for permitting review
Phase II – Bidding Phase Services	365 calendar days after Phase I Completion	Includes 60 days for Prepurchasing review/front end preparation by COUNTY, 60 days for purchasing review, and 180 days for bidding and award
Phase III – Construction Phase Services	1305 calendar days after Phase II completion	Includes 180 days between Contractor's NTP1 and NTP2 for contractor to obtain permits, submit shop drawings, etc. and 120 days at end of project for processing of contractor's final change order and final payment application
Phase IV – Optional Additional Services		As may be needed throughout project duration

### Key Assumptions

- Days are defined as calendar days.
- A single construction bid package shall be prepared with no owner furnished equipment.
- Additional emergency generator capacity is not required and will not be provided under this project.
- There is no existing soil contamination in the area to be impacted by construction.
- COUNTY will provide a single version of their Front End documentation that can be modified electronically. Any changes to the standard language or format of the Front End required prior to Bid will be completed by COUNTY and delivered to CONSULTANT electronically.
- Public relations with neighborhood residents, businesses and homeowner's associations are not included.
- The Construction Period is anticipated to last approximately 33 months from the Contractor's construction Notice-to-Proceed to Substantial Completion. The level of

effort (as referenced in Article 3, Section 3.2 of the Agreement) for RPR services on-site is calculated to be a total of 5,164 hours.

- CONSULTANT shall not be responsible for the acts or omissions of any Construction Contractor, any construction subcontractor or any other person (except CONSULTANT's own employees, subconsultants or other agents) at the project site.
- CONSULTANT shall not be responsible for Construction Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto.
- The project schedule is calculated based on 14 days for COUNTY review and contractor project initiation.
- The level of effort (as referenced in Article 3, Section 3.2 of the Agreement) for this design is based on the compatible manufacturer for the existing fine bubble diffuser equipment and for the existing multistage centrifugal blower equipment.
- The level of effort (as referenced in Article 3, Section 3.2 of the Agreement) for the submittal review subtask is calculated to be a total of 342 submittals (includes resubmittals).

**Professional Services Agreement**

EXHIBIT B

SALARY COSTS

Project No: RFP #R1061305P1  
Project Title: Engineering Services for Fine Bubble Aeration Basin Conversion  
Consultant/  
SubConsultant  
Name: Hazen and Sawyer, PC

TITLE	MAXIMUM HOURLY RATE (\$/HR)	X	MULTIPLIER	=	MAXIMUM BILLING RATE (\$/HR)
Vice President	\$81.78		3.07		\$251.08
Senior Associate	\$80.71		3.07		\$247.79
Associate	\$66.73		3.07		\$204.86
Senior Principal Engineer	\$58.66		3.07		\$180.08
Principal Engineer	\$51.67		3.07		\$158.61
Assistant Engineer	\$56.27		3.07		\$172.75
Senior Principal Scientist	\$44.18		3.07		\$135.62
Principal Scientist	\$44.02		3.07		\$135.13
Scientist	\$24.08		3.07		\$73.93
Senior Principal Designer	\$57.62		3.07		\$176.89
Principal Designer	\$43.45		3.07		\$133.41
Senior Designer	\$33.50		3.07		\$102.85
Principal Graphic Designer	\$36.90		3.07		\$113.28
Technical Typist	\$27.06		3.07		\$83.09
Technician	\$36.65		3.07		\$112.53

Multiplier of 3.07 is calculated as follows:

OVERHEAD = HOURLY RATE X OVERHEAD (123.82%)

FRINGE (\$/HR) = HOURLY RATE X FRINGE (62.68%)

PROFIT (\$/HR) = (HOURLY RATE+ OVERHEAD+ FRINGE) X PROFIT (7.24%)

MULTIPLIER = (HOURLY RATE + OVERHEAD + FRINGE +  
PROFIT) / HOURLY RATE

3.07

**Professional Services Agreement**

EXHIBIT B

SALARY COSTS

Project No: RFP No. R1061305P1  
Project Title: Engineering Services for Fine Bubble Aeration Basin Conversion

Consultant/  
SubConsultant Name Hazen and Sawyer, PC/ **Ghislaine Carr, PE**

---

TITLE	FIXED HOURLY RATE (\$/HR)
Senior Engineer	\$80.00

Note: These rates were established in accordance with Section 5.2.5 of the Agreement, utilizing previously established rates with other municipalities for similar engineering services.

## Professional Services Agreement

### EXHIBIT B

#### SALARY COSTS

Project No: RFP #R1061305P1  
 Project Title: Engineering Services for Fine Bubble Aeration Basin Conversion  
 Consultant/  
 SubConsultant  
 Name: Hazen and Sawyer, PC/Metco Southeast, LLC.

TITLE	MAXIMUM HOURLY RATE (\$/HR)	X	MULTIPLIER	=	MAXIMUM BILLING RATE (\$/HR)
General Manager	\$70.35		2.79		\$196.28
Associate	\$56.70		2.79		\$158.19
Senior Project Engineer	\$39.90		2.79		\$111.32
Engineer	\$33.60		2.79		\$93.74
Sr. Designer/Drafter	\$38.00		2.79		\$106.02
Designer/Drafter	\$29.40		2.79		\$82.03
Senior Administrative Assistant	\$27.30		2.79		\$76.17
Technician	\$21.00		2.79		\$58.59

Multiplier of 2.79 is calculated as follows:

OVERHEAD = HOURLY RATE X OVERHEAD (108.10%)

FRINGE (\$/HR) = HOURLY RATE X FRINGE (41.70%)

PROFIT (\$/HR) = (HOURLY RATE+ OVERHEAD+ FRINGE) X PROFIT (11.50%)

MULTIPLIER = (HOURLY RATE + OVERHEAD + FRINGE +  
PROFIT) / HOURLY RATE

2.79

## Professional Services Agreement

### EXHIBIT B

#### SALARY COSTS

Project No: RFP #R1061305P1  
 Project Title: Engineering Services for Fine Bubble Aeration Basin Conversion  
 Consultant/  
 SubConsultant  
 Name: Hazen and Sawyer, PC/Craven Thompson & Associates, Inc.

TITLE	MAXIMUM HOURLY RATE (\$/HR)	X	MULTIPLIER	=	MAXIMUM BILLING RATE (\$/HR)
Principal	\$89.28		2.80		\$249.98
Principal Engineer	\$71.00		2.80		\$198.80
Senior Supervising Engineer	\$66.50		2.80		\$186.20
Director of Construction Manager	\$59.00		2.80		\$165.20
Senior Engineer	\$52.00		2.80		\$145.60
Project Engineer	\$41.00		2.80		\$114.80
Engineering Designer	\$39.00		2.80		\$109.20
Senior Technician	\$31.50		2.80		\$88.20
Clerical	\$27.00		2.80		\$75.60
Principal Land Surveyor	\$53.00		2.80		\$148.40
Professional Land Surveyor	\$44.00		2.80		\$123.20
Project Surveyor	\$39.00		2.80		\$109.20
2-Man Survey Crew	\$45.00		2.80		\$126.00
3-Man Survey Crew	\$62.50		2.80		\$175.00
Senior Field Representative	\$40.00		2.80		\$112.00

Multiplier of 2.80 is calculated as follows:

OVERHEAD = HOURLY RATE X OVERHEAD (103.34%)

FRINGE (\$/HR) = HOURLY RATE X FRINGE (51.00%)

PROFIT (\$/HR) = (HOURLY RATE+ OVERHEAD+ FRINGE) X PROFIT (10.00%)

MULTIPLIER = (HOURLY RATE + OVERHEAD + FRINGE +  
PROFIT) / HOURLY RATE

2.80

**Professional Services Agreement**

EXHIBIT B

SALARY COSTS

Project No: RFP #R1061305P1  
 Project Title: Engineering Services for Fine Bubble Aeration Basin Conversion  
 Consultant/  
 SubConsultant  
 Name: Hazen and Sawyer, PC/CES Consultants, Inc.

TITLE	MAXIMUM HOURLY RATE (\$/HR)	X	MULTIPLIER	=	MAXIMUM BILLING RATE (\$/HR)
Principal	\$85.00		2.20		\$187.00
Principal Engineer	\$70.00		2.20		\$154.00
Project Manager	\$60.00		2.20		\$132.00
Senior Project Engineer	\$55.00		2.20		\$121.00
Project Engineer	\$45.00		2.20		\$99.00
Engineer	\$40.00		2.20		\$88.00
Staff Engineer	\$35.00		2.20		\$77.00
CADD Technician	\$35.00		2.20		\$77.00
Construction Manager	\$72.00		2.20		\$158.40
Resident Engineer	\$55.00		2.20		\$121.00
Inspector	\$45.00		2.20		\$99.00
Manager	\$65.00		2.20		\$143.00
Scheduler	\$45.00		2.20		\$99.00
Estimator	\$45.00		2.20		\$99.00
Project Administrator	\$30.00		2.20		\$66.00
Clerk	\$25.00		2.20		\$55.00

Multiplier of 2.20 is calculated as follows:

OVERHEAD = HOURLY RATE X OVERHEAD (70.24%)

FRINGE (\$/HR) = HOURLY RATE X FRINGE (29.94%)

PROFIT (\$/HR) = (HOURLY RATE+ OVERHEAD+ FRINGE) X PROFIT (10.00%)

MULTIPLIER = (HOURLY RATE + OVERHEAD + FRINGE + PROFIT) /  
HOURLY RATE

2.20





## Exhibit "C" - Letter of Intent CBE

### OFFICE OF ECONOMIC AND SMALL BUSINESS DEVELOPMENT

**LETTER OF INTENT BETWEEN PROPOSER/OFFEROR  
AND COUNTY BUSINESS ENTERPRISE (CBE) SUBCONTRACTOR/SUPPLIER**  
(Form to be completed and signed for each CBE firm)

**Solicitation Number:**   **Project Title:**

R1061305P1

Engineering Services for Fine Bubble Aeration Basin Conversion

**Proposer/Offeror Name:**

Hazen and Sawyer, P.C.

Address: 4000 Hollywood Boulevard, 750N City: Hollywood State: Florida Zip: 33021

Authorized Representative: Patrick A. Davis, PE Phone: (954) 987-0066

**CBE Subcontractor/Supplier Name:** CES Consultants, Inc.

Address: 14361 Commerce Way, Suite 103 City: Miami Lakes State: FL Zip: 33016

Authorized Representative: Rudy M. Ortiz, PE Phone: (305) 827-2220

A. This is a letter of intent between the proposer/offeror on this project and a CBE firm for the CBE to perform subcontracting work on this project.

B. By signing below, the proposer/offeror is committing to utilize the above-named CBE to perform the work described below.

C. By signing below, the above-named CBE is committing to perform the work described below.


D. By signing below, the proposer/offeror and CBE affirm that if the CBE subcontracts any of the work described below, it may only subcontract that work to another CBE.

#### Work to be performed by CBE Firm

Description	NAICS*	CBE Contract Amount†	CBE Percentage of Total Project Value
Testing Services	541380	TBD	2%

**AFFIRMATION:** I hereby affirm that the information above is true and correct.

**CBE Subcontractor/Supplier Authorized Representative**

  
(Signature) Rudy M. Ortiz, PE


President/CEO

(Title)

1/20/2014

(Date)

**Proposer/Offeror Authorized Representative**

  
(Signature) Patrick A. Davis, PE

Vice President

(Title)

01/20/2014

(Date)

\* Visit <http://www.census.gov/eos/www/naics/> to search. Match type of work with NAICS code as closely as possible.

† To be provided only when the solicitation requires that proposer/offer include a dollar amount in its bid-offer.

*In the event the proposer/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.*

CBE Letter of Intent July 2012



## Exhibit "C" - Letter of Intent CBE

### OFFICE OF ECONOMIC AND SMALL BUSINESS DEVELOPMENT

#### LETTER OF INTENT BETWEEN PROPOSER/OFFEROR AND COUNTY BUSINESS ENTERPRISE (CBE) SUBCONTRACTOR/SUPPLIER

(Form to be completed and signed for each CBE firm)

Solicitation Number: Project Title:

R1061305P1

Engineering Services for Fine Bubble Aeration Basin Conversion

Proposer/Offeror Name:  
Hazen and Sawyer, P.C.

Address: 4000 Hollywood Boulevard, 750N City: Hollywood State: Florida Zip: 33021

Authorized Representative: Patrick A. Davis, PE Phone: (954) 987-0066

CBE Subcontractor/Supplier Name: Metco Southeast, LLC

Address: 305 South Andrews Avenue, Suite 509 City: Ft. Lauderdale State: Florida Zip: 33301

Authorized Representative: Lakshman Thallapally, PE Phone: (954) 523-1010

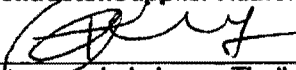

- A. This is a letter of intent between the proposer/offeror on this project and a CBE firm for the CBE to perform subcontracting work on this project.
- B. By signing below, the proposer/offeror is committing to utilize the above-named CBE to perform the work described below.
- C. By signing below, the above-named CBE is committing to perform the work described below.
- D. By signing below, the proposer/offeror and CBE affirm that if the CBE subcontracts any of the work described below, it may only subcontract that work to another CBE.

#### Work to be performed by CBE Firm

Description	NAICS*	CBE Contract Amount†	CBE Percentage of Total Project Value
Electrical Engineering	541330	TBD	20%

**AFFIRMATION:** I hereby affirm that the information above is true and correct.

**CBE Subcontractor/Supplier Authorized Representative**

(Signature) 	(Title) <u>G.M.</u>	(Date) <u>1/20/2014</u>
<b>Proposer/Offeror Authorized Representative</b>		
(Signature) 	(Title) <u>Vice President</u>	(Date) <u>01/20/2014</u>
<b>Patrick A. Davis, PE</b>		

\* Visit <http://www.census.gov/eos/www/naics/> to search. Match type of work with NAICS code as closely as possible.

† To be provided only when the solicitation requires that proposer/offer include a dollar amount in its bid-offer.

In the event the proposer/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.

CBE Letter of Intent July 2012

**Professional Services Agreement**

EXHIBIT C-1

SCHEDULE OF SUBCONSULTANTS

Project No: RFP #R1061305P1  
Project Title: Engineering Services for Fine Bubble Aeration Basin Conversion  
Consultant/  
SubConsultant  
Name: Hazen and Sawyer, PC

---

No.	Firm Name	Discipline
1	Ghislaine Carr, PE	Process mechanical design assistance
2	Metco Services Southeast, LLC	HVAC, Plumbing and portions of electrical design
3	Craven Thompson & Associates, Inc	Civil design
4	CES Consultants, Inc.	Structural design assistance, testing services

EXHIBIT D  
Insurance Requirement

Commercial General Liability Insurance

Combined single limit for bodily injury and property damage:

\$1,000,000.00 (One Million Dollars) minimum limits per occurrence

\$2,000,000.00 (Two Million Dollars) minimum limits per aggregate

Business Automobile Liability Insurance

Combined single limit for bodily injury and property damage:

\$1,000,000.00 (One Million Dollars) minimum limits per occurrence

Workers' Compensation Insurance

In compliance with state statutes and all federal laws

Operations in Florida comply with Chapter 440 FSS as amended

Employer's Liability Insurance

\$1,000,000.00 (One Million Dollars) minimum limits each accident

Professional Liability Insurance

\$1,000,000.00 (One Million Dollars) per occurrence

Extended reporting of two (2) years is required if coverage is on a claims-made basis