

**SECOND AMENDMENT TO AGREEMENT BETWEEN
BROWARD COUNTY AND WSP USA INC. FOR CONSULTANT SERVICES FOR PORT EVERGLADES
BY-PASS ROAD (RFP/RLI # PNC2119973P1)**

This Second Amendment ("Second Amendment") is entered into by and between Broward County, a political subdivision of the State of Florida ("County"), and WSP USA Inc., a foreign corporation registered to transact business in the State of Florida ("Consultant") (collectively referred to as the "Parties").

RECITALS

A. The Parties entered into that certain agreement between Broward County and WSP USA Inc. for consultant services for Port Everglades By-pass Road, dated March 15, 2021 (the "Original Agreement"), to provide consultant services for design of a new two-lane roadway known as Port Everglades By-Pass Road, including new bridges, entrance relocation, and related intersection work.

B. The Parties entered into a First Amendment to the Original Agreement, dated February 2, 2023 (the "First Amendment"). The Original Agreement, as amended by the First Amendment, is hereinafter referred to as the "Agreement."

C. The Parties now desire to further amend the Agreement to update the scope of services to add post design services, increase the maximum amount not-to-exceed compensation to account for the post design services, and update the standard terms and conditions in the Agreement.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The above Recitals are true and correct and are incorporated herein by reference. All capitalized terms not expressly defined within this Second Amendment shall retain the meaning ascribed to such terms in the Agreement.

2. Amendments to the Agreement made pursuant to this Second Amendment are indicated herein by use of strikethroughs to indicate deletions and bold/underlining to indicate additions. Except as modified herein, all remaining terms and conditions of the Agreement shall remain in full force and effect.

3. Sections 5.1.1, 5.1.4, and 5.1.7 of the Agreement are amended as follows:

5.1.1 **Maximum Amount Not-To-Exceed Compensation.** For Basic Services identified in Exhibits ~~A~~, ~~and A-1~~, ~~and A-2~~ as payable on a "Maximum Amount Not-To-Exceed" basis, compensation to Consultant shall be based upon the Salary Costs as described in Section 5.2 up to a maximum not-to-exceed amount of ~~\$2,762,463.09~~ **\$3,511,334.27.**

5.1.4 Reimbursable Expenses. County will reimburse authorized Reimbursable Expenses as defined in Section 5.3 up to a maximum not-to-exceed amount of ~~\$61,068.00~~ **\$94,418.00**. Unused amounts of those monies shall be retained by County.

5.1.7 Phased Payments. Payments for Basic Services shall be paid out pursuant to the Project phasing as specified in Exhibits A, ~~and A-1, and A-2~~. Any funds for a particular phase can be allocated to other phases, subject to approval by the Contract Administrator.

<u>Project Phase</u>	<u>Estimated Fee</u>
Phase I Submittal:	\$1,003,351.70
Phase II Submittal:	\$728,071.75
Phase III Submittal:	\$606,726.47
Phase IV Submittal:	\$424,313.17
<u>Phase V:</u>	<u>\$748,871.18</u>
Total Basic Services Fee (MAXIMUM NOT-TO-EXCEED)	<u>\$2,762,463.09</u> <u>\$3,511,334.27</u>

4. Sections 5.8 and 11.1 of the Agreement are amended as follows:

5.8 Withholding by County; Overcharges. Notwithstanding any provision of this Agreement to the contrary, County may withhold payment, in whole or in part, (a) in accordance with Applicable Law, or (b) to the extent necessary to protect itself from loss on account of (i) inadequate or defective work that has not been remedied or resolved in a manner satisfactory to the Contract Administrator, or (ii) Consultant's failure to comply with any provision of this Agreement. The amount withheld shall not be subject to payment of interest by County. ~~If In the event of an audit reveals overcharges~~ **overcharge** of any nature by Consultant in excess of five percent (5%) of the total amount billed in the invoice where the overcharge occurred, Consultant must refund the overbilled amount and pay liquidated damages in the amount of fifteen percent (15%) of the overbilled amount within ~~forty-five (45)~~ **thirty (30)** days after demand by County as just compensation for damages incurred by County due to the overbilling, including, but not limited to, County's administrative costs, ~~and~~ **and** loss of potential investment returns, ~~and~~ **(including interest)**.

11.1 Contract Administrator Authority. The Contract Administrator is authorized to coordinate and communicate with Consultant to manage and supervise the performance of this Agreement. Consultant acknowledges that the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise materially modify the Scope of Services except as expressly set forth in this Agreement or, to the extent applicable, in the Broward County Procurement Code. **Unless expressly stated otherwise in this Agreement or otherwise set forth in an applicable provision of the Broward County Procurement Code, Broward County Code of Ordinances, or Broward County**

Administrative Code, the Contract Administrator or designee may exercise ministerial authority in connection with the day-to-day management of this Agreement provided that such instructions and determinations do not change the Scope of Services. ~~The Contract Administrator may designate one or more County employees with authority pertaining to day to day Project management or activities. Consultant shall notify Contract Administrator in writing of Consultant's representative(s) to whom matters involving the Project shall be addressed.~~ The Contract Administrator may also approve in writing minor modifications to the Scope of Services that do not increase the total cost to County or waive any rights of County. **Consultant shall notify Contract Administrator in writing of Consultant's representative(s) to whom matters involving the Project shall be addressed.**

5. Section 11.5 of the Agreement is amended, in part, as follows:

11.5 Audit Rights and Retention of Records. Consultant and all Subconsultants 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. This article shall survive any dispute or litigation between the Parties, and Consultant expressly acknowledges and agrees to be bound by this article throughout the course of any dispute or litigation with County. 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 (3) years after the expiration or termination of this 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.

...

Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for County's disallowance and recovery of any payment upon such entry. If an audit or inspection ~~in accordance with this section~~ reveals overpricing or overcharges to County of any nature by Consultant or its Subconsultants in excess of five percent (5%) of the total contract billings reviewed by County, ~~in addition to making~~ **Consultant shall make** adjustments for the overcharges, ~~Consultant shall and pay the reasonable cost of County's audit~~ **liquidated damages pursuant to Section 5.8.** Any adjustments or payments due as a result of such audit or inspection shall be made within thirty (30) days after presentation of County's findings to Consultant.

6. Exhibits A and A-1 of the Agreement are hereby supplemented by Exhibit A-2, attached hereto and incorporated into and made part of the Agreement.

7. In the event of any conflict or ambiguity between this Second Amendment and the Agreement, the Parties agree that this Second Amendment shall control. The Agreement, as amended herein by this Second Amendment, incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein, and the Parties agree that there are no commitments, agreements, or understandings concerning the subject matter hereof that are not contained in the Agreement as amended in this Second Amendment. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

8. Preparation of this Second Amendment has been a joint effort of the Parties 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.

9. Consultant acknowledges that through the date this Second Amendment is executed by Consultant, Consultant has no claims or disputes against County with respect to any of the matters covered by the Agreement.

10. The effective date of this Second Amendment shall be the date of complete execution by the Parties.

11. This Second Amendment may be executed in counterparts, whether signed physically or electronically, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

(The remainder of this page is blank.)

IN WITNESS WHEREOF, the Parties have made and executed this Second Amendment: 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 ____ day of _____, 20__, and WSP USA INC., signing by and through its Local Business Leader, duly authorized to execute same.

County

ATTEST:

BROWARD COUNTY, by and through
its Board of County Commissioners

Broward County Administrator, as
ex officio Clerk of the Broward County
Board of County Commissioners

By _____
Mayor/Vice-Mayor
____ day of _____, 20__

Approved as to form by
Andrew J. Meyers
Broward County Attorney
115 South Andrews Avenue, Suite 423
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600

By Al A DiCalvo Digitally signed by Al A DiCalvo
Date: 2024.02.22 12:09:28
-05'00'
Al A DiCalvo (Date)
Senior Assistant County Attorney

By Michael Kerr Digitally signed by Michael
Kerr
Date: 2024.02.22 12:30:35
-05'00'
Michael J. Kerr (Date)
Deputy County Attorney

AAD
Second Amend to WSP (PE ByPassRoad)_v2Final-2024-0206
2/6/24

**SECOND AMENDMENT TO AGREEMENT BETWEEN
BROWARD COUNTY AND WSP USA INC. FOR CONSULTANT SERVICES FOR PORT EVERGLADES
BY-PASS ROAD (RFP/RLI # PNC2119973P1)**

Consultant

ATTEST:

WSP USA INC.

Secretary

(Print Name)

(Seal)

Digitally signed by
Sandy.Amores@wsp.com
DN: cn=Sandy.Amores@wsp.com
Date: 2024.02.13 10:18:06 -05'00'

By _____
Authorized Signer
Santiago Amores,
Local Business Leader

(Print Name and Title)

13 day of February, 20 24.

OR

WITNESS:
Yamila
Hernandez

Signature

Digitally signed by Yamila
Hernandez
DN: cn=Yamila Hernandez, c=US,
o=WSP USA INC.,
email=yamila.hernandez@wsp.com
Date: 2024.02.13 13:13:27 -05'00'

Yamila Hernandez
Print Name

EXHIBIT A-2

Scope for Post Design Services Consultant Services for Port Everglades By-Pass Road

Phase V- Post Design Services

Consultant shall provide post design services as follows:

Meetings: Consultant shall attend all pre-construction meetings as well as those regularly scheduled meetings throughout the construction phase, when deemed necessary by the County Project Manager. Consultant's hours must be approved in advance in writing by the County Project Manager for this task.

Construction Assistance: Consultant shall provide responses to Requests for Information (RFI), interpretation of construction plans and documents, and engineering solutions to changed conditions encountered in the field. Consultant shall perform site visits when agreed upon in advance with the County Project Manager. Consultant shall respond to all requests from the County Project Manager within 24 hours after receipt of same. This does not mean that the issue will be resolved; it simply means that Consultant has received the request, started an immediate course of action, and began the communication process.

Plan Updates/Changes during Construction: Consultant shall provide revised plan sheets reflecting any changes made during construction as a result of RFI or changes initiated by the Consultant. During construction and upon County Project Manager request, Consultant shall review and provide County with recommended solutions to remedy particular field situations not covered by the plans and specifications. If any plan revisions are due to design errors or omissions, Consultant shall track the work effort independent of the normal post design services tasks and any costs associated with this work effort will be absorbed by Consultant without any cost to County. Consultant's hours must be approved in advance in writing by the County Project Manager for this task.

Shop Drawing Review: Consultant shall review the shop drawings and erection plans for all components supplied by the Contractor and required by the bid documents. For all independently supported sign structures of which the Contractor is responsible, Consultant will review and check all the foundation, sign structure design, and shop drawings submitted by the Contractor. Consultant's hours must be approved in advance in writing by the County Project Manager for this task.

Plan Requested by the County: Consultant shall provide signed, and seal revised plans for the following area: -

- Service Road South along Spangler Blvd from STA 23+00 to STA 27+00 – During plans review process, County has identified that the existing sewer main including grinder/lift station/sewer pumps serves several owners along the corridor. County seeks to keep

the existing services. Consultant shall accommodate existing services and revise the roadway, drainage, signing, and pavement marking plans in this area accordingly.

- Eisenhower Service Road from STA 55+00 to STA 64+00 – To accommodate the future parking facility at west of Eisenhower Service Road, Consultant shall modify the roadway, drainage, signing and pavement markings, signalization, lighting, and ITS design/plans for the Port By-Pass Road.
- DMS signs relocation/redesign the canopy at the checkpoint to accommodate DMS signs. Consultant shall: -
 - Redesign of the Structure frame including columns, footings, and beams
 - Design of a wall to support the three new sign panels
 - Design of the sign's attachments
 - Design of ITS fiber connections for DMS signs
 - Design of electrical connections for DMS signs
 - Revise checkpoint plans
 - Revised checkpoint geotechnical report
 - Quality Assurance and Quality Control.

Sub-surface Utility Engineering (SUE) Services:

Consultant shall perform 17 pervious vacuum excavations, 34 impervious vacuum excavations, and 32 hours of sub-surface designation services. The location of the test holes including sub-surface designation area must be approved in advance and in writing by the County Project Manager.

Geotechnical Engineering Services:

Consultant shall review load test data, interpret load test data and pilot borings, determine production pile lengths per pier/bent and review of all installation records for production piles inclusive of non-destructive testing and provide pile length authorization letter. Consultant's hours must be approved in advance in writing by the County Project Manager for this task.

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