

FIFTH AMENDMENT

to

A G R E E M E N T

between

BROWARD COUNTY

and

LANDRUM & BROWN, INCORPORATED

for

CONSULTANT SERVICES RELATING TO AN
ENVIRONMENTAL IMPACT STATEMENT
FOR AN AIRPORT RUNWAY EXTENSION AT THE
FORT LAUDERDALE-HOLLYWOOD INTERNATIONAL AIRPORT
IN BROWARD COUNTY, FLORIDA

RLI #20030325-0-AV-01

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

AND

LANDRUM & BROWN, INCORPORATED, an Ohio corporation, its successors and assigns, hereinafter referred to as "CONSULTANT."

W I T N E S S E T H:

WHEREAS, COUNTY and CONSULTANT entered into an Agreement dated November 4, 2003, the First Amendment dated June 22, 2004, the Second Amendment dated April 25, 2006, the Third Amendment dated June 19, 2007, and the Fourth Amendment dated June 10 2008 (collectively, the "Agreement"), whereby CONSULTANT agreed to provide consultant services to the COUNTY and the Federal Aviation Administration ("FAA") to complete the existing Environmental Impact Statement ("EIS") for a proposed runway expansion consistent with the terms and conditions of that certain Memorandum of Understanding between the COUNTY and the FAA dated July 30, 2003; and

WHEREAS, the parties desire to reassign amounts among the categories set forth on **Exhibit A-1**, attached to this Amendment; and

WHEREAS, the Agreement expires December 31, 2009 and the parties desire to extend the Agreement until September 30, 2010 and to make such other modifications and amendments as set forth below;

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

1. The above recitals are true and correct and incorporated herein by reference.
2. Article 5, *Term and Time for Performance*, is amended as follows:
 - 5.1 The term of this Agreement shall ~~be for a period of approximately six (6) years, beginning~~ begin on the date of Board approval ("Effective Date") and ~~ending December 31, 2009 shall end on September 30, 2010;~~ provided that either party shall have the right to terminate this Agreement as set forth in Section 10.2. It is further provided that this Agreement shall terminate if funds for payment to the CONSULTANT for any COUNTY fiscal year are not budgeted and made available by the Board.
3. **Exhibit A-1, dated September 1, 2009 and Exhibit A, Amendment to the Revised Scope of Services, dated September 1, 2009**, which are attached hereto and made a part hereof, are hereby added to the Agreement. In each instance in which Exhibit A, *Phase I(A), Scope of Services*, Exhibit A, *Detailed Scope of Services for Phase II*, Exhibit A, *Revised Scope of Service*, February 17, 2006, Composite Exhibit A, *Amendment to the Revised Scope of Services*, January 24, 2007, Exhibit A, *Amendment to the Revised Scope of Services*, May 9, 2008 and Exhibit A-1, dated May 9, 2008 are referred to in the Agreement, said reference shall also be deemed a reference to **Exhibit A, Amendment to the Revised Scope of Services, dated September 1, 2009** and to **Exhibit A-1, dated September 1, 2009**, attached hereto.
4. With respect to Item 21(A5) on **Exhibit A-1**, dated September 1, 2009, attached hereto, the Contract Administrator may transfer an annual aggregate maximum of thirty percent (30%) of the initial value of the "Labor" category to the "Expenses" category.
5. Truth-in-Negotiation Certificate. Execution of this Amendment by CONSULTANT shall act as the execution of a truth-in-negotiation certificate that any rates and other costs supporting the rates set forth in the Agreement, as amended hereby, are accurate, complete, and current as of the date of execution hereof.


6. In the event of any conflict or ambiguity between this Amendment and the Agreement, the parties hereto hereby agree that this document shall control.
7. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement.
8. The Agreement, as amended hereby, incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained therein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter hereof that are not contained in the Agreement, as amended hereby. Accordingly, it is agreed that no deviation from the terms of the Agreement, as amended hereby, shall be predicated upon any prior representations or agreements, whether oral or written.
9. Preparation of the Agreement, as amended, has been a joint effort of CONSULTANT and COUNTY and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.
10. Except as set forth in the Agreement, as amended, no modification, amendment or alteration in the terms or conditions contained in the Agreement, as amended, shall be effective unless contained in a written document executed by the parties hereto.
11. Except as modified herein, all terms and conditions of the Agreement shall remain in full force and effect.
12. CONSULTANT hereby irrevocably submits to the jurisdiction of Florida's state or federal courts in any action or proceeding arising out of or relating to the Agreement, as amended and hereby irrevocably agrees that all claims in respect to such action or proceeding may be heard and determined in Broward County, Florida, the venue situs. The parties agree that the Agreement, as amended, shall be construed and interpreted according to the laws of the state of Florida. To encourage prompt and equitable resolution of any litigation that may arise hereunder, the parties hereby waive any rights either may have to a trial by jury of any such litigation.
13. In the event the Agreement, as amended, or a portion of the Agreement, as amended, is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless COUNTY or CONSULTANT elects to terminate the Agreement. The election to terminate the Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

14. The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties. The attached **Exhibit A-1**, dated September 1, 2009 and **Exhibit A, Amendment to the Revised Scope of Services**, dated September 1, 2009, are incorporated into and made a part of this Amendment by this reference.
15. No modification, amendment or alteration in the terms or conditions contained in the Agreement, as amended, shall be effective unless contained in a written document and executed by the parties hereto.
16. Multiple copies of this Fourth Amendment may be fully executed by all parties, each of which shall be deemed to be an original.

IN WITNESS WHEREOF, the parties hereto have made and executed this Fifth Amendment to Agreement on the respective dates under each signature: 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 _____, 2009, and LANDRUM & BROWN, INCORPORATED, signing by and through its ~~Vice~~ President duly authorized to execute same.

CONSULTANT

ATTEST:



Secretary

Dennis E. Peters
(Please Type Name of Secretary)

(CORPORATE SEAL)



LANDRUM & BROWN, INCORPORATED

By 

Mark A. Perryman, ~~Vice~~ President /COO

17 day of September, 2009

**FIFTH AMENDMENT TO AGREEMENT BETWEEN BROWARD COUNTY AND
LANDRUM & BROWN, INCORPORATED, FOR CONSULTANT SERVICES
RELATING TO AN ENVIRONMENTAL IMPACT STATEMENT FOR AN AIRPORT
RUNWAY EXTENSION AT THE FORT LAUDERDALE-HOLLYWOOD
INTERNATIONAL AIRPORT, BROWARD COUNTY, FLORIDA**

COUNTY

ATTEST:

BROWARD COUNTY, through its
BOARD OF COUNTY COMMISSIONERS

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

By _____
Mayor

____ day of _____, 2009.

Insurance requirements
approved by Broward County
Risk Management Division

Approved as to form by
Office of the County Attorney
for Broward County, Florida
JEFFREY J. NEWTON, County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By  _____

By  _____
Christine C. Lee
Senior Assistant County Attorney

#03-71.48

Exhibit A
Amendment to the Revised Scope of Services
September 1, 2009

ENVIRONMENTAL IMPACT STATEMENT

**FORT LAUDERDALE-HOLLYWOOD
INTERNATIONAL AIRPORT
RLI # 20030325-0-AV-01
Amendment #5**

Amendment #5 is for the Landrum & Brown Team (L&B Team) to assist Broward County Aviation Department (BCAD) with their wetland permitting activities and other Environmental Impact Statement (EIS)-related matters and to assist the Federal Aviation Administration (FAA) with litigation support after the EIS Record of Decision. The FAA has requested that the L&B EIS contract period with Broward County which ends December 31, 2009 be extended until September 30, 2010. Amendment #5 is not for additional funding but authorization to exchange unused labor and expense budget to labor budget in a new task described below under the current contract.

Task 12 Water Resources Permit Applications and Coordination

Task 12 will be closed and the balance of the budget reassigned to Task 21(A5).

Task 17(A4): Completion of EIS and Additional FAA Support As Needed

Task 17(A4) will be closed and the balance of the budget reassigned to Task 21(A5).

Task 18: Assistance with Freedom of Information Act (FOIA) Requests

Task 18 will be closed and the budget reassigned to Task 21(A5).

Task 19: Post-Decision Litigation Support

Task 19 will be closed and the balance of the budget reassigned to Task 21(A5).

Task 21(A5): FAA/BCAD Post ROD Support

Task 21 (A5) includes the remainder of the budgets from Tasks 12, 17(A4), 18, and 19. The effort to be expended under this task includes the on-going support to the

FAA on an as-needed basis; and, the on-going support to BCAD, as needed, for wetland permitting activities, and other EIS-related matters.

- **On-Going Support to FAA as Needed**

This additional task labor budget will allow L&B to provide additional support to the FAA on an as-needed basis throughout the defense of the Record of Decision (ROD) which has been contested legally.

The Consultant Team has been working with the FAA since the publication of the ROD in December 2008 to prepare the Administrative Record for the U.S. Department of Justice (DOJ). Specifically the FAA requested that all emails generated in the EIS process dating back to 2004 be compiled. Items the FAA determined should be part of the Administrative Record to support litigation was cataloged and entered into the index. Copies of the individual emails were recorded and made available electronically.

Based on the Consultant's past experience, the FAA and the DOJ may request that the Consultant generate declarations, affidavits, exhibits, copies of past documents, and other material support. The FAA and DOJ may also request that the Consultant testify in court, facilitate site tours, or provide other services. The Consultant Team will be available, when requested by the FAA to conduct and document additional analyses; prepare, conduct, and attend meetings; consult with, via telecon or in-person with FAA at all levels, on any project issues; evaluate analyses of other firms or teams as it relates to the EIS or other airport improvement project enabling authorizations.

- **On-Going Support to BCAD as Needed for Wetland Permitting and Other EIS-Related Matters**

BCAD has determined that the project design team will prepare and submit all applicable permit applications related to the EIS after final project design and engineering is complete. Chen & Associates (a BCAD consultant) is currently working on the Stormwater Master Plan (existing and future conditions) and will provide the stormwater data for all permit applications. Miller-Legg, a consultant to the Broward County Parks Department, is preparing information regarding wetland mitigation to take place at West Lake Park.

As of the approval of Amendment #5, the work contained in this task, Task 21(A5), supersedes all previous amendments to Task 12. The Consultant Team will be available, when requested by BCAD to provide support of the permitting process and for preliminary review by the L&B Team of the data/information necessary for preparation of the permit and ERP applications, and to continue coordination with the permitting agencies.

This effort includes the additional coordination related to wetland permitting issues and other EIS-related matters including, but not limited to,

teleconferences needed with the permitting agencies, the field work needed in order to verify the jurisdictional wetlands according to the Rapanos decision requested by the USACE, the preparation of documentation outlining the findings of the Rapanos verification field work, and review of permit applications developed by the design team to ensure consistency with the EIS/ROD.

* * * * *

All services associated with this Amendment #5 Scope of Services will be conducted on a Time and Materials (T&M) basis in accordance with the current contract provisions, and the overall not-to-exceed limit of the contract through this amendment of \$10,309,558.

EXHIBIT A-1
September 1, 2009
FORT LAUDERDALE-HOLLYWOOD INTERNATIONAL AIRPORT ENVIRONMENTAL IMPACT STATEMENT
LANDRUM & BROWN TEAM

Task	Description	Authorized Budgets by Task Through Amendment #4 (Completed Tasks highlighted)						Budget Remaining (As of July 2009)			Remaining Budget Reallocation		Amendment #5 Actual & Budgets (Completed Tasks highlighted)		
		Expenditures Through July 2009			Expenditures Through July 2009			Expenditures Through July 2009			Remaining Budget Reallocation		Amendment #5 Actual & Budgets		
		Labor	Expenses	Total	Labor	Expenses	Total	Labor	Expenses	Total	Labor	Expenses	Labor	Expenses	Total
PHASE I(A)															
1.0	Phase I(A) Mobilization	\$ 111,390	\$ 30,203	\$ 141,593	\$ 111,390	\$ 30,203	\$ 141,593.28	\$ -	\$ -	\$ -			\$ 111,390	\$ 30,203	\$ 141,593
2	Phase II Mobilization	\$ 29,793	\$ 32	\$ 29,826	\$ 29,793	\$ 32	\$ 29,826	\$ -	\$ -	\$ -			\$ 29,793	\$ 32	\$ 29,826
3	Project Management and Decision Support Tasks	\$ 1,674,446	\$ 62,352	\$ 1,736,798	\$ 1,674,446	\$ 62,352	\$ 1,736,798	\$ -	\$ -	\$ -			\$ 1,674,446	\$ 62,352	\$ 1,736,798
4	Administrative File	\$ 518,906	\$ 12,183	\$ 531,089	\$ 518,906	\$ 12,183	\$ 531,089	\$ -	\$ -	\$ -			\$ 518,906	\$ 12,183	\$ 531,089
5	Determination of Purpose and Need	\$ 263,083	\$ 4,170	\$ 267,253	\$ 263,083	\$ 4,170	\$ 267,253	\$ -	\$ -	\$ -			\$ 263,083	\$ 4,170	\$ 267,253
6	Affected Environment – 2004 Baseline	\$ 703,249	\$ 13,077	\$ 716,326	\$ 703,249	\$ 13,077	\$ 716,326	\$ -	\$ -	\$ -			\$ 703,249	\$ 13,077	\$ 716,326
7	Federal Scoping	\$ 120,018	\$ 27,193	\$ 147,211	\$ 120,018	\$ 27,193	\$ 147,211	\$ -	\$ -	\$ -			\$ 120,018	\$ 27,193	\$ 147,211
8	Agency Coordination and Public Involvement	\$ 197,642	\$ 29,346	\$ 226,988	\$ 197,642	\$ 29,346	\$ 226,988	\$ -	\$ -	\$ -			\$ 197,642	\$ 29,346	\$ 226,988
9	Alternatives Development and Analysis	\$ 929,714	\$ 3,103	\$ 932,817	\$ 929,714	\$ 3,103	\$ 932,817	\$ -	\$ -	\$ -			\$ 929,714	\$ 3,103	\$ 932,817
10	Net Benefits Analysis	\$ 338,878	\$ 4,729	\$ 343,607	\$ 338,878	\$ 4,729	\$ 343,607	\$ -	\$ -	\$ -			\$ 338,878	\$ 4,729	\$ 343,607
11	Environmental Consequences	\$ 1,949,632	\$ 34,934	\$ 1,984,566	\$ 1,949,632	\$ 34,932	\$ 1,984,564	\$ -	\$ -	\$ -			\$ 1,949,632	\$ 34,934	\$ 1,984,566
12	Water Resources Permit Applications and Coordination	\$ 316,275	\$ 2,950	\$ 319,225	\$ 263,131	\$ 2,483	\$ 265,615	\$ 53,144	\$ 467	\$ 53,610	Reallocate to Task 21(A5)	Reallocate to Task 21(A5)	\$ 263,131	\$ 2,483	\$ 265,615
13	Mitigation Strategies	\$ 42,426	\$ 47	\$ 42,473	\$ 42,426	\$ 47	\$ 42,473	\$ -	\$ -	\$ -			\$ 42,426	\$ 47	\$ 42,473
15	Draft Environmental Impact Statement Preparation	\$ 34,918	\$ 11,511	\$ 46,429	\$ 34,918	\$ 11,511	\$ 46,429	\$ -	\$ -	\$ -			\$ 34,918	\$ 11,511	\$ 46,429
16	Final Environmental Impact Statement Preparation	\$ 286,330	\$ 12,364	\$ 298,694	\$ 286,330	\$ 12,364	\$ 298,694	\$ -	\$ -	\$ -			\$ 286,330	\$ 12,364	\$ 298,694
17	Assistance with Final Federal Finding	\$ 186,708	\$ 500	\$ 187,208	\$ -	\$ -	\$ -						\$ 186,708	\$ 500	\$ 187,208
18	Assistance with Freedom of Information Act (FOIA) Requests	\$ 58,800	\$ 500	\$ 59,300	\$ 80,438	\$ -	\$ 80,438	\$ (21,638)	\$ 500	\$ (21,138)	Reallocate to Task 21(A5)	Reallocate to Task 21(A5)	\$ 80,438	\$ -	\$ 80,438
19	Post-Litigation Support	\$ 46,800	\$ 3,200	\$ 50,000	\$ 53,900	\$ 433	\$ 54,333	\$ (7,100)	\$ 2,767	\$ (4,333)	Reallocate to Task 21(A5)	Reallocate to Task 21(A5)	\$ 53,900	\$ 433	\$ 54,333
20	General Advisory Services	\$ 99,885	\$ 4,824	\$ 104,709	\$ 99,885	\$ 4,824	\$ 104,709	\$ -	\$ -	\$ -			\$ 99,885	\$ 4,824	\$ 104,709
16(A4)	Supplemental Response to Comments	\$ 304,155	\$ 41,136	\$ 345,291	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			\$ 304,155	\$ 41,136	\$ 345,291
17(A4)	Assistance with Final Federal Finding, Completion of EIS, and FAA Support As Needed	\$ 1,371,067	\$ 427,090	\$ 1,798,157	\$ 1,371,059.53	\$ 270,803.00	\$ 1,641,862.53	\$ 7	\$ 156,287	\$ 156,294	Reallocate to Task 21(A5)	Reallocate to Task 21(A5)	\$ 1,371,060	\$ 270,803	\$ 1,641,863
21(A5)	FAA/BCAD Post ROD Support												\$ 183,433	\$ 1,000	\$ 184,433
PROJECT TOTALS		\$ 9,584,115	\$ 725,443	\$ 10,309,558	\$ 9,068,839	\$ 523,786	\$ 9,592,625	\$ 24,414	\$ 160,021	\$ 184,434			\$ 9,743,135	\$ 566,423	\$ 10,309,558