CITY OF CORAL GABLES, FL

FINANCE DEPARTMENT / PROCUREMENT DIVISION

405 Biltmore Way – Coral Gables, FL 33134

RFP No. 2011.05.20

ARCHITECTURAL CONSULTANTS

ATTACHMENT "C" PROFESSIONAL SERVICE AGREEMENT (PSA)

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT, is made as of this _____day of _____, 20_____, between the City of Coral Gables (hereinafter called the "CITY"), and C3TS, Inc. (hereinafter called the "PROFESSIONAL").

RECITALS

WHEREAS, the CITY wishes to retain AECOM Technical Services, Inc.; and

WHEREAS, the CITY having investigated the qualifications of the PROFESSIONAL to perform the services herein contemplated and found those qualifications satisfactory; and

WHEREAS, the PROFESSIONAL having examined the scope of the services required hereunder and having expressed desire and willingness to provide such services and having presented qualifications to the CITY in support of those expressed desires; and

WHEREAS, the PROFESSIONAL agrees to accept this Agreement upon the terms and conditions hereinafter set forth; and

WHEREAS, the City Commission has approved the selection of the PROFESSIONAL to perform such services, and the PROFESSIONAL agrees to accept this Agreement upon the terms and conditions herein set forth.

NOW, THEREFORE, in consideration of the promises and the mutual covenants herein contained, the CITY agrees to retain the PROFESSIONAL for a two (2) year period. However, this period may be extended at the sole discretion of the CITY for one (1) additional two (2) year period. The PROFESSIONAL agrees to perform all Architectural Consulting Services in connection with the services described herein.

I. GENERAL PROVISIONS

1.1 **Engagement**. The CITY agrees to engage the PROFESSIONAL for a period specified in paragraph 1.2, and the PROFESSIONAL agrees to accept such engagement and to perform such services for the CITY upon the terms, and subject to the conditions forth herein.

1.2 **Agreement Period**. The terms of the Agreement (the "Professional Period") shall commence upon approval of the City Commission and agreement execution, and shall continue thereafter for a period of two (2) years or until terminated by the CITY upon 30 days written notice to the PROFESSIONAL, in accordance with the notice requirements contained in Section XII. This agreement may be renewed at the sole discretion of the CITY for one (1) additional two (2) year period.

1.3 **Priority of Interpretation.** This document without exhibits is referred to as the "Base Agreement". In the event of any conflict of inconsistency in the definition or interpretation of any word, responsibility, schedule, or the contents or description of any task, deliverable, service, or other work, or otherwise, between the Base Agreement and the exhibits, or between exhibits, such conflict or inconsistency shall be resolved by giving precedence first to the body of this Base Agreement and the exhibits, or between exhibits, such conflict or inconsistency shall be resolved by giving precedence first to the body of this Master Agreement, and then to the exhibits according to the following priority:

a) CITY Resolution and applicable Code provisions;
b) CITY Request for Qualifications (Exhibit "A");
c) PROFESSIONAL'S Response to Request for Qualifications (Exhibit "C");
d) Scope of Service (Exhibit "B");
e) Insurance Certificates, and related documents;
f) PROFESSIONAL'S Exceptions to Terms and Conditions.

1.4 **Background Investigation**. The PROFESSIONAL agrees that all employees including the PROFESSIONAL may be subject to an annual background investigation.

1.5 **Medical, Drug Screening and Check-ups**. All PROFESSIONALS, contractors, their employees, agents and subcontractors must satisfactorily complete the CITY'S pre-placement medical and drug screening examinations and be certified as drug free as well as abide by the CITY'S Drug Free Work Place Policy at PROFESSIONAL'S expense. The CITY may require that the PROFESSIONAL, contractor and/or their employees, agents and subcontractors performing services for the CITY submit to yearly medical examinations at PROFESSIONAL'S expense. The PROFESSIONAL, contractor and/or their employees, agents and subcontractors agree to submit to unannounced drug testing at the request of the Director or designee.

1.6 **Driver's License**. At CITY'S option, the contractor (PROFESSIONAL) must provide a valid Florida Driver's License or appropriate commercial driver's license for each employee, agent or subcontractor and be willing and able to operate any required vehicles as authorized by the CTIY. Evidence of compliance with the Defensive Driving Course must be submitted to the CITY prior to operating a CITY vehicle or any vehicle where patrons or their children are passengers. Individuals must be approved by the Risk Management Division of the CITY prior to the operation of a CITY owned vehicle and/or privately owned vehicles while conducting CITY business. The CITY reserves the right to request the employee/agent's driving record from the State of Florida, at PROFESSIONAL'S (contractor's) expense.

1.7 **Confidential Information**. The PROFESSIONAL agrees that any information received by the PROFESSIONAL for the CITY and in providing services in accordance with this Agreement which is not publicly available, shall not be revealed to any other persons, firm or organizations.

1.8 **Most Favored Public Entity.** PROFESSIONAL represents that the prices charged to CITY in this Agreement do not exceed existing prices to other customers for the same or substantially similar items or services for comparable quantities under similar terms and conditions. If PROFESSIONAL'S prices decline, or should PROFESSIONAL, at any time during the term of this Agreement, provide the same goods or services to any other customer at prices below those set forth herein, then such lower prices shall be immediately extended to the CITY.

II. PROFESSIONAL SERVICES

2.1 **Basic Services**. During the Professional Period, the PROFESSIONAL will serve as a PROFESSIONAL to the CITY and shall assist the CITY as the Broker/Agent of Record, and shall perform and oversee those tasks outlined, including, but not limited to:

a) Scope of Services (Exhibit "B");
b) PROFESSIONAL'S Response to Request for Qualifications (Exhibit "C")

The PROFESSIONAL shall perform the services as specifically stated in the Scope of Services, which is attached hereto and incorporated herein as Exhibit A, and as may be specifically designated and authorized by the CITY.

2.2 **Authorizations.** Authorizations will be in the form of a Work Authorization. Each Work Authorization will set forth a specific Scope of Services, amount of compensation, a completion date, and shall be approved by the Public Works Director.

2.3 **Reporting**. The PROFESSIONAL shall provide the necessary reporting requirements as outlined by the Director or designee for review. In addition, the PROFESSIONAL shall submit a monthly report to the Director or designee, which shall include detailed information regarding the activities of the PROFESSIONAL during the previous month.

2.4 **Availability of Professional**. The PROFESSIONAL shall make all documents available 24 hours a day, 7 days a week, 365 days a year, in order to satisfy the CITY'S emergency demands for continued, non-interrupted service.

III. COMPENSATION

3.1 **Basis of Compensation.** The CONSULTANT agrees to negotiate a "Not to Exceed" fixed sum fee for each of the WORK based on the Scope of such WORK. Upon agreement of a fee, the Director of Public Works or his/her designee, will issue a -written authorization to proceed to the CONSULTANT. In the case of an emergency, the CITY reserves the right to issue oral authorization to the CONSULTANT with the understanding that written confirmation will follow immediately thereafter. The CITY reserves the right to contract with the CONSULTANT for additional services. Any increase in the agreed upon amount shall be approved by the Public Works Director or designee, and shall be in accordance with applicable CITY and State regulations.

The fees for Professional Services for each of the WORK shall be determined by one of the following methods or a combination thereof, as mutually agreed upon by the CITY and the CONSULTANT.

Multiple of Direct Salary Expense: The "Not to Exceed" fee may be based on multiple of 2.70 times the salary rate, as determined from salaries reported to the Director of Internal Revenue, of the personnel engaged directly on a project, such multiplied rate not to exceed $135 dollars per hour by either principals or employees.

Fixed Sum (Lump Sum): The fee for a task or a Scope of WORK may be fixed sum as mutually agreed upon by the CITY and the CONSULTANT.

Hourly Rate Fee: The CITY agrees to pay, and the CONSULTANT agrees to accept, for the services rendered pursuant to this Agreement, fees in accordance with the following:

Category	Hourly Rates
Principal	$135
R.A.	$105
P.E.	$105
Landscape Architect	$99
Project Manager	$105
CADD Technician	$63
Clerical	$46
Construction Inspector	$75

IV. INDEPENDENT CONTRACTOR AND PROFESSIONAL HOLD HARMLESS PROVISIONS

4.1 **Independent Contractor and Professional**. The PROFESSIONAL acknowledges entering into this Agreement as an independent Contractor and Professional, and that the PROFESSIONAL shall therefore be responsible for the deposit and payment of any Federal Income Taxes, FICA, Unemployment Taxes or any similar fees or taxes that become due, and shall be responsible for the collection and payment of all withholdings, contributions and payroll taxes relating to PROFESSIONAL'S services, or those of employees of the PROFESSIONAL. The CITY shall not withhold from sums payable to the Professional, any amount whatsoever for Federal Income Taxes, FICA, Unemployment Insurance Taxes or any similar fees or taxes. The PROFESSIONAL, their employees or agents, will not be considered an employee of the CITY or entitled to participate in plans, distributions, arrangements or other benefits extended to the CITY employees.

4.2 **Agency/Third Party Beneficiary**. The PROFESSIONAL is an independent contractor. This Agreement does not create a joint venture, partnership, or other business enterprise between the parties. Nothing herein shall imply or shall be deemed to imply an agency relationship between the CITY and PROFESSIONAL. The PROFESSIONAL has no authority to bind the CITY to any promise, debt, default, or undertaking of the PROFESSIONAL. The PROFESSIONAL and the CITY agree that it is not intended that any provision of the Agreement establish a third party beneficiary giving or allowing any claim or right of action whatsoever by any third party under this Agreement.

4.3 **Indemnification and Hold Harmless**. In a professional services contract for the City or a City project, the Professional shall indemnify and hold harmless the City, its officer and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the

negligence, recklessness, or intentional wrongful misconduct of the Professional and persons employed or utilized by the Professional in performance of the contract.

The Monetary Limitation to the extent of the indemnification provided herein shall not be less than $1,000,000 per occurrence. (Florida Statute Section 725.06)

V. INSURANCE

5.1 Without limiting PROFESSIONAL'S indemnification of the CITY, and during the term of this Agreement, PROFESSIONAL shall provide and maintain at its own expense the below described programs of insurance. Such programs and evidence of insurance shall be satisfactory to the CITY and shall be primary to and not contributing with any other insurance or self-insurance program maintained by the CITY. Certificates or other evidence of coverage shall be delivered to:

City of Coral Gables
Risk Management Division
2801 Salzedo Street, 2nd Floor
Coral Gables, Florida 33134

Such certificates or other evidence of coverage shall be delivered prior to commencing performance under this Agreement, and shall specifically identify this Agreement, and shall contain the express condition that the CITY is to be given written notice, by receipted deliver, at least thirty (30) days in advance of any cancellation, non-renewal or material change of any insurance policy.

5.2 The PROFESSIONAL shall maintain during the terms of this Agreement, except as noted herein, the Insurance required under the Request for Proposal or as follows:

a. **Professional Liability Insurance** with a limit of liability no less than $1,000,000 per occurrence with a deductible per claim, if any, not to exceed 5% of the limit of liability providing for all sums which the PROFESSIONAL shall become legally obligated to pay as damages for claims arising out of the services performed by the PROFESSIONAL or any person employed in connection with this Agreement (as applicable). This insurance shall be maintained for three (3) years after any WORK covered by this Agreement.

b. **Comprehensive General Liability Insurance** with broad form endorsement or equivalent, including automobile liability, completed operations and products liability, contractual liability, severability of interests with cross liability provision, and personal injury and property damage liability with limits no less than $1,000,000 per occurrence for bodily injury and property damage, and $2,000,000 in the aggregate. Said policy or policies shall name the CITY as an additional insured on a primary and non-contributory basis and shall reflect the hold harmless provision contained herein.

c. **Worker's Compensation Insurance** covering ALL employees of PROFESSIONAL, in compliance with the requirements of Florida Statutes Section 440, and employer's liability insurance with limits not less than, $1,000,000.

d. **Automobile Liability Insurance** covering all owned, non-owned and hired vehicles used in connection with the performance of the work in an amount not less than $1,000,000 combined single limit per occurrence for bodily injury and property damage.

e. **Other (or increased amounts of) Insurance** which CITY shall from time to time deem advisable or appropriate and is commercially available. Such new or additional insurance to be effective as of the sooner of ninety (90) days after notice thereof or the next annual renewal of any policy being increased (as applicable).

f. All policies shall contain waiver of subrogation against CITY where applicable, and shall expressly provide that such policy or policies are primary over any other collective insurance the CITY may have.

g. All of the above insurance is to be placed with insurance companies with an A.M. Best Key Rating Guide, latest edition, or equivalent rating of "A-", "VI" or better, qualified to do business under laws of the

State of Florida. The PROFESSIONAL shall maintain coverage with equal or better rating as identified herein for the term of the contract.

h. The CITY shall be named as an additional insured on a primary and non-contributory basis under such policies with the exception of Professional Liability Insurance. Said policies shall contain a "severability of interest or "cross liability" clause without obligation for premium payment of the CITY. The CITY reserves the right to request a copy of required policies for review.

i. All insurance policies shall provide for thirty (30) days [ten (10) days for non-payment of premium] advance written notice to CITY prior to cancellation, non-renewal or material change.

j. The PROFESSIONAL shall furnish Certificates of Insurance to the Risk Management Division of the Human Resources Department, for review and approval, prior to the commencement of operations or policy termination, which certificates shall clearly indicate that the CITY is named as an additional insured on a primary and non-contributory basis and that the PROFESSIONAL has obtained insurance in the type, amount and classification required for strict compliance with this Section and that no material change, cancellation or non-renewal of this insurance shall be effective without thirty (30) days [ten (10) days for non-payment of premium] advance written notice to the CITY.

k. The PROFESSIONAL shall furnish copies of insurance policies pertaining to this Agreement to the Risk Management Division of the Human Resources Department within ten (10) days of written request.

5.3 **Breach.** Failure on the part of the PROFESSIONAL to obtain and maintain all required insurance coverage is a material breach upon which the CITY may, in its sole discretion, immediately suspend PROFESSIONAL'S performance or terminate this Agreement (Termination for Default 13.1).

VI. STANDARD OF CARE

6.1 **Degree of Care.** The PROFESSIONAL shall exercise the same degree of care, skill, and diligence in the performance of the services as is ordinarily provided by a comparable professional under similar circumstances, and the PROFESSIONAL shall, at no additional cost to the CITY, re-perform services which fail to satisfy the foregoing standard of care.

6.2 **Key Staff.** The parties acknowledge that PROFESSIONAL was selected by the City, in part, on the basis of the qualifications of particular staff identified in the PROFESSIONAL's response to the City's solicitation. The PROFESSIONAL shall ensure that this staff is available for work hereunder as long as the staff is in the PROFESSIONAL's employ.

6.3 **Suspension Procedures.** PROFESSIONAL may be suspended for any violation of the provisions of this Agreement, which in the sole discretion of the CITY may be cause for such suspension as follows:

(a) 1st violation – up to 7 days
(b) 2nd violation – up to 14 days
(c) 3rd violation – City Manager may terminate this agreement.

VII. FEDERAL/STATE/LOCAL LAWS

7.1 **EEO and ADA.** The contractor (PROFESSIONAL) must be and remain in compliance with all local, state and federal Equal Employment Opportunity (EEO) and American Disabilities Act (ADA) requirements.

7.2 **Discrimination.** It is understood that the PROFESSIONAL shall not discriminate against any employee in the performance or the contract with respect to hire, tenure, terms, conditions or privileges of employment, or any other matter directly or indirectly related to employment because of age, marital status, race, color, religion, national origin, sex, or disability.

7.3 **CITY Policy Regarding Conduct**. All contractors (PROFESSIONAL) their employees, agents and subcontractors must abide by the CITY'S policies regarding conduct. Discrimination, harassment, and/or

violations of CITY policies will not be tolerated and are grounds for termination of the contract without harm to the CITY or its employees.

7.4 **Aliens.** PROFESSIONAL warrants that it fully complies with all Federal statutes and regulations regarding the employment of aliens and others and that all employees performing work under this Agreement meet the citizenship or alien status requirements set forth in Federal statutes and regulations. PROFESSIONAL shall indemnify, defend, and hold harmless CITY, its officers and employees from and against any sanctions and any other liability which may be assessed against PROFESSIONAL or CITY in connection with any alleged violation of any Federal statutes or regulations pertaining to the eligibility for employment of any persons performing work hereunder.

7.5 **Premises.** The employees and agents of each party, shall while on the premises of the other party, comply with all rules and regulations of the premises, including, but not limited to, security requirements.

VIII. CONFLICT OF INTEREST

8.1 The PROFESSIONAL represents that it has provided a list of all current clients subject to the jurisdiction of the CITY. Any potential or actual conflict between private interests and responsibilities under this Agreement shall be immediately disclosed to the CITY. The PROFESSIONAL agrees that it will not enter into any agreements during the term of this Agreement to provide services for any person or corporation who applies for a permit or other development approval from the CITY. Upon request of the PROFESSIONAL, and full disclosure of the nature and extent of the proposed representation, the City Manager shall have the authority to authorize such representation during the term of this Agreement.

IX. CONFIDENTIALITY

9.1 No reports, information, computer programs, documentation, and/or data given to or prepared or assembled by the PROFESSIONAL under this Agreement shall be made available to any individual or organization by the PROFESSIONAL without prior written approval of the CITY.

The Consultant agrees to keep confidential and not disclose to any person or entity, other than the Consultant's employees, sub consultants and the general contractor and subcontractors, if appropriate, any data or information not previously known to and generated by the Consultant or furnished to the Consultant and marked confidential by the City. These provisions shall not apply to information in whatever form that is in the public domain, nor shall they restrict the Consultant for giving notices required by law or complying with an order to provide information or data when such order is issued by a Court, administrative agency or other legitimate authority, or if disclosure is reasonably necessary for the consultant to defend itself from any legal action or claim.

X. OWNERSHIP OF DOCUMENTS

10.1 All right, title, and interest in and to all work performed under this Agreement, including without limitations all schematics, designs, plans, specifications, documents, records, disks, or other information (including electronic copies) produced or developed by the PROFESSIONAL or sub-consultants, shall become the property of the CITY for its use and/or distribution as may be deemed appropriate by the CITY; provided that any materials used by the PROFESSIONAL and any sub-consultants for which a patent or copyright protection has previously been secured by them shall remain the property of the PROFESSIONAL or sub-consultants. Notwithstanding the foregoing, the PROFESSIONAL, shall not be held liable for the re-use or misuse of its work product by the City or any third party for any purpose other that the purpose specified hereunder.

10.2 The CITY shall have the right to visit the site for inspection of the work and the products the PROFESSIONAL at any time. The PROFESSIONAL shall be permitted to retain copies, including reproducible copies, solely for information and reference in connection with the CITY's use.

10.3 To the extent allowed by law, the PROFESSIONAL shall not divulge, furnish or make available to any third person, firm or organization, without the CITY's prior written consent, or unless incident to the proper performance of the PROFESSIONAL's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public concerning the services to be rendered by the

PROFESSIONAL hereunder, and PROFESSIONAL shall require all of its employees, agents, sub consultants, and subcontractors to comply with the provisions of this paragraph.

XI. TRUTH-IN-NEGOTIATION CERTIFICATE

11.1 Execution of this Agreement by the PROFESSIONAL shall act as the execution of a truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Agreement are accurate, complete, and current as of the date of the Agreement.

11.2 The said rates and costs shall be adjusted to exclude any significant sums should the CITY determine that the rates and costs were increased due to inaccurate, incomplete, or noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. The CITY shall exercise its rights under this "Certificate" within one (1) year following payment.

XII. NOTICE

12.1 Any notice, request, instruction or other document required or permitted to be given hereunder by either party hereto to the other shall be in writing, and delivered personally, or sent by certified or registered mail, postage prepaid, return receipt requested, to the address set forth for such party at the bottom of this Agreement. Any notice so given shall be deemed received when personally delivered or three (3) calendar days after mailing. Any party may change the address to which notices are to be sent by giving notice of such change of address to the other party in the manner herein provided for giving notice. Notice as the City of Coral Gables shall be to:

City Manager
City of Coral Gables
405 Biltmore Way
Coral Gables, FL 33134

cc: City Attorney

Notice as to Professional shall be to:

Mr. Javier F. Salman, AIA, LEED AP
Principal - Architect
Corzo, Castella, Carballo, Thompson and Salman (C3TS), P.A.
901 Ponce De Leon Blvd, Suite 900
Coral Gables, FL 33134

XIII. TERMINATION

13.1 **Termination by City for default.** CITY may, by written notice to PROFESSIONAL, terminate the whole or any part of this Agreement if, in the judgment of the City Manager:

a) PROFESSIONAL has materially breached any portion of this Agreement;
b) PROFESSIONAL fails to timely provide and/or satisfactorily perform any task, deliverable, service, or other work required under this Agreement;
c) PROFESSIONAL has assigned or delegated its duties or subcontracted any performance of this Agreement without prior written consent by the CITY;
d) Insolvency of PROFESSIONAL. PROFESSIONAL shall be deemed insolvent if it has ceased to pay its debts for at least sixty (60) days in the ordinary course of business, whether or not a petition has been filed under the Federal Bankruptcy Code and whether or not PROFESSIONAL is insolvent within the meaning of such laws;
e) There has been a filing of a voluntary or involuntary petition regarding PROFESSIONAL under the Federal Bankruptcy Code;
f) There has been the appointment of a Receiver or Trustee for PROFESSIONAL;
g) There has been an execution by PROFESSIONAL of a general assignment for the benefit of creditors;
h) PROFESSIONAL fails to obtain or maintain insurance or bonding herein required.

13.1.1 **Return of Payments.** Upon the occurrence of a default hereunder, all payments, advances, or other compensation paid by the CITY to the PROFESSIONAL while the PROFESSIONAL was in material default shall be immediately returned to the CITY.

13.1.2 **Obligations to City.** The PROFESSIONAL agrees that termination of this Agreement under this section shall not release the PROFESSIONAL from any obligation accruing prior to the effective date of termination.

13.1.3 **No default.** If, after CITY has given notice of termination under the provisions hereunder, it is determined by CITY that PROFESSIONAL was not in default under these provisions, or that the default was excusable under these provisions, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Paragraph 13.2 (Termination for Convenience).

13.1.4 **Non-exclusive.** The rights and remedies of CITY provided in this Paragraph 13.1 are non-exclusive and cumulative.

13.2 **Termination for Convenience**. This Agreement may be terminated when such action is deemed by CITY to be in its best interest. Termination shall be effected by delivery to PROFESSIONAL of a notice of termination specifying the extent to which performance of Agreement is terminated and the date upon which such termination becomes effective, which shall be no less than ten (10) days after the notice is sent.

13.3 **Professional's responsibilities.** After receipt of a Termination Notice, and except as otherwise directed by the CITY, the PROFESSIONAL shall:

A. Stop work on the date and to the extent specified.
B. Terminate and settle orders and subcontracts relating to the performance of the terminated work.
C. Transfer all work in process, completed work, and other material related to the terminated work to the CITY. PROFESSIONAL shall not be responsible for the accuracy or reliability of any work in process delivered in accordance with this provision.
D. Continue to complete all parts of the work that have not been terminated.

13.4 **Payments for work performed.** After receipt of a notice of termination, PROFESSIONAL shall submit its termination claim and invoice to CITY, in the form and with any certifications as may be prescribed by CITY. Such claim and invoice shall be submitted promptly, but not later than three (3) months from the effective date of termination. Upon failure by PROFESSIONAL to submit its termination claim and invoice within the time allowed, CITY may determine on the basis of the information available to the CITY, the amount, if any, due to PROFESSIONAL in respect to the termination, and such determination shall be final. When such determination is made, CITY shall pay PROFESSIONAL the amount so determined. The PROFESSIONAL shall have no recourse or remedy from a termination made by the CITY except to retain the fees earned for the services that were performed in complete compliance with this Agreement as full and final settlement of any claim, action, demand, cost, or charge.

13.6 **Termination by Professional.** This Agreement may be terminated by the PROFESSIONAL upon sixty (60) days prior written notice to the CITY in the event of substantial failure by the CITY to perform in accordance with the terms of the Agreement through no fault of the PROFESSIONAL.

13.7 **Professional's warranty.** The PROFESSIONAL warrants that it has not employed or retained any company or person, other than a bone fide employee working solely for the PROFESSIONAL to solicit or secure this Agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bone fide employee working solely for the PROFESSIONAL, any fee, commission, percentage, gift, or other compensation contingent upon or resulting from the award or making of this Agreement.

13.8 **Documents.** Upon termination of this Agreement, all schematics, designs, plans, specifications, documents, records, disks, or other information (including electronic copies) produced or developed by the PROFESSIONAL or sub-consultants, whether finished or not, shall become CITY property. Failure to timely deliver the documentation shall be cause to withhold any payments due without recourse by the PROFESSIONAL until all documentation is delivered to the CITY.

Under no circumstances shall the transfer of ownership of the Consultant's drawings, specifications, electronic files or other instruments of service be deemed a sale by the Consultant, and the Consultant makes no warranties, either express or implied, of merchantability and fitness for any particular purpose.

XIV. UNCONTROLLABLE FORCES

14.1 Neither the CITY nor PROFESSIONAL shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the nonperforming party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to, fire, flood, earthquake, storm, lighting, epidemic, war, riot, civil disturbance, sabotage, and governmental action.

14.2 Neither party shall, however, be excused from performance if nonperformance is due to forces which are preventable, removable, or remediable, and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

XV. AUDITS

15.1 **Financial records**. The PROFESSIONAL shall maintain accurate and complete financial records of its activities and operations relating to this Agreement in accordance with generally accepted accounting principles. PROFESSIONAL shall maintain adequate records to justify all charges and costs incurred in performing the services for at least three (3) years after completion of this Agreement. PROFESSIONAL shall also maintain accurate and complete employment and other records relating to its performance of this Agreement. PROFESSIONAL agrees that CITY, or its authorized representatives, shall have access to and the right to examine, audit, excerpt, copy or transcribe any pertinent transaction, activity, or records relating to this Agreement. All financial records, timecards and other employment records, and proprietary data and information shall be kept and maintained by PROFESSIONAL and made available to the CITY during the terms of this Agreement and for a period of three (3) years thereafter unless CITY'S written permission is given to dispose of any such material prior to such time. All such materials shall be maintained by PROFESSIONAL at a location in Miami-Dade County, Florida, provided that if any such material is located outside Miami-Dade County, then, at CITY'S option PROFESSIONAL shall pay CITY for travel, per diem, and other costs incurred by CITY to examine, audit, excerpt, copy or transcribe such material at such other location. The CITY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal working business hours at the PROFESSIONAL'S place of business.

15.2 **Copies of audits.** In the event that an audit is conducted by PROFESSIONAL specifically regarding this Agreement by any Federal or State auditor, or by any auditor or accountant employed by PROFESSIONAL, then PROFESSIONAL shall file a copy of the audit report with the CITY'S Auditor within thirty (30) days of PROFESSIONAL'S receipt thereof, unless otherwise provided by applicable Federal or State law. CITY shall make a reasonable effort to maintain the confidentiality of such audit report(s).

15.3 **Breach.** Failure on the part of PROFESSIONAL to comply with the provisions of this Paragraph 15.1 shall constitute a material breach upon which the CITY may terminate or suspend this Agreement.

15.4 **City Audit Settlements.** If, at any time during or after the term of this Agreement, representatives of the CITY conduct an audit of PROFESSIONAL regarding the work performed under this Agreement, and if such audit finds that CITY'S dollar liability for any such work is less than payments made by CITY to PROFESSIONAL, then the difference shall be either repaid by PROFESSIONAL to CITY by cash payment upon demand or, at the sole option of CITY, deducted from any amounts due to PROFESSIONAL from CITY. If such audit finds that CITY'S dollar liability for such work is more than the payments made by CITY to PROFESSIONAL, then the difference shall be paid to PROFESSIONAL by cash payment.

XVI. MISCELLANEOUS

16.1 **Modification.** This agreement may not be amended or modified unless in writing and signed by both parties.

Assignment and subcontracting. This Agreement and the rights of the PROFESSIONAL and obligations hereunder may not be transferred, pledged, sold, assigned, or delegated by the PROFESSIONAL without the express prior written consent of the CITY via executed amendment. It is understood that a sale of the majority of the stock or partnership shares of the PROFESSIONAL, a merger or bulk sale, an assignment for the benefit of creditors shall each be deemed transactions that would constitute an assignment or sale hereunder requiring prior to CITY approval.

16.2 Any transfer, pledge, sale, assignment, or delegation without such express prior written consent shall be null and void and shall constitute a material breach of this Agreement, upon which the CITY may immediately terminate the Agreement in accordance with the provisions of paragraph 13.1 (Termination by Default). The CITY may assign its rights, together with its obligations hereunder.

16.3 **Availability of funds.** The obligations of the CITY under this Agreement are subject to the availability of funds lawfully appropriated for its purpose by the City Commission.

16.4 **Compliance with laws.** In performance of the services, the PROFESSIONAL will comply with applicable regulatory requirements, including federal, state, special district, and local laws, rules, regulations, orders, codes, criteria, and standards. It shall be the responsibility of the PROFESSIONAL to obtain and maintain, at no cost to the CITY, any and all license and permits required to complete the services provided pursuant to this Agreement.

16.5 **Conflict of Interest.** PROFESSIONAL covenants that no person employed by the PROFESSIONAL which exercises any functions or responsibilities in connection with this Agreement has any personal financial interests direct or indirect with the CITY. PROFESSIONAL further covenants that, in the performance of this Agreement, no person having a conflicting interest shall be employed. Any such interests on the part of PROFESSIONAL or its employees must be disclosed in writing to CITY.

16.5.1 PROFESSIONAL is aware of the conflict of interest code of the City of Coral Gables, the Conflict of Interest and Code of Ethics of Miami-Dade County, Florida, Section 2-11.1 et seq., and the Ethics Laws of the State of Florida, and agrees that it shall fully comply in all respects with the terms of said laws.

16.6 **Federal and State taxes.** The CITY is exempt from Federal Tax and State Sales and Use Taxes. Upon request, the CITY will provide an exemption certificate to the PROFESSIONAL. The Professional shall not be exempted from paying sales tax to its suppliers for materials to fulfill the contractual obligations with the CITY, nor shall the PROFESSIONAL be authorized to use the CITY'S Tax Exemption Number in securing such materials.

16.7 **Entirety of agreement.** The CITY and the PROFESSIONAL agree that this Agreement, as amended from time to time, sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. This Agreement supersedes all prior agreements, contracts, proposals, representations, negotiations, letters, or other communications, written or oral, between the CITY and the PROFESSIONAL pertaining to the services. None of the provisions, terms, and conditions contained in this Agreement may be added to, modified, superseded, or otherwise altered, except by written instrument executed by the parties hereto.

16.7.1 The following documents are made an integral part of this Agreement:

A. Request for Qualifications;
B. Insurance Certificates and related documents;
C. Response to Request for Qualifications of PROFESSIONAL.

16.8 **Counterparts.** This Agreement may be executed simultaneously in several counterparts, each of which will be an original, but all of which together will constitute one and the same instrument.

16.9 **Waiver**. A waiver by either the CITY or the PROFESSIONAL of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

16.10 **Severability, survival**. If any provision of this Agreement is found to be void and unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall nevertheless be binding upon the parties with the same effect as though the void or unenforceable provision had been severed and deleted.

16.11 **Governing law and venue**. This Agreement shall be governed and construed in accordance with the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Miami-Dade County, and the Agreement will be interpreted according to the laws of Florida.

16.12 **Priority of provisions.** The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way effect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement, and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

16.12.1 The provisions of this section shall not prevent the entire Agreement from being void should a provision, which is of the essence of the Agreement, be determined to be void.

16.13 **Time is of the Essence**. The PROFESSIONAL agrees to start all work and to complete each assignment, task, or phase within the time stipulated in this Agreement (including all attachments). If any anticipated or actual delays arise, PROFESSIONAL shall immediately so notify the CITY. Regardless of notice if services or deliveries are not made at the time agreed upon, the CITY may, at its sole discretion, terminate this Agreement and proceed pursuant to Paragraph 13.1 (Termination by Default).

16.14 **Joint preparation.** Preparation of this Agreement has been a joint effort of the CITY and the PROFESSIONAL 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.

16.15 **Headings**. The headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day, month and year first above written by the City Clerk on the day of attestation.

Approved as to Insurance:

Michael Sparber
Risk Management Division

Approved by
Department Director or head of
Negotiations team as to the
negotiated business terms

Glenn Kephart
Public Works Director

Approved as to compliance with
the Procurement Code

Michael P. Pounds
Chief Procurement Officer

Approved as to Funds Appropriation

Diana Gomez
Chief Financial Officer

AS TO CITY:

Patrick G. Salerno
City Manager

ATTEST:

Walter J. Foeman
City Clerk

Approve as to form and legal sufficiency:

Craig E. Leen
City Attorney

ATTEST:

Corporate Secretary
Print Name: JAVIER SALMAN
(SEAL)

(OR)
WITNESSES (2):

Print Name: JOE RODRIGUEZ

Print Name:

AS TO PROFESSIONAL

PREPARED BY:
Craig E. Leen
CITY ATTORNEY
405 BILTMORE WAY
CORAL GABLES, FL 33134