

AGREEMENT

Between

BROWARD COUNTY

and

JEFF ELLIS AND ASSOCIATES, INC.

for

**AQUATIC RISK MANAGEMENT CONSULTANT SERVICES
IN BROWARD COUNTY, FLORIDA**

RLI #R1031202R2

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JEFF ELLIS AND ASSOCIATES, INC.

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**AQUATIC RISK MANAGEMENT CONSULTANT SERVICES
IN BROWARD COUNTY, FLORIDA**

RLI # R1031202R2

This is an Agreement, made and entered into by and between: **BROWARD COUNTY**, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY,"

and

JEFF ELLIS AND ASSOCIATES, INC., a Texas corporation authorized to do business in the State of Florida, hereinafter referred to as "JEFF ELLIS," collectively referred to as the "Parties."

WITNESSETH:

WHEREAS, COUNTY issued a Request for Letters of Interest ("RLI") for the provision of Aquatic Risk Management Consultant Services, and JEFF ELLIS, the sole proposer, was selected by COUNTY to provide said services for COUNTY's aquatic facilities and activities; and

WHEREAS, COUNTY has engaged in negotiations with JEFF ELLIS for the provision of aquatic risk management services, and this Agreement incorporates the results of such negotiations; NOW, THEREFORE,

IN CONSIDERATION of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, the Parties agree as follows:

ARTICLE 1

DEFINITIONS AND IDENTIFICATIONS

The following definitions apply unless the context in which the word or phrase is used requires a different definition:

- 1.1 **Agreement** - This Agreement includes Articles 1 through 9, the exhibits and documents that are expressly incorporated herein by reference.
- 1.2 **Board** - The Board of County Commissioners of Broward County, Florida.
- 1.3 **Contract Administrator** - The Director of the Broward County Parks and Recreation Division or a Park Superintendent. The primary responsibilities of the Contract Administrator are to coordinate and communicate with JEFF ELLIS and to manage and supervise execution and completion of the Project and the terms and conditions of this Agreement as set forth herein. In the administration of this Agreement, as contrasted with matters of policy, the Parties may rely on the instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Project.
- 1.4 **County Administrator** - The administrative head of COUNTY appointed by the Board.
- 1.5 **County Attorney** - The chief legal counsel for COUNTY appointed by the Board.
- 1.6 **Project** - The Project consists of the Scope of Services described in Article 2 and Exhibit "A."
- 1.7 **Purchasing Director** - The individual designated by the Board to serve as the principal procurement officer of COUNTY within the award authority delegated by the Board.

ARTICLE 2

SCOPE OF SERVICES

- 2.1 JEFF ELLIS shall perform all work identified in this Agreement and Exhibit "A," Scope of Services. The Scope of Services is a description of JEFF ELLIS' obligations and responsibilities and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, and tasks which are such an inseparable part of the work described that exclusion would render performance by JEFF ELLIS impractical, illogical, or unconscionable.

- 2.2 The Parties acknowledge that the Scope of Services does not delineate every detail and minor work task required to be performed by JEFF ELLIS to complete the Project. If, during the course of the performance of the Scope of Services under this Agreement, JEFF ELLIS determines that additional work beyond that identified in the Scope of Services is required to be performed to complete the Project, JEFF ELLIS shall notify the Contract Administrator of the additional work required and the additional cost for same in writing in a timely manner. JEFF ELLIS shall not perform any additional work without the Contract Administrator's written approval. If JEFF ELLIS elects to perform additional work without the prior written approval of the Contract Administrator, such work shall be deemed included within the Scope of Services, and JEFF ELLIS shall not receive any additional compensation from COUNTY for same.
- 2.3 Except as provided for in Section 2.2 above, JEFF ELLIS acknowledges that the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement except as expressly authorized by the Broward County Procurement Code (Chapter 21 of the Broward County Administrative Code), as may be amended from time to time.

ARTICLE 3

TERM AND TIME OF PERFORMANCE

- 3.1 The term of this Agreement shall commence on execution of the Parties and continue for two (2) years, unless terminated earlier or extended as provided for herein. The Contract Administrator may renew this Agreement for three (3) additional one (1) year periods, under the same terms and conditions as set forth herein, by providing JEFF ELLIS notice of COUNTY's intent to renew in accordance with the "NOTICES" section of this Agreement, at least ninety (90) days prior to the expiration of the then current term. The continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Chapter 129, Florida Statutes.
- 3.2 All duties, obligations, and responsibilities of JEFF ELLIS required by this Agreement shall be completed no later than the end of the then current term. Time shall be deemed to be of the essence in performing the duties, obligations, and responsibilities required by this Agreement.

ARTICLE 4

COMPENSATION AND METHOD OF PAYMENT

4.1 COUNTY will pay JEFF ELLIS a total maximum amount not-to-exceed of Two Hundred Thousand 00/100 Dollars (\$200,000.00) during the term of this Agreement, including any renewals periods, for the performance of services actually performed and completed pursuant to this Agreement, including Reimbursables as provided for in Section 4.3. The fees for JEFF ELLIS' services are set forth in attached Exhibit "B," Fee Schedule.

4.2 JEFF ELLIS acknowledges that this amount is the maximum payable and constitutes a limitation upon COUNTY's obligation to compensate JEFF ELLIS for its services and expenses related to this Agreement. This maximum amount, however, does not constitute a limitation, of any sort, upon JEFF ELLIS' obligation to perform all items of work required by or which can be reasonably inferred from the Scope of Services.

4.3 REIMBURSABLES

4.3.1 In accordance with and pursuant to the Broward County Procurement Code, direct non salary expenses, entitled Reimbursables, directly attributable to the Project will be charged at actual cost, and shall be limited to the following:

- a) Identifiable transportation expenses in connection with the Project, subject to the limitations of Section 112.061, Florida Statutes, as amended from time to time.
- b) Identifiable per diem meals within Broward County, lodging, taxi fares, and miscellaneous travel-related expenses for JEFF ELLIS' personnel subject to the limitations of Section 112.061, Florida Statutes, as amended from time to time. Lodging will be reimbursed only for room rates equivalent to Holiday Inn, Hampton Inn, La Quinta Inn, or Ramada Inn.

4.3.2 A detailed statement of expenses must accompany any request for reimbursement. Expenses other than auto travel must be documented by copies of paid receipts, checks, or other evidence of payment.

4.4 METHOD OF BILLING AND PAYMENT

4.4.1 JEFF ELLIS may submit invoices for compensation no more often than on a monthly basis, but only after the services for which the invoices are submitted have been completed. An original invoice plus one (1) copy are

due within fifteen (15) days of the end of the month except the final invoice which must be received no later than sixty (60) days after this Agreement expires. Invoices shall designate the nature of the services performed.

- 4.4.2 COUNTY shall pay JEFF ELLIS within thirty (30) calendar days of receipt of JEFF ELLIS' proper invoice, as required by the "Broward County Prompt Payment Ordinance" (Section 1-51.6, Broward County Code of Ordinances). To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by the Contract Administrator. Payment may be withheld for failure of JEFF ELLIS to comply with a term, condition, or requirement of this Agreement.
- 4.5 Notwithstanding any provision of this Agreement to the contrary, COUNTY may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work which has not been remedied or resolved in a manner satisfactory to the Contract Administrator or failure to comply with this Agreement. The amount withheld shall not be subject to payment of interest by COUNTY.
- 4.6 Payment shall be made to JEFF ELLIS at:

Jeff Ellis and Associates, Inc.
508 Goldenmoss Loop
Ocoee, Florida 34761

ARTICLE 5

INDEMNIFICATION

JEFF ELLIS shall at all times hereafter indemnify, hold harmless and, at the County Attorney's option, defend or pay for an attorney selected by the County Attorney to defend COUNTY, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by any intentional, negligent, or reckless act of, or omission of, JEFF ELLIS, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event any lawsuit or other proceeding is brought against COUNTY by reason of any such claim, cause of action, or demand, JEFF ELLIS shall, upon written notice from COUNTY, resist and defend such lawsuit or proceeding by counsel satisfactory to COUNTY or, at COUNTY's option, pay for an attorney selected by the County Attorney to defend COUNTY. The

obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the Contract Administrator and the County Attorney, any sums due JEFF ELLIS 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. Any amount withheld shall not be subject to payment of interest by COUNTY.

ARTICLE 6

INSURANCE

- 6.1 To ensure the indemnification obligation contained above, JEFF ELLIS shall, at a minimum, provide, pay for, and maintain in force at all times during the term of this Agreement (unless otherwise provided), the insurance coverage set forth in Sections 6.3, 6.4, and 6.5, in accordance with the terms and conditions required by this Article. Each insurance policy shall clearly identify the foregoing indemnification as insured.
- 6.2 Such policy or policies shall be without any deductible amount unless otherwise noted in this Agreement and shall be issued by approved companies authorized to do business in the State of Florida, and having agents upon whom service of process may be made in Broward County, Florida. JEFF ELLIS shall pay all deductible amounts, if any. JEFF ELLIS shall specifically protect COUNTY and the Broward County Board of County Commissioners by naming Broward County as an additional insured under the Commercial Liability Policy as well as on any Excess Liability Policy coverage. The official title of the certificate holder is Broward County, Florida. This official title shall be used in all insurance documentation.
- 6.3 Professional Liability Insurance. A Professional Liability Insurance Policy shall be provided which shall contain minimum limits of Three Million Dollars (\$3,000,000.00) for each claim. Any deductible amount shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) for each occurrence. Policy shall contain an Extended Reporting Period of one (1) year after the completion of services under this Agreement. **JEFF ELLIS shall notify COUNTY in writing within thirty (30) days of any one (1) claim that is filed or made against its Professional Liability Insurance Policy, where the sum of defense costs incurred and damages claimed reaches One Hundred Thousand Dollars (\$100,000.00).**
- 6.4 Business Automobile Liability. Business Automobile Liability shall be provided if services to be rendered under this Agreement involve the use of an automobile with minimum limits of Three Hundred Thousand Dollars (\$300,000.00) per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest

edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:

Owned Vehicles, if applicable.

Hired and Non-Owned Vehicles, if applicable.

Employers' Non-Ownership, if applicable.

- 6.5 Workers' Compensation Insurance. Workers' Compensation insurance shall apply for all employees in compliance with Chapter 440, Florida Statutes, as may be amended from time to time, the "Workers' Compensation Law" of the State of Florida, and all applicable federal laws. In addition, the policy(ies) must include:

Employers' Liability with a limit of Five Hundred Thousand Dollars (\$500,000.00) each accident.

If any operations are to be undertaken on or about navigable waters, coverage must be included for the U.S. Longshoremen & Harbor Workers Act and Jones Act.

- 6.6 JEFF ELLIS shall furnish to the Contract Administrator a Certificate of Insurance or other proof of insurance and endorsements evidencing the insurance coverage specified by this Article within fifteen (15) calendar days after notification of award of the Agreement and subject to the approval of the Risk Management Division. JEFF ELLIS' failure to provide to COUNTY acceptable proof of insurance within fifteen (15) calendar days shall provide the basis for the termination of the Agreement.
- 6.7 Coverage is not to cease and is to remain in force until all performance required of JEFF ELLIS is completed. All policies must be endorsed to provide COUNTY with at least thirty (30) days' notice of expiration, cancellation, or restriction. If any of the insurance coverage will expire prior to the completion of the work, copies of renewal policies shall be furnished at least thirty (30) days prior to the date of their expiration.
- 6.8 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 based on insurance market conditions affecting the availability or affordability of coverage, or changes in the scope of work or specifications that affect the applicability of coverage.

ARTICLE 7

TERMINATION

- 7.1 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 receipt of 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 COUNTY, which termination date shall be not less than thirty (30) days after the date of such written notice. 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, safety, or welfare. If 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.
- 7.2 This Agreement may be terminated for cause for reasons including, but not limited to, JEFF ELLIS' 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. The Agreement may also be terminated for cause if JEFF ELLIS 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 JEFF ELLIS provides a false certification submitted pursuant to Section 287.135, Florida Statutes, as amended.
- 7.3 In the event this Agreement is terminated for convenience, JEFF ELLIS shall be paid for any services properly performed under this Agreement through the effective date of termination specified in the written notice of termination. JEFF ELLIS acknowledges that it has received good, valuable and sufficient consideration from COUNTY, the receipt and adequacy of which are, hereby acknowledged by JEFF ELLIS, for COUNTY's right to terminate this Agreement for convenience.
- 7.4 In the event this Agreement is terminated for any reason, any amounts due JEFF ELLIS shall be withheld by COUNTY until all documents are provided to COUNTY pursuant to Section 9.1 of Article 9.

ARTICLE 8

EEO AND CBE COMPLIANCE

- 8.1 EEO Compliance. 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 Agreement.

JEFF ELLIS shall include the foregoing or similar language in its contracts with any approved subcontractors or subconsultants, 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.

JEFF ELLIS 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. JEFF ELLIS 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, JEFF ELLIS shall take affirmative steps to prevent discrimination in employment against disabled persons.

By execution of this Agreement, JEFF ELLIS 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 JEFF ELLIS all monies paid by COUNTY pursuant to this Agreement, and may result in debarment from COUNTY's competitive procurement activities.

- 8.2 CBE Compliance. 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. Although no CBE goal has been set for this Agreement, COUNTY encourages JEFF ELLIS to give full consideration to the use of CBE firms to perform work under this Agreement.

ARTICLE 9

MISCELLANEOUS

9.1 RIGHTS IN DOCUMENTS AND WORK

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of COUNTY, and, if a copyright is claimed, JEFF ELLIS grants to COUNTY a non-exclusive license to use the copyrighted item(s) indefinitely, to prepare derivative works, and to make and distribute copies to the public. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by JEFF ELLIS, whether finished or unfinished, shall become the property of COUNTY and shall be delivered by JEFF ELLIS to the Contract Administrator within seven (7) days of termination of this Agreement by either party. Any compensation due to JEFF ELLIS shall be withheld until all documents are received as provided herein.

9.2 AUDIT RIGHT AND RETENTION OF RECORDS

COUNTY shall have the right to audit the books, records, and accounts of JEFF ELLIS that are related to this Project. JEFF ELLIS shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project. All books, records, and accounts of JEFF ELLIS shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, JEFF ELLIS shall make same available at no cost to COUNTY in written form.

JEFF ELLIS shall preserve and make available, at reasonable times for examination and audit by COUNTY, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, as may be amended from time to time, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by COUNTY to be applicable to JEFF ELLIS' records, JEFF ELLIS and its subcontractors shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by JEFF ELLIS. 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.

9.3 TRUTH-IN-NEGOTIATION CERTIFICATE

Execution of this Agreement by JEFF ELLIS shall constitute execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of the Agreement are accurate, complete, and current at the time of contracting. The original Agreement price and any additions thereto shall be adjusted to exclude any significant sums by which COUNTY determines the Agreement price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such Agreement adjustments shall be made within one (1) year following the end of this Agreement.

9.4 PUBLIC ENTITY CRIME ACT

JEFF ELLIS represents that the execution of this Agreement will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes, as may be amended from time to time, which essentially provides that a person or affiliate who is a contractor, JEFF ELLIS, 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 JEFF ELLIS 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, as may be amended from time to time, for category two purchases for a period of thirty-six (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 by COUNTY pursuant to this Agreement, and may result in debarment from COUNTY's competitive procurement activities.

In addition to the foregoing, JEFF ELLIS 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 JEFF ELLIS has been placed on the convicted vendor list.

9.5 INDEPENDENT CONTRACTOR

JEFF ELLIS is an independent contractor under this Agreement. Services provided by JEFF ELLIS pursuant to this Agreement shall be subject to the supervision of JEFF ELLIS. In providing such services, neither JEFF ELLIS nor

its agents shall act as officers, employees, or agents of COUNTY. No partnership, joint venture, or other joint relationship is created hereby. COUNTY does not extend to JEFF ELLIS or JEFF ELLIS' agents any authority of any kind to bind COUNTY in any respect whatsoever.

9.6 THIRD PARTY BENEFICIARIES

Neither JEFF ELLIS nor COUNTY intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

9.7 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:

FOR COUNTY:

Director, Parks and Recreation Division
950 NW 38th Avenue
Oakland Park, Florida 33309

FOR JEFF ELLIS:

Jeff Ellis and Associates, Inc.
508 Goldenmoss Loop
Ocoee, Florida 34761

9.8 ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other party. In addition, JEFF ELLIS shall not subcontract any portion of the work required by this Agreement. Notwithstanding the Termination provision of this Agreement, COUNTY may terminate this Agreement, effective immediately, if there is any assignment, or attempted assignment, transfer, or encumbrance, by JEFF ELLIS

of this Agreement or any right or interest herein without COUNTY's written consent.

JEFF ELLIS represents that each person who will render services pursuant to this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and that each such person is reasonably experienced and skilled in the area(s) for which he or she will render his or her services.

JEFF ELLIS shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of JEFF ELLIS' 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.

9.9 CONFLICTS

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

None of JEFF ELLIS' 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, she, or JEFF ELLIS is not a party, unless compelled by court process. Further, such persons shall not 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 in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude JEFF ELLIS or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding.

9.10 MATERIALITY AND WAIVER OF BREACH

Each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement, and 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.

9.11 COMPLIANCE WITH LAWS

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

9.12 SEVERANCE

In the event 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 JEFF ELLIS elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days of final court action, including all available appeals.

9.13 JOINT PREPARATION

The Parties and their counsel have participated fully in the drafting of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one party than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

9.14 INTERPRETATION

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.

9.15 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 workplace in accordance with Chapter 21.31(a)(2) of the Broward County Procurement Code. Execution of this Agreement by JEFF ELLIS shall serve as JEFF ELLIS' required certification that

it either has or that it will establish a drug-free workplace in accordance with Section 287.087, Florida Statutes, as may be amended from time to time, and Chapter 21.31(a)(2) of the Broward County Procurement Code, as may be amended from time to time.

9.16 CONTINGENCY FEE

JEFF ELLIS warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for JEFF ELLIS, 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 JEFF ELLIS, 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, COUNTY shall have the right, at its discretion, to terminate this Agreement without liability, or to deduct from this Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift, or consideration.

9.17 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 Articles 1 through 9 of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 9 shall prevail and be given effect.

9.18 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. The Parties acknowledge that jurisdiction of any controversies or legal disputes 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, JEFF ELLIS AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, ARISING FROM, OR IN CONNECTION WITH THIS AGREEMENT.**

9.19 AMENDMENTS

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Board and JEFF ELLIS or others delegated authority to or otherwise authorized to execute same on their behalf.

9.20 DOMESTIC PARTNERSHIP REQUIREMENT

JEFF ELLIS 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 term of this Agreement. The failure of JEFF ELLIS to comply shall be a material breach of this 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 JEFF ELLIS until JEFF ELLIS complies; (2) termination of this Agreement; (3) and suspension or debarment of JEFF ELLIS from doing business with COUNTY.

9.21 PRIOR AGREEMENTS

This document represents the final and complete understanding of the Parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

9.22 INCORPORATION BY REFERENCE

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the Parties. The attached Exhibits "A" and "B" are incorporated into and made a part of this Agreement.

9.23 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 legal authority.

9.24 MULTIPLE ORIGINALS

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


(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: BROWARD COUNTY, through its Director of Purchasing authorized to execute same, and JEFF ELLIS AND ASSOCIATES, INC., signing by and through its _____, duly authorized to execute same.

COUNTY

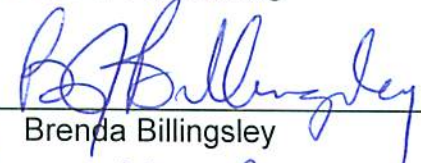
WITNESSES:



Signature


Signature

BROWARD COUNTY, by and through its Director of Purchasing

By 

Brenda Billingsley
6th day of March, 2013.

Insurance requirements approved by Broward County Risk Management Division

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  2/25/13

Signature (Date)
Risk Management Division

By  2/25/13

Patrice M. Eichen (Date)
Assistant County Attorney

Print Name and Title Above

Risk Insurance and
Contracts Manager

PME:hp
Jeff Ellis Agreement 021913 final.doc
2/19/13
#12-115.24

AGREEMENT BETWEEN BROWARD COUNTY AND JEFF ELLIS AND ASSOCIATES,
INC., FOR AQUATIC RISK MANAGEMENT CONSULTANT SERVICES

JEFF ELLIS

JEFF ELLIS AND ASSOCIATES, INC.

WITNESSES:



Signature

Brandy Mobley

Print Name



Signature

Elaine Cmelik

Print Name

By 
_____, President

22 day of FEBRUARY, 2013.

EXHIBIT "A" SCOPE OF SERVICES

JEFF ELLIS' RESPONSIBILITIES:

- A. JEFF ELLIS shall provide ongoing consultant services to COUNTY for a comprehensive aquatic risk management program ("Project") for COUNTY's aquatic facilities ("COUNTY facilities") under the terms of the Agreement. The Project shall include written procedures and standards and provide for the services specified herein. JEFF ELLIS shall provide COUNTY with its Comprehensive Aquatic Risk Management Program Handbook ("Handbook"). COUNTY, in its discretion, may add additional COUNTY-operated facilities to the Agreement, and JEFF ELLIS shall provide the same services under the terms, conditions, and fees provided for herein.
- B. JEFF ELLIS shall be available to respond to COUNTY on an "as needed" basis regarding any aquatic inquiries. This service is included in JEFF ELLIS' annual retainer fee of One Thousand Five Hundred Dollars (\$1,500.00) as provided in Exhibit "B," Fee Schedule.
- C. International Lifeguard Training Program (ILTP).

1. **Lifeguard Training.**

JEFF ELLIS shall provide an International Lifeguard Training Program (ILTP), on an as needed basis, as determined by the Contract Administrator, including, but not limited to, the following:

- State-of-the-art aquatic rescue technology.
- Professional lifeguard techniques.
- Scanning and victim Identification.
- Spinal cord injury management.
- Lifeguard first aid skills.
- CPR/Basic Life Support (BLS) for adult, children, and infants.
- Oxygen support administration.

The fees for each individual participating in any ILTP training course, including training materials, shall be as provided in Exhibit "B," Fee

Schedule, for the specific license to be obtained, as the cost of the license includes the training.

2. Lifeguard Instructor Training.

JEFF ELLIS shall provide an ILTP for training COUNTY Instructor(s) in the areas indicated below, on an as needed basis, as determined by the Contract Administrator, including, but not limited to, the following:

- Teaching methodology, including communication presentation techniques.
- Skills enhancement training to develop "teacher level" quality for course demonstrations.
- Course management procedures.
- Testing and evaluation procedures.

The training includes licensing instructors as ILTP Instructors (or equivalent), and any training materials needed to support the ILTP. Training that can be provided locally shall be given additional consideration.

COUNTY acknowledges that a minimum of six (6) individuals must attend a Lifeguard Instructor Training course in order for JEFF ELLIS to be required to perform the training course. The fees for each individual participating in any Lifeguard Instructor Training course, including training materials, shall be as provided in Exhibit "B," Fee Schedule, for the specific license.

3. Other Training.

JEFF ELLIS shall provide additional training to COUNTY, on an as needed basis, as determined by the Contract Administrator for the Swimming Program - Swim Instructor and Jr. Lifeguard Program. Training includes any training materials needed in support of the programs. Training that can be provided locally shall be given additional consideration.

D. Licensing.

JEFF ELLIS shall properly license individuals upon completion of the training referenced in paragraph C above. Licenses issued in accordance with paragraph C shall be valid at all COUNTY facilities regardless of whether the license

identifies a specific facility and the license fees shall be as provided in Exhibit "B," Fee Schedule. A license issued by JEFF ELLIS in accordance with paragraph C above may be transferred by JEFF ELLIS to another facility outside of COUNTY facilities for a license transfer fee, as provided in Exhibit "B," exclusive of costs for shipping and handling. The standard handling rate per shipped order is Twelve Dollars (\$12.00), and shipping costs shall be calculated based on the type of delivery and weight of shipment.

E. Aquatic Safety Operational Audits.

JEFF ELLIS shall conduct independent and random aquatic safety operational audits ("safety audits") at each COUNTY facility with a range of 21-30 calendar days between each safety audit. Safety audits shall be conducted at any time during COUNTY's hours of operation at COUNTY's facilities. The Division shall be provided written and video recorded copies of all safety audits and recommendations made by JEFF ELLIS for each COUNTY facility. All safety audits shall be furnished to COUNTY's Aquatic Coordinator or designated supervisor on site, immediately following the completion of a safety audit. Safety audits shall be performed three (3) times a year at each COUNTY facility for a cost per audit, including all travel related expenses, as provided in Exhibit "B," Fee Schedule.

Each safety audit shall consist of unannounced visits to COUNTY's facilities and independent evaluation of randomly selected lifeguards to determine the following:

- Aquatic professionalism and attentiveness,
- Aquatic rescue competency, and
- CPR/BLS competency.

The safety audits shall also include a review of each facility's administrative areas, including, but not limited to, a basic facility safety inspection, supervisory evaluation and administrative evaluation to determine whether the facility staff are properly documenting their protective zones, in service training sessions and other administrative areas.

F. Annual safety inspections.

JEFF ELLIS shall perform annual safety inspections at each COUNTY facility, upon the request of the Contract Administrator, at a cost per inspection as provided in Exhibit "B," Fee Schedule. JEFF ELLIS shall provide the Contract Administrator in writing with any recommended changes within thirty (30) days of each inspection.

G. Annual review of emergency plans.

JEFF ELLIS shall perform a review of the emergency plan for each COUNTY facility, upon the request of the Contract Administrator, for the One Hundred Seventy-five Dollars (\$175.00) hourly consulting fee provided in Exhibit "B," Fee Schedule. JEFF ELLIS shall provide the Contract Administrator in writing with any recommended changes within seven (7) days of the review.

H. Annual review of Division's Aquatic Manual.

JEFF ELLIS shall perform annual reviews of the Division's Aquatic Manual, at the request of the Contract Administrator, for the One Hundred Seventy-five Dollars (\$175.00) hourly consulting fee provided in Exhibit "B," Fee Schedule. JEFF ELLIS shall provide the Contract Administrator in writing with any recommended changes within thirty (30) days of the review.

I. Accident and Drowning Investigation.

1. JEFF ELLIS shall provide catastrophic aquatic accident and/or drowning incident investigation services and be named lead investigator of any aquatic incident, on an as needed basis, as requested by the Contract Administrator, at the One Hundred Seventy-five Dollars (\$175.00) hourly consulting fee provided in Exhibit "B," plus travel related expenses, provided for in Section 4.3 of the Agreement, for a total amount not to exceed of Two Thousand Five Hundred Dollars (\$2,500.00) per incident.
2. JEFF ELLIS may, at its option after reviewing the facts on a case-by-case basis, provide litigation support services to COUNTY, if requested by the Contract Administrator, at the One Hundred Seventy-five Dollars (\$175.00) hourly consulting fee provided in Exhibit "B," plus travel related expenses, provided for in Section 4.3 of the Agreement, for a total amount not to exceed of Five Thousand Dollars (\$5,000.00) per case.

J. Additional Consultant Services.

JEFF ELLIS shall perform additional professional aquatic consulting services for COUNTY on as "as-needed" basis as requested by the Contract Administrator, for the One Hundred Seventy-five Dollars (\$175.00) hourly consulting fee provided in Exhibit "B," Fee Schedule.

COUNTY's RESPONSIBILITIES:

- A. COUNTY shall assist JEFF ELLIS by placing, at JEFF ELLIS' disposal, all information pertinent to the Project that COUNTY has available, including previous reports and any other data relative to the Project.

- B. COUNTY shall arrange for JEFF ELLIS to have access to COUNTY facilities as required for JEFF ELLIS to perform its services under the Agreement.
- C. COUNTY shall use its best efforts to:
1. Adhere to and comply with the International Lifeguard Training Program™ standard of care for lifeguarding, CPR, safety and emergency procedures;
 2. Adhere to and comply with all aspects of the aquatic risk management program guidelines provided in the Handbook;
 3. Respond in writing and implement JEFF ELLIS' audit recommendations in accordance with the aquatic risk management protocols outlined in audit reports provided by JEFF ELLIS; and
 4. COUNTY must submit, in writing to JEFF ELLIS, any request to deviate from or not comply with requirements set forth in the Handbook.
- D. COUNTY shall make available all emergency action plans, staff certification, and training records to JEFF ELLIS' auditors upon request of same.
- E. COUNTY shall notify JEFF ELLIS of any catastrophic aquatic accident and/or drowning incident at any COUNTY facility.

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**EXHIBIT "B"
FEE SCHEDULE**

- A. Annual Retainer Fee. \$1,500.00
 • All COUNTY facilities
 (Includes the ILTP referenced in Exhibit "A")
- B. Aquatic Safety Operational Audit. \$800.00 per audit
 • Three (3) safety audits per facility per operating season
- C. Facility Inspection Fee. \$1,500.00
 • As requested by the Contract Administrator
- D. Consulting Fee. \$175.00 per hour
- E. License Fees. The fee for individual licenses shall be as follows:

<u>Type of License.</u>	<u>Fee</u>
ILTP Shallow Water Lifeguard License Fee	\$ 75.00
ILTP Pool Lifeguard License Fee	\$ 80.00
ILTP Special Facilities Lifeguard License Fee	\$ 80.00
ILTP Renewal Lifeguard License Fee	\$ 65.00
ILTP Lifeguard Textbook or Online Program	\$ 32.95*
License Transfer Fee	\$ 10.00
ILTP Instructor License Fee (late registration penalties apply)	\$ 360.00
ILTP Renewal Instructor License Fee (late registration penalties apply)	\$ 260.00
Swim Program Coordinator License Fee	\$ 275.00
Renewal Swim Program Coordinator License Fee	\$ 225.00
ILTP Lifeguard course completion Kit (textbook and course card)	\$ 55.00
Course Completion Card upgrade to License	\$ 35.00

* The ILTP Lifeguard Textbook or Online Program fee is subject to the Publisher's increase in costs effective July 1 of each year. JEFF ELLIS shall provide notice to the Contract Administrator thirty (30) days prior to any fee increase being effective.

<u>F. Training Fees.</u>	<u>Fee</u>
Swim Instructor Certificate	\$ 30.00
Renewal Swim Instructor Certificate	\$ 30.00
VanGuard Aquatics Leadership Instructor Training	\$ 25.00