

FIRST AMENDMENT TO AGREEMENT BETWEEN BROWARD COUNTY AND CARTAYA AND ASSOCIATES ARCHITECTS, P.A. FOR PROFESSIONAL CONSULTANT SERVICES FOR THE FORT LAUDERDALE-HOLLYWOOD INTERNATIONAL AIRPORT AND NORTH PERRY AIRPORT, BUILDING PROJECTS (AGREEMENT #Z1224902P1)

This First Amendment to the Agreement ("First Amendment") between Broward County, a political subdivision of the State of Florida ("County"), and Cartaya and Associates Architects, P.A., a Florida Corporation authorized to transact business in the State of Florida ("Consultant") (collectively, the "Parties"), is entered into effective as of the date this First Amendment is fully executed by the Parties.

RECITALS:

A. The Parties entered into an agreement on June 2, 2015, for Professional Consultant Services for Fort Lauderdale–Hollywood International Airport and North Perry Airport, Building Projects ("Agreement").

B. The Parties desire to amend the Agreement to increase the duration and budget to address the increase in scope of the projects being performed under the Agreement.

C. Additional funds are needed to provide for additional design, Construction Administration and Resident Project Representatives services for various projects including Terminal Connectors, Security Infrastructure Project, CCTV Enhancement, Rehabilitation of Rental Car Facility, Palm and Hibiscus Garages, Long-Term Infrastructure Equipment Replacement, and Naval Air Station Museum.

D. The First Amendment increases the budget by an additional amount of Five Million Dollars (\$5,000,000).

E. The Parties desire to update selected terms of the Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Agreement is amended as follows:

1. The foregoing Recitals are true and correct, and are incorporated herein by reference.
2. Throughout this First Amendment, stricken-through language indicates deletions, and underlined language (except for the title) indicates additions.

3. Section 4.1 of the Agreement is amended as follows:

4.1 The initial term of this Agreement shall be for the period beginning on the date of execution of this Agreement by the Board and ending three (3) years from that date ("Initial Term"). At its option, the County may renew this Agreement for ~~two (2)~~ four (4) additional one (1) year periods. The option to renew may be exercised by the County's Director of Purchasing by written notice of renewal to Consultant.

4. Article 5 of the Agreement is amended, in part, as follows:

5.1 AMOUNT AND METHOD OF COMPENSATION

Absent amendment, the total cumulative amount authorized for all Work Authorizations issued under authority of this Agreement to CONSULTANT may not exceed ~~Six Million Six Hundred Fifty Thousand Dollars (\$6,650,000)~~ Eleven Million Three Hundred Thousand Dollars (\$11,300,000) for labor and ~~Three Hundred Fifty Thousand Dollars (\$350,000)~~ Seven Hundred Thousand Dollars (\$700,000) for reimbursables, for a total maximum not to exceed Agreement amount of ~~Seven Million Dollars (\$7,000,000)~~ Twelve Million Dollars (\$12,000,000).

...

5.1.4 Reimbursable Expenses. County has established a maximum amount not-to exceed of ~~\$350,000~~ Seven Hundred Thousand Dollars (\$700,000) for potential reimbursable expenses which may be utilized pursuant to Section 5.3. Unused amounts of those monies established for reimbursable expenses shall be retained by County.

...

5.3 REIMBURSABLES. For reimbursement of any travel costs, travel-related expenses, or other direct nonsalary expenses directly attributable to this Project permitted under this Agreement, Consultant agrees to adhere to Section 112.061, Florida Statutes, except to the extent, ~~if any,~~ that Exhibits A and B expressly provides to the contrary. Allowable non-travel reimbursable expenses include geotechnical investigations, utility locations, ground penetrating radar, surveys, permit fees, and testing costs. County shall not be liable for any such expenses that have not been approved in advance, in writing, by the Contract Administrator. Reimbursable subconsultant expenses are limited as described herein when the subconsultant agreement provides for reimbursable expenses.

5. Article 8 of the Agreement is deleted in its entirety and replaced with the following:

8.1 Consultant shall, at a minimum, provide, pay for, and maintain in force at all times during the term of this Agreement, the insurance coverages set forth in Exhibit D, in accordance with the terms and conditions required by this article. If services are required of Consultant pursuant to this Agreement subsequent to the expiration of the Agreement, Consultant shall provide, pay for, and maintain in force such insurance coverages until County determines all services required of Consultant have been completed. Such policy or policies shall be issued by companies authorized to do business in the State of Florida with a minimum AM Best financial rating of A-, and that maintain a registered agent in Broward County, Florida upon whom service of process may be made.

8.2 Consultant shall specifically protect County by naming Broward County as an additional insured/loss payee under the primary and non-contributory General Liability Policy, Business Automobile Liability, Excess Liability, and any Property or Environmental Insurance policies.

All retentions, deductibles, and exclusions must be declared in writing and approved by County. Consultant shall be solely responsible to pay all deductibles or retentions.

If Consultant maintains broader coverage or higher limits than the minimums shown in Exhibit D, County requires, and shall be entitled to, the broader coverage or the higher limits maintained by Consultant.

8.3 Consultant shall provide written notice to County of any cancellation or restriction of insurance at least thirty (30) Days prior to the date of expiration, or ten (10) Days prior to the date of expiration for cancellation due to non-payment, and shall concurrently provide County with a copy of its updated Certificates of Insurance. Upon request by County, Consultant shall provide a copy of any policy required by this article within fourteen (14) Days of a written request to Consultant, either by inspection of the policy at Broward County Aviation Department or by providing a copy of the policy. Any insurance coverage that is written on a "claims made" basis must remain in force for two (2) years after the termination or expiration of this Agreement. Commercial General Liability Insurance shall be written on an "occurrence" basis only.

8.4 County may modify the insurance coverages required under this article at any time as County determines necessary to protect County's interest. In such event, County shall notify Consultant of the modified requirements, and Consultant shall provide an updated Certificate of Insurance evidencing such modified coverages within thirty (30) Days after County's notice of the modification to the requirements.

8.5 Subrogation. Notwithstanding anything to the contrary in this Agreement,

Consultant waives any right of recovery against County for any loss or damage to the extent the same is required to be covered by Consultant's insurance hereunder. Consultant shall obtain from its insurers a waiver of subrogation in favor of County in connection with any loss or damage covered by Consultant's insurance.

8.6 Certificate Holder Address. The certificate holder address shall read "Broward County, c/o Aviation Department, 2200 SW 45 Street, Suite 101, Dania Beach, Florida 33312" or such other address as may from time to time be required by County.

8.7 Subcontractor Coverage. Any subcontractor performing work for Consultant shall have Broward County listed as a certificate holder for all coverages and as an additional insured for its General Liability, Excess Liability, and Pollution coverages. Consultant shall require its subcontractors to provide all appropriate and necessary insurance coverages in their respective agreements.

8.8 The failure of County to demand evidence of the required insurance or to identify any deficiency in Consultant's coverage based on the evidence of insurance provided shall not be construed as a waiver by County. The insurance requirements required under this Agreement are minimum requirements, and shall in no way limit the Consultant's liability arising out of the work performed or related activities.

The terms of this Article 8 shall survive the expiration or earlier termination of this Agreement.

6. Section 10.4 of the Agreement is deleted in its entirety and replaced with the following:

10.4 Public Records. To the extent Consultant is acting on behalf of County as stated in Section 119.0701, Florida Statutes, Consultant shall:

- a. Keep and maintain public records required by County to perform the services under this Agreement;
- b. Upon request from County, provide County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
- c. Ensure that public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by law for the duration of this Agreement and

following completion or termination of this Agreement if the records are not transferred to County; and

- d. Upon completion or termination of this Agreement, transfer to County, at no cost, all public records in possession of Consultant or keep and maintain public records required by County to perform the services. If Consultant transfers the records to County, Consultant shall destroy any duplicate public records that are exempt or confidential and exempt. If Consultant keeps and maintains public records, Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to County upon request in a format that is compatible with the information technology systems of County.

The failure of Consultant to comply with the provisions of this section shall constitute a material breach of this Agreement entitling County to exercise any remedy provided in this Agreement or under applicable law.

A request for public records regarding this Agreement must be made directly to County, who will be responsible for responding to any such public records requests. Consultant will provide any requested records to County to enable County to respond to the public records request.

Any material submitted to County that Consultant contends constitutes or contains trade secrets or is otherwise exempt from production under Florida public records laws (including Florida Statutes Chapter 119) ("Trade Secret Materials") must be separately submitted and conspicuously labeled "EXEMPT FROM PUBLIC RECORD PRODUCT – TRADE SECRET." In addition, Consultant must, simultaneous with the submission of any Trade Secret Materials, provide a sworn affidavit from a person with personal knowledge attesting that the Trade Secret Materials constitute trade secrets under Florida Statutes Section 812.081 and stating the factual basis for same. In the event that a third party submits a request to County for records designated by Consultant as Trade Secret Materials, County shall refrain from disclosing the Trade Secret Materials, unless otherwise ordered by a court of competent jurisdiction or authorized in writing by Consultant. Consultant shall indemnify and defend County and its employees and agents from any and all claims, causes of action, losses, fines, penalties, damages, judgments, and liabilities of any kind, including attorneys' fees, litigation expenses, and court costs, relating to the non-disclosure of any Trade Secret Materials in response to a records request by a third party.

IF CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF FLORIDA STATUTES CHAPTER 119 TO CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (954) 359-2581 JCHAMBERS@BROWARD.ORG, 2200 SW 45TH STREET, SUITE 101, DANIA BEACH, FL 33312.

7. Exhibit D and Attachment III are hereby deleted in their entireties and replaced with Exhibit D and Attachment III, attached hereto and made a part of this First Amendment. As of the effective date of this First Amendment, all references to Exhibit D and Attachment III in the Agreement shall be deemed to refer to the form of Exhibit D and Attachment III attached to this First Amendment.
8. In the event of any conflict or ambiguity between this First Amendment and the Agreement, the Parties agree that this First Amendment shall control.
9. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement.
10. The Agreement, as amended herein, incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein, and the Parties agree that there are no commitments, agreements, or understandings concerning the subject matter hereof that are not contained in the Agreement and this First Amendment to the Agreement. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.
11. Preparation of this First Amendment has been a joint effort of the Parties and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than any other.
12. Except as modified herein, all terms and conditions of the Agreement shall remain in full force and effect.
13. This First Amendment may be executed in multiple counterparts, each of which shall be deemed to be an original.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties hereto have made and executed this First Amendment: Broward County, through its Board of County Commissioners, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the ____ day of _____, 2018, and Cartaya Associates and Architects, P.A., signing by and through its _____, duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, by and through
its Board of County Commissioners


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

By _____
Mayor or Vice-Mayor

____ day of _____, 2018

Insurance requirements
approved by Broward County
Risk Management Division

Approved as to form by
Andrew J. Meyers
Broward County Attorney
Aviation Office
2200 SW 45th Street, Suite 101
Dania Beach, Florida 33312
Telephone: (954) 359-6100
Telecopier: (954) 359-1292

By  7-23-18

Tracy Meyer, Esq. (Date)
Risk Insurance and Contracts Manager

By  _____
Alexander J. Williams, Jr. (Date)
Senior Assistant County Attorney

FIRST AMENDMENT TO AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES FOR THE FORT LAUDERDALE-HOLLYWOOD INTERNATIONAL AIRPORT AND NORTH PERRY AIRPORT, BUILDING PROJECTS

CONSULTANT

WITNESSES:

CARTAYA ASSOCIATES AND ARCHITECTS, P.A.



Signature

By: 


Authorized Signor

Billy Hayles.

Print Name of Witness above

Marc M. Cartaya, President

Print Name and Title




Signature

20th day of July, 2018

TEEN WOON

Print Name of Witness above

ATTEST: 

Person authorized to attest

(SEAL OR NOTARY)

