

Contract Number _____
Vendor Number 190717

LEE COUNTY PORT AUTHORITY

PROFESSIONAL SERVICES AGREEMENT

General Planning and Environmental Services – Continuing Contract

LOQ # 23-64

THIS AGREEMENT is entered this _____ day of _____, 20____, between the **LEE COUNTY PORT AUTHORITY**, a political subdivision and special district of the State of Florida ("Authority") located at 11000 Terminal Access Road, Suite 8671, Fort Myers, Florida, 33913, and **PASSARELLA & ASSOCIATES, INC.**, a Florida corporation, authorized to do business in the State of Florida, and having a business address of 13620 Metropolis Avenue, Ste. 200, Fort Myers, FL 33966 FEI No. 65-0667105, ("Consultant").

WITNESSETH:

WHEREAS, Authority desires to enter a continuing contract to obtain the professional general planning and environmental services of Consultant to benefit various Authority projects at the Southwest Florida International Airport and Page Field General Aviation Airport in Fort Myers, Florida; and

WHEREAS, Consultant has submitted Letters of Qualifications seeking to provide those services and represents that it has expertise in the type of professional services required; and

WHEREAS, Authority has conducted a competitive selection process in under the terms of the Port Authority Purchasing Manual procedures to acquire "Other Professional Services" to obtain the professional services described above and has selected Consultant to provide those services; and

WHEREAS, the Parties have agreed that this Agreement is intended to be a "Continuing Contract".

NOW, THEREFORE, in consideration of the above, the terms and provisions contained herein, and the mutual consideration described below, the parties agree as follows:

ARTICLE 1 - RECITALS

The recitals as set forth above are true and correct and are incorporated into the terms of this Agreement as if set out herein at length.

ARTICLE 2 - SCOPE OF SERVICES

2.1. Consultant shall provide professional planning and environmental services to Authority on a continuing basis, as described in Exhibit "A", "Scope of Services," attached to this Agreement and incorporated herein, and as assigned by Authority during the term of this Agreement. These services may include serving as Authority's professional planning and environmental consultant for various projects and providing the customary services associated therewith.

2.2. Consultant has represented to Authority that it has expertise in the type of professional services that will be required by the Scope of Services. Consultant agrees that all services provided by Consultant under this Agreement are subject to Authority's review and approval and shall be performed according to the normal and customary standards of professional practice for firms with special expertise in the type of services required by this Agreement, and in compliance with all laws, statutes, ordinances, codes, rules, regulations and requirements of any governmental agencies which regulate or have jurisdiction over those services. If Consultant becomes aware of any conflicts in these requirements, Consultant shall notify Authority of such conflict in writing and utilize its best professional judgment to resolve the conflict.

ARTICLE 3 - TERM OF AGREEMENT

The term of this Agreement commences on the date first written above and continues for a term of three (3) years from that date (the "Expiration Date"), or the date Consultant completes, and Authority accepts, any work assigned by a Contract Amendment or Task Authorization issued before the Expiration Date, whichever occurs last. If a Contract Amendment or Task Authorization is issued that will require work to continue beyond the Expiration Date, neither Agreement nor Authorization may extend the term of this Agreement for more than six (6) months from the Expiration Date.

ARTICLE 4 - CONSULTANT'S RESPONSIBILITIES

The Consultant's responsibilities are, but not limited to, the following:

4.1. Obtain and maintain throughout the term of this Agreement all licenses required to do business in the State of Florida and in Lee County, Florida, including, but not limited to, all licenses required by any governmental agency responsible for regulating and licensing the professional services provided by Consultant under this Agreement.

4.2. Agree that when services provided under this Agreement relate to professional services which, under Florida law, require a license, certificate of

authorization or other form of legal entitlement to practice such services, Consultant shall employ and/or retain only qualified personnel to provide those services.

4.3. Employ and designate a qualified licensed professional to serve as Consultant's Project Manager ("Project Manager"). Consultant must designate its Project Manager in writing within five (5) calendar days after receiving an executed original of this Agreement. Consultant's Project Manager designation must be executed by the proper officers of Consultant, and shall acknowledge that the Project Manager shall have full authority to bind and obligate Consultant on all matters arising out of or relating to this Agreement. The Project Manager shall be specifically authorized and responsible to act on behalf of Consultant with respect to directing, coordinating and administering all aspects of the services provided under this Agreement. The person selected as Consultant's Project Manager will be subject to the prior approval and acceptance of Authority. Consultant further agrees not to change its designated Project Manager, or the location or duties assigned to the Project Manager, without prior written consent of Authority.

4.4. Agree to promptly remove and replace the Project Manager, or any other personnel employed or retained by Consultant, or any subconsultant or subcontractor, or any personnel of any such subconsultant or subcontractor, engaged by Consultant to provide services under this Agreement, within fourteen (14) calendar days of receipt of a written request from Authority. Authority may make such requests with or without cause. However, if day fourteen (14) falls on a Saturday, Sunday, or Authority recognized holiday, the deadline shall fall to the next Ondon or non-Authority recognized holiday.

4.5. Agree to be responsible for the professional quality, technical adequacy and accuracy, timely completion, and the coordination of all data, studies, reports, memoranda, other documents and other services, work and materials performed, provided, and/or furnished by Consultant. The Consultant shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in such data, studies and other services, work and materials resulting from the negligent act, errors or omissions or intentional misconduct of Consultant.

4.6. Agree that neither review, approval, nor acceptance by Authority of any data, studies, reports, memoranda, and incidental professional services, work or materials furnished hereunder by the Consultant shall in any way relieve Consultant of responsibility for the adequacy, completeness and accuracy of its services and the quality of Consultant's work and materials. Neither the Authority's review, approval or acceptance of, nor payment for, any part of the Consultant's services, work and materials shall be construed to operate as a waiver of any of the Authority's rights under this Agreement or any cause of action it may have arising out of the performance of this Agreement.

4.7. If requested by Authority, maintain for the duration of this Agreement a local office in Southwest Florida staffed full-time by Consultant's Project Manager. The local office must be Consultant's main place of business, or an independent branch office of

Consultant's business, and not merely the office of a subconsultant or subcontractor providing desk space to the Project Manager.

4.8. Comply with all federal, state and local laws and building requirements. Consultant shall devote particular attention to complying with Federal Aviation Administration regulations, requirements and Advisory Circulars. The Consultant must also comply with all pertinent grant agreements and grant conditions applicable to each Contract Amendment or Task Authorization. Authority shall provide the Consultant with one copy of any specific and unique grant or regulatory requirements on a task by task basis prior to or concurrent with issuance of any Contract Amendment or Task Authorization.

4.9. Acknowledge that Authority is conducting an ongoing capital improvement program at the Southwest Florida International Airport and continuing renovations and improvements to Page Field General Aviation Airport. Accordingly, Consultant agrees to coordinate the performance of its services under this Agreement as directed and required by Authority so as not to interfere with, disrupt or delay any work. Consultant further agrees to coordinate its efforts with Authority's other architects, engineers, designers, or construction managers for that work.

ARTICLE 5 - ADDITIONAL SERVICES OF CONSULTANT

Additional Services refer to professional services requested by Authority that are not specifically set out in the Scope of Services. Should the Authority request Consultant to provide and perform Additional Services, the Consultant agrees to provide and perform such Additional Services as may be agreed to in writing by both parties to this Agreement.

Additional Services may include, but are not limited to:

5.1. Preparation of applications and supporting documents (except those already to be furnished under this Agreement) for private or governmental grants, loans or advances in connection with any Project or Task.

5.2. Services resulting from significant changes in the general scope, extent or character of any assignment including, but not limited to, changes in size, complexity, Authority's schedule or character of construction; and revising previously accepted studies, reports, designs or documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to and not reasonably anticipated prior to the preparation of such studies, reports, designs or documents, or that are due to any causes beyond Consultant's control and fault.

5.3. Providing models for Authority's use.

5.4. Furnishing services of independent professional associates and consultants for services other than those to be provided by Consultant under this Agreement.

5.5. Services during out-of-town travel required of Consultant and as directed by Authority, other than visits to any Project site or Authority's offices.

5.6. Assistance in connection with bid protests, rebidding or renegotiating contracts for construction, materials, equipment or services, except as otherwise provided for herein.

5.7. Preparing to serve or serving as a consultant or witness for Authority in any litigation, or other legal or administrative proceeding, involving any assignment (except for assistance in any litigation or other legal or administrative proceeding, involving any assignments that are included as part of the services to be provided herein).

5.8. Additional services rendered by Consultant in connection with any assignment, not otherwise provided for in this Agreement or not customarily furnished in accordance with generally accepted professional planning and environmental service practice.

Any additional services agreed to by the parties will constitute a continuation of the professional services requested under this Agreement and must be provided and performed in accord with the terms of this Agreement and any amendment to this Agreement.

Any amendment shall describe: (1) the scope of the additional services requested; (2) the basis of compensation; and (3) the period of time or performance schedule for completion of the additional services.

ARTICLE 6 - RESPONSIBILITY FOR ESTIMATES

6.1 If the Consultant is required to evaluate a project budget and prepare preliminary or detailed estimates of probable construction cost for any project or portion of a project, Consultant shall insure that all evaluations and estimates represent Consultant's best judgment as a professional familiar with the construction industry. For purposes of the Liability Provisions of this Article only, the Consultant's evaluations or estimate(s) shall be considered valid and effective for a period of six (6) months from the date Authority accepts the evaluation or estimate(s).

6.2. Budget Evaluations - Budget in this case applies to the Authority's budget and not to the budget as a project-controlled document. A budget is prepared with the use of flowsheets, layouts, and equipment details. This type of evaluation shall be accurate within twenty-five percent (25%) of the cost of construction of the Project. If the bids, as described above, fail to meet this prescribed accuracy, the cost associated with the preparation of the Budget Evaluation will be repaid by Consultant to Authority or deducted from any fees owing Consultant by Authority.

6.3. Construction Estimates - When preparing and submitting preliminary or detailed estimates of probable construction cost to the Authority for any project or portion of a project, the Consultant, by exercise of its experience, effort, knowledge and

judgment, shall insure that all estimates represent Consultant's best judgment as a professional familiar with the construction industry and shall be held accountable, responsible and liable for the accuracy and completeness of any and all such cost estimates.

(A) A construction cost estimate for purposes of this Agreement is an estimate prepared on the basis of well-defined engineering/architectural data and on detailed information set forth in specifications, designs or drawings which are to be used as a basis for obtaining bids or price proposals for constructing a project. This type of estimate shall be accurate within plus or minus ten percent (10%) of the cost of the construction of the project. The accuracy and reliability of a Construction Cost Estimate is vital to the Authority's interests because it may be used for such purposes as, but not limited to, the following: budgeting; obtaining, allocating or obligating funds for the project; and evaluating or determining the reasonableness and acceptableness of bids or price proposals for construction projects.

(B) Consultant shall certify all estimates of probable construction costs and project completion dates prepared by Consultant. All certifications shall be in a form approved by Authority.

(C) If the Authority solicits and receives bids or price proposals from contractors on a construction project based on specifications, design, drawings and a Construction Cost Estimate prepared by the Consultant, and the lowest bid or price proposal, submitted by a responsive and responsible bidder or proposer, exceeds the amount of the Consultant's Construction Cost Estimate by more than the five percent (5%), the Consultant shall, upon notification by the Authority, assume responsibility for and proceed to provide and perform the following service without additional compensation. Notwithstanding the above, Consultant will not be required to guarantee that bids or negotiated prices will not vary from any estimate of probable construction cost prepared or agreed to by Consultant.

(D) Consultant will, subject to the review and approval of the Authority, modify at its expense the design, specifications, drawings and related bidding and contract documents to the extent necessary to reduce the anticipated construction costs so that the re-solicitation of bids or price proposals will realize bids or price proposals being received that are within the range of accuracy established for the Construction Cost Estimate. Any such modifications made by the Consultant shall not conflict with the functional or operational requirements established by the Authority for the project and set forth in the Agreement or Task Authorization(s) issued thereto, nor shall any such modifications conflict with established rules, regulations, requirements or professional standards pertaining to the design, specifications or drawings prepared by the Consultant, nor shall such modifications adversely affect the safe use or operation of the constructed project.

(E) If (i) the Consultant's modification of the design, specifications, drawings and related bidding and contract documents, and (ii) the re-solicitation of bids or price proposals do not result in bids or price proposals being received from a responsive and

responsible bidder or proposer that are within the established percent accuracy of the Consultant's Construction Cost Estimate, the costs associated with the Consultant's preparation and development of the Construction Cost Estimate shall be recoverable by the Authority by an appropriate reduction in the Consultant's invoice requesting payment for services rendered.

(F) To determine compliance with the accuracy requirement established for the Construction Cost Estimate prepared by the Consultant, the amount of the Construction Cost Estimate shall be adjusted from the date the Construction Cost Estimate was received by the Authority until the date bids or price proposals are received by the Authority, by applying the percent change in the "20 Cities Cost Index" as published in the ENR (formerly Engineering News-Record), a McGraw-Hill, Inc. publication.

If, in response to its solicitation, the Authority receives less than three bids or priced proposals for a project, there is the potential that such bids or price proposals may not be a realistic representation of the costs expected to be associated with the Project. If under such circumstances, and if in the professional judgment of the Consultant, the low bid or the low price proposal received from a responsive bidder or proposer does not realistically represent the costs associated with the Project, the Consultant may deem it appropriate to recommend that the Authority reject any such bid(s) or price proposal(s). If under such circumstances the Authority concurs with the Consultant's recommendation and rejects the bid(s) or price proposal(s), the Authority will not hold the Consultant responsible to, nor will the Authority require the Consultant to, modify the specifications, design, drawings and related bidding and contract documents as set forth above.

ARTICLE 7 - AUTHORITY'S RESPONSIBILITIES

The Authority's responsibilities are the following:

7.1. Designate in writing a Project Manager to act as Authority's representative with respect to the issuance of Contract Amendment or Task Authorizations for services rendered under this Agreement ("Authority Project Manager"). The Authority's Project Manager, Executive Director, Deputy Executive Director - Development or the Development Division Director shall have authority to execute Contract Amendments, Task Authorizations, and any modifications or changes to Consultant's (1) scope of services; (2) time of commencement or delivery; or (3) compensation related to services required under any Contract Amendment or Task Authorization. The Authority Project Manager shall have authority to transmit instructions, receive information, and interpret and define Authority's policies and decisions with respect to Consultant's services under this Agreement. The Authority's Project Manager shall review and make appropriate recommendations on all requests for payment for services submitted by Consultant.

7.2. The Authority's Project Manager is not authorized to, and shall not, issue any verbal orders or instructions to Consultant that would have the effect, or be interpreted to have the effect, of modifying or changing in any way whatever the: (1) scope of services provided and performed by Consultant hereunder; (2) the time Consultant is

obligated to commence and complete all such services; or (3) the compensation Authority is obligated or committed to pay Consultant.

7.3. Provide all criteria and information requested by Consultant as to Authority's requirements for any project or task, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and budgetary limitations.

7.4. Upon request from Consultant, make available to Consultant all available information in Authority's possession pertinent to any Contract Amendment or Task Authorization, including existing drawings, specifications, shop drawings, product literature, previous reports and any other data concerning design or construction of a project.

7.5. Arrange access, in accord with Authority's security regulations, for Consultant to enter any Project site to perform services. Consultant acknowledges that Authority may provide such access during times that are not the Consultant's normal business hours.

7.6. Notify Consultant of any defects or deficiencies in services rendered by Consultant.

ARTICLE 8 - CONTRACT AMENDMENTS, TASK AUTHORIZATIONS AND TIME FOR COMPLETION OF SERVICES

8.1. Consultant shall not commence work under this Agreement until it receives a fully-executed copy of this Agreement and a written Contract Amendment or Task Authorization, in substantially the form attached and incorporated by reference as Exhibit "E," and signed by both parties. Each Contract Amendment or Task Authorization must include a lump sum or not-to-exceed compensation amount and a schedule of services required or a delivery date for all services.

8.2. All tasks outlined in the Agreement are contingent upon execution of a Task Authorization Form.

8.3. Time is of the essence for all services provided under this Agreement. Authority may suffer damage if Consultant does not complete the required services in a timely manner. Consultant therefore agrees to employ or retain adequate personnel and subconsultants or subcontractors throughout the term of this Agreement to complete all services in a timely and diligent manner.

8.4. If Consultant is obstructed or delayed in the prosecution or completion of its services as a result of unforeseeable causes beyond the control of Consultant, and not due to its own fault or neglect, including but not restricted to: acts of God or of public enemies, acts of government or of Authority, fires, floods, epidemics, quarantine regulations, strikes or lock-outs, then Consultant must notify the Authority in writing within seventy-two (72) hours after commencement of such delay, stating the cause or causes

thereof, or be deemed to have waived any right which Consultant may have had to request a time extension.

8.5. No interruption, interference, inefficiency, suspension or delay in the commencement or progress of Consultant's services from any cause whatsoever, including those for which Authority may be responsible in whole or in part, shall relieve Consultant of its duty to perform services or give rise to any right to damages or additional compensation from Authority. Consultant's sole remedy against Authority will be the right to seek an extension of time to its schedule. This paragraph shall expressly apply to claims for early completion, as well as claims based on late completion. Provided, however, if through no fault or neglect of Consultant, the services relating to a specific Contract Amendment or Task Authorization hereunder have not been completed within twenty-four (24) months of the date that Contract Amendment or Task Authorization was signed by both parties, Consultant's compensation for that Contract Amendment or Task Authorization shall be equitably adjusted, with respect to those services that have not yet been performed, to reflect the incremental increase in costs experienced by Consultant after expiration of said twenty-four (24) month period.

8.6. If Consultant fails to commence, provide, perform or complete any of the services to be provided hereunder in a timely and diligent manner, in addition to any other rights or remedies available to Authority hereunder, Authority at its sole discretion and option may withhold any and all payments due and owing to Consultant until such time as Consultant resumes performance of its obligations in such a manner so as to establish to Authority's satisfaction that Consultant's performance is or will shortly be back on schedule.

ARTICLE 9 - COMPENSATION AND METHOD OF PAYMENT

9.1. Authority will pay Consultant for all requested and authorized services provided by Consultant under this Agreement and as set forth in the individual Contract Amendments or Task Authorizations, based on the Fee Schedule set out in Exhibit "B", "Basis of Compensation," which is attached hereto and incorporated by reference. Consultant will be compensated on a lump-sum basis on completion of a particular Contract Amendment or Task Authorization over the course of Consultant's services for Work in Progress, based on a monthly statement of services, as follows:

- (1) **Lump Sum** - Upon completion and Authority's acceptance of Consultant's work on a particular Project or Task, Authority will pay Consultant a lump sum as specified in the Task Authorization or Contract Amendment.

9.1 (1)a. "Lump Sum is a contracting method utilized by the Authority whereby scope equals fee. Lump Sum fees shall be based on assumptions/estimates of personnel, hourly rates, man hours, indirect expenses, time durations, etc. needed to effectively accomplish the scope of work. As such, the project assumptions made during good faith negotiations are the basis for the Lump Sum fee. The Lump Sum scope equals the Lump Sum fee. As such, the Lump Sum fee is not

guaranteed regardless of scope or time impacts to the project. If at any time during the progression of work under this Contract the project assumptions and resulting agreed upon scope of work substantially or materially change, then the Lump Sum fee will be adjusted to reflect these changes by a Contract Amendment.”

Lump Sum Fees are negotiated, understood and agreed to include all direct and indirect labor costs, personnel related costs, overhead and administrative costs, costs of sub-consultant(s) and/or subcontractor(s), out-of-pocket expenses and costs, professional service fee(s) and any other costs or expenses which may pertain to the services and/or work to be performed, provided and/or furnished by the Consultant as may be required and/or necessary to complete each and every task set forth in the Scope of Professional Services, or as may be set out in subsequent Contract Amendments, and/or Task Authorizations agreed to in writing by both parties to this Agreement.

The parties acknowledge that Lump Sum fees are negotiated based on their best estimate of the number of personnel required, their hourly rates, and the cost of indirect expenses, materials and general conditions required to complete a specific Project or Task. Each Lump Sum amount is therefore based on a good faith estimate and the Lump Sum will be subject to adjustment by a revised Task Authorization or Contract Amendment if the project assumptions substantially or materially change over the course of the services.

If the scope of Consultant’s services for a particular Task or Project are substantially reduced, due to lack of funding or for any other reason, or Consultant’s services are suspended or this Agreement expires or is terminated prior to the completion of a Task or Project, Consultant shall not be entitled to claim the entire Lump Sum payment amount for that Task or Project, but will be compensated as set out in Sections 9.4 through 9.6, below.

(2) **Work in Progress - Monthly Statements** - Consultant may submit one invoice to Authority’s Development Division each calendar month covering services rendered and completed during the preceding calendar month. Consultant’s invoice(s) must be itemized to correspond to the basis of compensation as set forth in the Task Authorization or Contract Amendment, expressed as a percentage of the total work to be performed under that Task Authorization or Contract Amendment.

Authority will review each Monthly Invoice Statement to determine whether the requested Consultant Invoice accurately accounts for the work completed to date, the remaining scope of work required and the remaining schedule of subconsultant or subcontractor work required to complete the assigned Task or Project. If Authority determines that the time and costs invoiced does not reflect the negotiated Consultant scope of work for the specific Contract Amendment or Task Authorization and the agreed project schedule, the Authority may reduce the amount of the invoice to be paid accordingly.

(3) **Non-Personnel Reimbursable Expenses** – If authorized, Authority will further compensate Consultant for non-personnel reimbursable expenses and costs as set out in Exhibit “B-1”, attached and incorporated by reference.

(4) **Not-To-Exceed Fee(s)** - When all, or any portion, of the Consultant's compensation for performing services required in the Scope of Services or any Contract Amendment or Task Authorization(s), is established on a Not-to-Exceed (N.T.E.) amount basis, it is mutually understood and agreed that such compensation for each Completed Task shall be made on the following basis:

a. For the actual hours necessary, required and expended by the Consultant's professional and technical personnel, multiplied by the applicable hourly rates for each classification or position as set forth in Exhibit "B" to this Agreement; and

b. For the actual necessary, required and expended non-personnel reimbursable expenses and costs, multiplied by the applicable charge for each item as set forth in Exhibit "B-1"; and

c. With the understanding and agreement that the Authority shall pay the Consultant for all such costs and expenses within the established Not-to-Exceed amount for each Task or Sub-Task subject to the Consultant presenting an itemized and detailed invoice with appropriate supporting documentation attached thereto to show evidence satisfactory to the Authority covering all such costs and expenses; and

d. With the understanding and agreement that the Consultant's invoices and all payments to be made for all Not-to-Exceed amounts will be subject to the review, acceptance and approval of the Authority; and

e. With the understanding and agreement that when the Consultant's compensation is established on a Not-to-Exceed basis for a specific Task(s) or Sub-Task(s) the total amount of compensation to be paid the Consultant to cover all personnel costs, non-personnel reimbursable expenses and costs, and Sub-Consultant and Sub-Contractor costs for any such specific Task(s) or Sub-Task(s) shall not exceed the amount of the total Not-to-Exceed compensation established and agreed to for each specific Task(s) or Sub-Task(s).

(5) **Authorization to Commit Funds** - All Tasks outlined in the Agreement are contingent upon execution of a Contract Amendment or Task Authorization Form. The Board of Port Commissioners' approval and execution of this Agreement does not commit the Authority to the expenditure of any federal, state, local funds for any service listed in this Agreement. Only by execution of a Contract Amendment and subsequent Task Authorization is the expenditure of funds authorized and committed. Consultant and Authority understand, recognize and agree that there is no presumption of funding availability, authorization to work or commitment for future work until an appropriate Contract Amendment or Task Authorization is executed by both parties. Tasks may be authorized in whole or in part.

9.2. Payments will be made upon receipt of a proper invoice and in compliance with FL § Chapter 218, otherwise known as the “Florida Prompt Payment Act,” and, pursuant to the Authority’s payment policies as described herein. Authority shall issue payment to Consultant within forty-five (45) calendar days after receipt of an invoice in an acceptable form and containing the requested breakdown and detailed description and documentation. If Authority objects or takes exception to the amount of any Consultant invoice, Authority shall notify Consultant in writing of such objection or exception within the forty-five (45) day period. However, if day forty-five (45) falls on a Saturday, Sunday, or Authority recognized holiday, the deadline shall fall to the next Monday or non-Authority recognized holiday. If such objection or exception remains unresolved at the end of the forty-five (45) day period, Authority shall withhold the disputed amount and make payment to Consultant of all amounts not in dispute. Payment of any disputed amount will be resolved by the mutual agreement of the parties.

9.3. Failure by Consultant to follow the instructions set out above shall result in an unavoidable delay in payment by Authority.

9.4. If this Agreement is terminated for the convenience of the Authority, the Authority shall compensate the Consultant for: (1) all services performed prior to the effective date of termination; (2) reimbursable expenses then due; and (3) reasonable expenses incurred by the Consultant in effecting the termination of services and work, and incurred by the submittal to the Authority of any Project documents.

9.5. If Authority suspends the Consultant's services or work on all or part of the services required by this Agreement, the Authority shall compensate the Consultant for all services performed prior to the effective date of suspension and any reimbursable expenses then due along with any reasonable expenses incurred or associated with, or incurred as a result of such suspension.

9.6. If services required under this Agreement are terminated, canceled, or decreased due to: (1) termination; (2) suspension in whole or in part; and (3) and/or are modified by the subsequent issuance of Contract Amendment(s); the Consultant shall not be entitled to receive compensation for anticipated fees; profit, general and administrative overhead expenses or any other anticipated income or expense which may be associated with the services which are terminated, suspended, eliminated, canceled or decreased.

9.7. The Consultant may cross-utilize funds from the various Tasks assigned to accomplish the overall purpose and goal of this Agreement provided Consultant has obtained prior written approval from the Authority. The Authority shall review the need for such request and the impact on other assigned Tasks. In doing so, the Authority retains the authority to delete any Task outlined in the Scope of Services.

ARTICLE 10 - FAILURE TO PERFORM

If Consultant fails to commence, perform and/or complete any of the services and work required under this Agreement in a timely and diligent manner, the Authority may consider such failure as cause to terminate this Agreement. As an alternative to

termination, the Authority may, at its option, withhold any or all payments due and owing to the Consultant, not to exceed the amount of the compensation for the work in dispute, until such time as the Consultant resumes performance of its obligations in accordance with the time and schedule of performance requirements set forth in this Agreement.

ARTICLE 11 - PUBLIC RECORDS

Consultant acknowledges that any information concerning its services may be exempt from disclosure under the Florida Public Records Law as follows:

(1) **Airport Security Plans** - The Southwest Florida International Airport security plan, and other critical operational materials designated by the Authority, are exempt from disclosure as public records under Section 331.22, Florida Statutes (2001).

These materials include, but are not limited to, any photograph, map, blueprint, drawing, or similar material that depicts critical operational information that the Authority determines could jeopardize airport security if generally known.

(2) **Building Plans** - Consultant further acknowledges that Section 119.07(3)(b)1., Florida Statutes, exempts building plans, blueprints, schematic drawings, and diagrams depicting internal layouts and structural elements of a public building from the disclosure requirements of the Florida Public Records Law.

(3) **Airport Security Systems** - Section 281.301, Florida Statutes, exempts information relating to the security systems for any property owned by or leased to the Authority and all information relating to the security systems for any privately-owned or leased property which is in Authority's possession, including all records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to or revealing such systems or information, and all meetings relating directly to or that would reveal such systems or information, is confidential and exempt from disclosure.

Section 119.071(3)(a)1. and 2., Florida Statutes, reiterates the security system exemption and expands upon it to include threat assessments; threat response plans; emergency evacuation plans; shelter arrangements; security manuals; emergency equipment; and security training as confidential and exempt from disclosure.

Consultant agrees, during the term of this Agreement, not to divulge, furnish or make available to any third person, firm, or organization, without Authority's prior written consent, or unless incident to the proper performance of Consultant's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by Consultant or any sub-consultants or subcontractors pursuant to this Agreement. Consultant shall require all of its employees, sub-consultants and subcontractors to comply with the provisions of this paragraph.

ARTICLE 12 – CONSULTANT’S PUBLIC RECORDS OBLIGATIONS

Consultant specifically acknowledges its obligation to comply with Section 119.0701, Florida Statutes, with regard to public records, and shall:

- (1) Keep and maintain public records that ordinarily and necessarily would be required by the Authority in order to perform the services required under this Agreement;
- (2) Upon request from the Authority, provide the Authority with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 199, Florida Statutes, or as otherwise provided by law;
- (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law; and
- (4) Meet all requirements for retaining public records and transfer, at no cost to the Authority, all public records in possession of Provider upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Authority in a format that is compatible with the information technology system of the Authority.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 239-590-4504, 11000 TERMINAL ACCESS ROAD, SUITE 8671, FORT MYERS, FLORIDA 33919, publicrecords@flylcpa.com; <http://flylcpa/publicrecords>.

ARTICLE 13 - OWNERSHIP OF DOCUMENTS

Upon completion or termination of this Agreement, all records, documents, tracings, plans, specifications, maps, evaluations, reports and other technical data, other than working papers, prepared or developed by Consultant under this Agreement shall be delivered to and become the property of Authority. Consultant, at its expense, may retain copies thereof for files and internal use.

ARTICLE 14 - MAINTENANCE OF RECORDS

Consultant will keep and maintain adequate records and supporting documentation which concern or reflect its services hereunder. The records and documentation will be retained by Consultant for a minimum of five (5) years from the date of expiration or termination of this Agreement or the date all work under this Agreement is complete, whichever is later. Authority, the FAA, the Comptroller General

of the United States or any duly authorized agent or representative of any of them shall have the right to audit, inspect and copy all such records and documentation as often as they deem necessary during the period of this Agreement and during the five (5) year period thereafter; provided, however, such activity shall be conducted only during normal business hours.

ARTICLE 15 - INDEMNIFICATION

15.1. Consistent with the provisions of FS s. 725.08, Consultant shall indemnify, hold harmless and defend Authority and Lee County, Florida, and their respective Boards of Commissioners, officers, agents, and employees, from and against any liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, that may be made or brought hereafter by anyone on account of personal injury, property damage, loss of monies, or other loss, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of Consultant, or anyone utilized by Consultant in the performance of this Agreement, except where such claims or damages result from the gross negligence or willful, wanton or intentional misconduct of Authority, Lee County or their respective Boards of Commissioners, officers, agents, or employees. This obligation will survive termination of the Agreement and acceptance of the services provided under this Agreement and payment therefore by Authority.

ARTICLE 16 – SOVEREIGN IMMUNITY

Consultant acknowledges and agrees that Authority does not waive its sovereign immunity by entering into this Agreement and that nothing herein shall be interpreted as a waiver of Authority's rights, including the limitation of waiver of immunity per Section 768.28, Florida Statutes, or any other statute, and Authority expressly reserves those rights to the fullest extent allowed by law.

ARTICLE 17 – INSURANCE

During the term of this Agreement, Consultant shall provide, pay for, and maintain, with companies satisfactory to Authority, the types of insurance described herein. Promptly after execution of this Agreement by both parties, the Consultant must obtain the insurance coverages and limits as set out below. All insurance shall be from responsible companies duly authorized to do business in the State of Florida and/or responsible risk retention group insurance companies registered with the State of Florida.

In the event that the Consultant engages Sub-Consultants or Sub-Contractors to assist the Consultant in providing or performing services or work pursuant to the requirements of this Agreement, the insurance coverages required under Article 17 to be provided by the Consultant shall cover all of the services or work to be provided or performed by all of the Sub-Consultants or Sub-Contractors engaged by the Consultant. However, in the event the services or work of Sub-Consultants or Sub-Contractors engaged by the Consultant is not covered by the Consultant's Insurance Policy(s), it shall be the responsibility of the Consultant to ensure that all Sub-Consultants or Sub-

Contractors have fully complied with the Authority's insurance requirements set forth in Article 17 of this Agreement.

The Authority reserves the right to reject insurance written by an insurer it deems unacceptable because of poor financial condition or other operational deficiency. All insurance must be placed with insurers who are duly licensed, or authorized to do business within the State of Florida, and with an A.M. Best Rating of not less than A-VII. Regardless of this requirement, Authority in no way warrants that the required minimum insurer rating is sufficient to protect the Consultant from potential insurer insolvency.

All policies of insurance shall contain provisions that advance written notice shall be given to Authority's Risk Manager of any cancellation, intent not to renew, material change or alteration, or reduction in the policies' coverages, except in the application of the Aggregate Limits provision of any policy. If there is a reduction in the Aggregate Limit of any policy, Consultant shall immediately take steps to have the Aggregate Limit reinstated to the full extent permitted under such policy. If there is a cancellation, Provider agrees to obtain replacement coverage as soon as possible.

The acceptance by Authority of any Certificate of Insurance evidencing the insurance coverages and limits required in this Agreement does not constitute approval or agreement by Authority that the insurance requirements have been met or that the insurance policies shown in the Certificates of Insurance are in compliance with the requirements of this Agreement.

All of Consultant's insurance coverages shall be primary and non-contributory to any insurance or self-insurance program carried by Authority and applicable to work under this Agreement and shall include waiver of subrogation in favor of Authority.

No work shall commence on any Task assigned under this Agreement unless and until the required Certificates of Insurance are received and approved by Authority. During the term of this Agreement, Consultant shall provide, pay for, and maintain, with companies satisfactory to Authority, the types of insurance described herein.

17.1. INSURANCE REQUIRED

Before starting and until acceptance of any work by Authority, Consultant shall procure and maintain insurance of the types and to the limits specified in paragraphs 17.2.1 through 17.2.6, inclusive below. All liability insurance policies obtained by Consultant to meet the requirements of this Agreement, other than Worker's Compensation and Employer's Liability and Professional Liability policies, shall name Authority as an additional insured as to the services of Consultant under this Agreement and shall contain the severability of interests provisions.

17.2. COVERAGES

The amounts and types of insurance described below are the minimum requirements and are not intended to limit the Authority's access to additional coverage

if more coverage is available. All amounts and types of insurance shall conform to the following minimum requirements with the use of Insurance Service Office (ISO) forms and endorsements or broader where applicable:

17.2.1. Professional Liability Insurance - Consultant shall maintain professional liability insurance insuring its legal liability arising out of the performance of professional services under this Agreement. Such insurance shall have limits of not less than \$2,000,000 each claim and \$2,000,000 annual aggregate. Consultant must continue this coverage for a period of not less than five (5) years after completion of its services to Authority. Consultant shall promptly submit a Certificate of Insurance providing for an unqualified written notice to Authority of any cancellation of coverage or reduction in limits, other than the application of the Aggregate Limits provision.

If the professional liability insurance is written on a claims-made basis, Consultant warrants that any retroactive date under the policy shall precede the effective date of this Agreement and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Agreement is completed.

17.2.2. Commercial General Liability Insurance - Consultant shall maintain commercial general liability insurance on an occurrence basis. Coverage shall include, but not be limited to, Bodily Injury, Contractual for this Agreement, Independent Contractors, Broad Form Property Damage including Products and Completed Operations, and Personal and Advertising Injury.

Limits of coverage shall not be less than the following:

Each Occurrence Personal and Advertising Injury	\$1,000,000
General Aggregate Limits	\$2,000,000

17.2.3. Automobile Liability Insurance shall be maintained by Consultant as to ownership, maintenance, and use of all owned, non-owned, leased or hired vehicles with limits of not less than:

Bodily Injury Liability per person/per accident	\$1,000,000
Property Damage	\$100,000 per accident
OR	
Combined Single Limits	\$1,000,000 per accident

If Consultant's services require driving Airside, business automobile liability coverage must be increased as follows:

Page Field	\$2,000,000 Combined Single Limit
Southwest Florida International Airport	\$5,000,000

17.2.4. Worker's Compensation and Employers Liability Insurance shall be maintained by Consultant during the term of this Agreement for all employees engaged

in the work under this Agreement, in accordance with the laws of the State of Florida. The amount of such insurance shall not be less than:

Worker's Compensation	Florida Statutory Requirements
Employer's Liability	
Each Accident	\$1,000,000
Disease Each Employee	\$1,000,000

17.2.5. Environmental Liability and/or Contractors Pollution Liability Insurance and/or Errors and Omissions Liability Applicable to the Work Performed – Consultant shall maintain pollution liability insurance, including the cost of defense during the term of this Agreement and for a period of five (5) years following completion of all services under this Agreement. Such coverage shall apply specifically to the services/scope of work outlined in this Agreement and shall include, but not limited to, Pollution Legal Liability (legal liability arising out of fumes, acids, alkalis, toxic chemicals, liquids or gasses, hazardous materials, waste materials or other irritants, contaminants, or pollutants) into or upon land, the atmosphere, or any watercourse or body of water, including groundwater at, under, or emanating from the site of services:

Per Claim or Occurrence	\$2,000,000
General Aggregate per policy	\$2,000,000 per 1 year period
Period one year	

17.2.6. Consultant must provide evidence of the required insurance coverage using Authority's Certificate of Insurance attached as Exhibit "C", or similar form acceptable to Authority's Risk Manager, to verify coverages. The Certificate of Insurance must be completed on a "sample only" basis by Consultant's insurance representatives and must be submitted for Authority's review as to acceptability. Upon acceptance, the Certificates must be signed by an Authorized Representative of the insurance company/companies shown on the Certificates with proof that he or she is an authorized representative thereof. In addition, copies of all insurance policies shall be provided to Authority, on a timely basis, if requested by Authority. If any insurance provided under this Agreement will expire prior to the completion of the services provided under this Agreement, renewal Certificates of Insurance on an acceptable form and copies of the renewal policies, if requested by Authority, must be furnished to Authority's Risk Manager at least thirty (30) days prior to the date of expiration.

17.2.7. If Consultant does not maintain the insurance coverages required by this Agreement, Authority may cancel the Agreement or at its sole discretion is authorized to purchase such coverages and charge Consultant for such coverages purchased. Authority shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company/companies used. The decision of Authority to purchase such insurance coverages shall in no way be construed to be a waiver of its rights under this Agreement.

ARTICLE 18 - SERVICES BY CONSULTANT'S OWN STAFF

Services to be performed hereunder must be performed by Consultant's own staff, unless otherwise authorized in writing by Authority. The employment of, contract with, or use of the services of any other person or firm by Consultant, as independent contractor or otherwise, shall be subject to the prior written approval of Authority. No provision of this Agreement shall, however, be construed as constituting an agreement between Authority and any such other person or firm. Nor shall anything contained herein be deemed to give any such party or any third party any claim or right of action against Authority beyond such as may otherwise exist without regard to this Agreement.

ARTICLE 19 - WAIVER OF CLAIMS

Consultant's acceptance of final payment shall constitute a full waiver of any and all claims, except for insurance company subrogation claims, by it against Authority for services rendered under this Agreement, except those previously made in writing and identified by Consultant as unsettled at the time of the final payment. Neither the acceptance of Consultant's services nor payment by Authority shall be deemed to be a waiver of any of Authority's rights against Consultant.

ARTICLE 20 - AIRPORT SECURITY REQUIREMENTS

Consultant acknowledges that the Authority is subject to strict federal security regulations limiting access to secure areas of the airport and prohibiting violations of the adopted Airport Security Program. Consultant may need access to these secure areas to complete the work required by this Agreement.

Consultant therefore agrees, in addition to the other indemnification and assumption of liability provisions set out above, to indemnify and hold harmless the Authority and Lee County, Florida, and their respective commissioners, officers and employees, from any duty to pay any fine or assessment or to satisfy any punitive measure imposed on the Authority or Lee County, Florida by the FAA or any other governmental agency for breaches of security rules and regulations by Consultant, its agents, employees, subconsultants, subcontractors, or invitees.

Consultant further acknowledges that its employees and agents may be required to undergo background checks and take Airport Security and Access Procedures ("S.I.D.A.") training before receiving an Airport Security Identification Badge.

Immediately upon the completion of any work requiring airport security access under this Agreement, or upon the resignation or dismissal or conclusion of any work justifying airport security access to any agent, employee, subcontractor, or invitee of the Consultant, Consultant shall notify the Airport's Police Department that the Consultant's access authorization or that of any of Consultant's agents, employees, subconsultants, subcontractors, or invitees has changed. Consultant will confirm that notice, by written confirmation on company letterhead, within twenty-four (24) hours of providing initial notice to the Airport's Police Department.

Upon termination of this Agreement, or the resignation or dismissal of any employee or agent, or conclusion of any work justifying airport security access to any agent, employee, subcontractor, or invitee of the Consultant, Consultant shall surrender any Airport Security Identification Badge held by the Consultant or by Consultant's agents, employees, subconsultants, subcontractors, or invitees. If Consultant fails to surrender these items within five (5) days, the Consultant shall be assessed a fee of One Hundred Dollars (\$100.00) per identification badge not returned. This fee will be billed to the Consultant or deducted from any money owing to the Consultant, at the Authority's discretion.

ARTICLE 21 – ASSIGNMENT, TRANSFER AND SUBCONTRACTS

Consultant shall not assign or transfer any of its rights, benefits or obligations hereunder, without the prior written consent of Authority. The Consultant shall have the right, subject to the Authority's prior written approval, to employ other persons and/or firms to serve as subconsultants or subcontractors in connection with the Consultant's performance of services under the requirements of this Agreement.

ARTICLE 22 – CONSULTANT AN INDEPENDENT CONTRACTOR

Consultant is an independent contractor and is not an employee or agent of the Authority. Nothing in this Agreement shall be interpreted to establish any relationship other than that of an independent contractor between the Authority and Consultant, its employees, agents, subcontractors or assigns, during or after the performance of this Agreement.

ARTICLE 23 - TERMINATION OR SUSPENSION

23.1. Consultant shall be considered in material default of this Agreement and such default will be considered cause for Authority to terminate this Agreement, in whole or in part, as further set forth in this section, for any of the following reasons: (a) failure to begin work under the Agreement within the times specified under any Task Authorization, or (b) failure to properly and timely perform the services as directed by Authority as provided for in the Agreement, or (c) the bankruptcy or insolvency or a general assignment for the benefit of creditors by Consultant, or (d) failure to obey laws, ordinances, regulations or other codes of conduct, or (e) failure to perform or abide by the terms or spirit of this Agreement, or (f) for any other just cause. Authority may terminate this Agreement, in whole or in part, by giving Consultant seven (7) calendar days written notice.

23.2. If, after notice of termination of this Agreement, it is determined for any reason that Consultant was not in default, or that its default was excusable, or that Authority was not entitled to the remedies against Consultant provided herein, then Consultant's remedies against Authority shall be the same as and limited to those afforded Consultant under paragraph 23.3. below.

23.3. Authority shall have the right to terminate this Agreement, in whole or in part, without cause upon thirty (30) calendar days written notice to Consultant. In the event of such termination for convenience, Consultant's recovery against Authority shall be limited to that portion of the fee earned through the date of termination, together with any retainage withheld and any costs reasonably incurred by Consultant that are directly attributable to the termination, but Consultant shall not be entitled to any other or further recovery against Authority, including, but not limited to, anticipated fees or profits on work not required to be performed.

23.4. Upon termination, Consultant shall deliver to Authority all original papers, records, documents, drawings, models, and other material set forth and described in this Agreement.

23.5. Authority shall have the power to suspend all or any portions of the services to be provided by Consultant hereunder upon giving Consultant two (2) calendar days prior written notice of such suspension. If all or any portion of the services to be rendered hereunder are so suspended, Consultant's sole and exclusive remedy shall be an extension of time to its schedule.

ARTICLE 24 - TERMINATION UNDER SECTION 287.135, F.S.

Notwithstanding any provision of this Agreement to the contrary, Authority will have the option to immediately terminate this Agreement, in the exercise of its sole discretion, if Consultant is found to have submitted a false certification under Section 287.135(5), F.S., or has been placed on the Scrutinized Companies with Activities in Sudan List; Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; is engaged in business operations in Cuba or Syria; or is on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

ARTICLE 25 - SECURING AGREEMENT

Consultant warrants that Consultant has not employed or retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement and that Consultant has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement.

Consultant shall sign the Truth-In-Negotiation Certificate attached hereto and made a part hereof as Exhibit "D". The original Agreement price and any additions thereto shall be adjusted to exclude any sums by which Authority determines the Agreement price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs.

ARTICLE 26 - CONFLICT OF INTEREST

26.1. - Conflict of Interest - Clients - The Authority desires to avoid any real or perceived conflict of interest in obtaining Consultant's services during the term of this Agreement. Consultant therefore agrees not to perform work for any third party related to development of the Southwest Florida International Airport or Page Field General Aviation Airport, nor perform work related to any property directly abutting either Airport boundary or the boundary of the Southwest Florida International Airport Mitigation Park, or within the Runway Protection Zone of either Airport, or within the Southwest Florida International Airport Noise Overlay Zone.

Consultant represents that it presently has no interest and shall acquire no interest, during the term of this Agreement, either direct or indirect, which would conflict in any manner with the performance of services required under this Agreement. Consultant further agrees that no person having any such interest shall be employed or engaged by Consultant for said performance.

If Consultant, for itself and on behalf of its subconsultants or subcontractors, is about to engage in representing another client, which it in good faith believes could result in a conflict of interest with the work being performed by Consultant or such subconsultants or subcontractors under this Agreement, then it will promptly bring such potential conflict of interest to Authority's attention, in writing. Authority will advise Consultant, in writing, within ten (10) calendar days as to the period of time required by Authority to determine if such a conflict of interest exists. If Authority determines that there is a conflict of interest, Consultant or such subconsultant or subcontractor shall decline the representation upon written notice by Authority.

If Authority determines that there is no conflict of interest, then Authority will give its written consent to the proposed representation. If Consultant or a subconsultant or subcontractor accepts any representation without obtaining Authority's prior written consent, and if Authority subsequently determines that there is a conflict of interest between that representation and the work being performed by Consultant or a subconsultant or subcontractor under this Agreement, then Consultant or such subconsultant or subcontractor agrees to promptly terminate the representation. Consultant shall require each of its subconsultant or subcontractors to comply with the provisions of this Article.

If Consultant fails to advise or notify Authority as provided hereinabove of representation which could, or does, result in a conflict of interest, or if Consultant fails to discontinue such representation when requested, Authority may consider such failure as justifiable cause to terminate this Agreement.

26.2. Conflict of Interest - Projects - If Consultant or any subconsultant or subcontractor is requested by Authority to prepare any early analysis, concept study, preliminary design, cost estimate, project schedule, etc. for a project and the estimated construction cost of that project is expected to exceed the statutory threshold for competitive solicitations (currently \$4 million) the Consultant and any subconsultant or

subcontractor will be prohibited from pursuing any future solicitation or contracting with another firm, as a prime consultant or subconsultant, for that same project. The Consultant may not decline any work assigned by the Authority under this Agreement because of this restriction.

As identified in the Request for Letters of Qualification, Consultant acknowledges and accepts that all work that is potentially funded with any federal funds will be awarded to the top ranked firm as previously determined during the competitive selection process.

ARTICLE 27 - NOTICES AND ADDRESS OF RECORD

27.1. All notices required or made under this Agreement to be given by either party to the other shall be in writing and shall be delivered by hand or by United States Postal Service, first class mail service, postage prepaid, and addressed to the following addresses of record:

Lee County Board of Port Commissioners
11000 Terminal Access Road, Suite 8671
Fort Myers, Florida 33913

ATTENTION: Emily Underhill, P.E., Deputy Executive Director - Development

Passarella & Associates, Inc.
13620 Metropolis Avenue, Ste. 200
Fort Myers, FL 33912

ATTENTION: Kenneth C. Passarella

27.2. Either party may change its address of record by written notice to the other party given in accordance with requirements of this Article.

ARTICLE 28 - NO THIRD PARTY RIGHTS

Nothing contained in this Agreement shall create a contractual relationship with a third party, or any duty, obligation or cause of action in favor of any third party, against either the Authority or Consultant.

Services performed by Consultant under the Agreement are solely for the benefit of the Authority. This Agreement shall not be construed to create any contractual relationship between Consultant and any third party. It is the intent of the parties that there be no third party beneficiaries to this Agreement. The fact that the Authority may enter into other agreements with third parties that give Consultant and Authority the right to observe work being performed by those third parties, shall not give rise to any duty or responsibility on the part of Consultant in favor of such third parties.

ARTICLE 29 – MISCELLANEOUS

29.1. All services provided under this Agreement must be performed in a professional manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances in the same geographic location.

29.2. No modification, waiver, suspension or termination of the Agreement or of any terms thereof shall impair the rights or liabilities of either party.

29.3. Waiver by either party or a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.

29.4. The headings of the Articles, Sections, Schedules and Attachments as contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions in such Articles, Sections, Exhibits and Attachments.

29.5. This Agreement, including any Addenda and referenced Exhibits and Attachments hereto, constitutes the entire agreement between the parties hereto and shall supersede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matter set forth herein, and any such prior agreements or understanding shall have no force or effect whatever on this Agreement.

29.6 Each party's liability with respect to any claims arising out of this Agreement shall be absolutely limited to direct damages arising out of the Services and each party shall bear no liability whatsoever for any consequential loss, injury or damage incurred by the other party, including but not limited to claims for loss of use, loss of profits and loss of markets.

29.7 If any word, phrase, sentence, part, subsection, or other portion of this Agreement, or any application thereof, to any person, or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, subsection, other portion, or the proscribed application thereof, shall be severable, and the remaining portions of this Agreement, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force, and effect.

ARTICLE 30 - NOTICE REGARDING PUBLIC ENTITY CRIMES

Section 287.133(3)(a) (1995) requires Authority to notify Consultant of the provisions of Section 287.133(2)(a) F.S.

Section 287.133(2)(a) F.S. prohibits a person or affiliate who has been placed on the convicted vendor list maintained by the Florida Department of Management Services following a conviction for a public entity crime from:

- A. Contracting to provide goods or services to a public entity.
- B. Submitting a bid on a contract for construction or repair of a public building or public work.
- C. Submitting bids on leases of real property to a public entity.
- D. Being awarded or perform work as a contractor, supplier, subcontractor, or Consultant under a contract with any public entity in excess of \$25,000.00.

The prohibitions listed above apply for a period of thirty-six (36) months from the date a person or an affiliate is placed on the convicted vendor list.

ARTICLE 31 - APPLICABLE LAW

Unless otherwise specified, this Agreement shall be governed by the laws, rules, and regulations of the State of Florida, and by the laws, rules, and regulations of the United States when providing services funded by the United States government. Any suit or action brought by either party to this Agreement against the other party relating to or arising out of this Agreement shall be brought to the Circuit Court for Lee County, Florida. The prevailing party in any such suit or action shall be entitled to recover from the other party their reasonable attorneys' fees and court costs.

ARTICLE 32 - PROHIBITED INTERESTS

No member, officer or employee of the Authority or of the locality during his tenure or for one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof.

ARTICLE 33 - LOBBYING CERTIFICATION

The Port Authority agrees that no Federal appropriated funds have been paid or will be paid by or on behalf of the Authority, to any person for influencing or attempting to influence any officer or employee of any Federal agency, a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

If any funds other than Federal appropriated funds have been paid by the Port Authority to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Authority shall require that the language of this section be included in this award document and any award document for all subawards at all tiers (including

subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

ARTICLE 34 - E-VERIFY

Consultant certifies that it has enrolled and is using in the U.S. Department of Homeland Security's E-Verify Program for Employment Verification in accordance with the terms governing use of the Program and is eligible to enter this Agreement. The Consultant further agrees to provide the Authority with proof of such enrollment within thirty (30) days of the date of this Agreement.

Consultant agrees to use the E-Verify Program to confirm the employment eligibility of:

34.1. All persons employed by Consultant during the term of this Agreement.

34.2. All persons, including subconsultants and subcontractors, assigned by the Consultant to perform work or provide services under the Agreement.

Consultant further agrees that it will require each subconsultant or subcontractor performing work or providing services under this Agreement to enroll in and use the U.S. Department of Homeland Security's E-Verify Program for Employment Verification to verify the employment eligibility of all persons employed by the subconsultant or subcontractor during the term of this Agreement.

Consultant agrees to maintain records of its participation and compliance with the provisions of the E-Verify Program, including participation by its subconsultants and subcontractors as provided above, and to make such records available to the Authority or other authorized state or federal agency consistent with the terms of this Agreement.

Compliance with the terms of this Article is made an express condition of this Agreement, and the Authority may treat failure to comply as a material breach of the Agreement and grounds for immediate termination.

ARTICLE 35 - COVENANTS AGAINST DISCRIMINATION

During the performance of this Agreement, Consultant, for itself, its assignees and successors in interest agrees as follows:

35.1. Compliance with Regulations. Consultant shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (the "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

35.2. FAA Nondiscrimination Clause. Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this

Agreement. Consultant shall carry out all applicable requirements of 49 CFR Part 23 and Part 26 in the award and administration of DOT-assisted contracts. Failure by Consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as Authority (recipient) deems appropriate. Every contract that Consultant enters with a subconsultant or subcontractor for services under this Agreement must contain this clause.

35.3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations, either by competitive bidding or negotiation made by Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Consultant of Consultant's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

35.4. Information and Reports. Consultant shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by Authority or the FAA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of Consultant is in the exclusive possession of another who fails or refuses to furnish this information, Consultant shall so certify to Authority or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

35.5. Sanctions for Noncompliance. In the event of Consultant's noncompliance with the nondiscrimination provisions of this Agreement, Authority shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

- (a) withholding of payments to Consultant under the Agreement until Consultant complies; and/or
- (b) cancellation, termination, or suspension of the Agreement, in whole or in part.

35.6. DBE Policy. It is the policy of the Department of Transportation (the "DOT") that Disadvantaged Business Enterprises ("DBE's") as defined in 49 CFR Part 23 and Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 23 and Part 26 apply to this Agreement. The Consultant agrees to ensure that DBE's as defined in 49 CFR Part 23 and Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this Agreement. In this regard, Consultant shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 and Part 26 to ensure that DBE's have the maximum opportunity to compete for and perform contracts.

35.7. Prompt Payment Requirements. Authority has adopted a DBE Program in compliance with 49 CFR Part 26, therefore, the following requirement will apply to all contracts funded, either wholly or in-part, with DOT financial assistance:

Consultant agrees to pay each subconsultant under this contract for satisfactory performance of its contract no later than fifteen (15) days from the receipt of each payment Consultant receives from Authority. Consultant agrees further to return any retainage payments to each subconsultant within thirty (30) days after the subconsultant's work is satisfactorily completed. Any delay or postponement of payment beyond these time limits may occur only for good cause following written approval of the delay by Authority. This clause applies to both DBE and non-DBE subconsultants.

35.8. Incorporation of Provisions. Consultant shall include the provisions of paragraphs 35.1. through 35.7. in every subcontract, including procurements of materials and leases of equipment, unless exempted by the Regulations or directives issued pursuant thereto. Consultant shall take such action with respect to any subcontract or procurement as Authority or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Consultant may request Authority to enter into such litigation to protect the interests of Authority and, in addition, Consultant may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE 36 - NONDISCRIMINATION CLAUSE

Pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, the Restoration Action of 1987, the Florida Civil Rights Act of 1992, and as said Regulations may be amended, the Contractor/Consultant must assure that "no person in the United States shall on the basis of race, color, national origin, sex, creed or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity," and in the selection and retention of subcontractors/subconsultants, including procurements of materials and leases of equipment.

The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

ARTICLE 37 - GENERAL CIVIL RIGHTS CLAUSE

The Contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

ARTICLE 38 - AMENDMENTS OR MODIFICATIONS

No amendment or modification to this Agreement shall be valid or binding upon the parties unless in writing as an Amendment to this Agreement and executed by both parties intended to be bound by it.

This Agreement shall become effective upon concurrence by the Federal Aviation Administration and/or the Florida Department of Transportation, if required, and otherwise on the date first written above.

ARTICLE 39 – ENTIRE AGREEMENT

This Agreement, including referenced Exhibits and Attachments hereto, constitutes the entire Agreement between the parties hereto and shall supersede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matters set forth herein, and any such prior agreements or understandings shall have no force or effect whatever on this Agreement.

The following listed documents, which are referred to hereinbefore, are attached to and are acknowledged, understood and agreed to be an integral part of this Agreement:

- (1) EXHIBIT "A" entitled "Scope of Services".
- (2) EXHIBIT "B" entitled "Basis of Compensation".
- (3) EXHIBIT "C" entitled "Certificate of Insurance".
- (4) EXHIBIT "D" entitled "Truth in Negotiation Certificate".
- (5) EXHIBIT "E" entitled "Lee County Port Authority – Professional Services Task Authorization Form".

IN WITNESS WHEREOF, the parties have executed this Agreement effective the day and year first written above.

ATTEST:

Consultant:

(Witness)

By: _____

Title: _____

(Witness)

Date: _____

(Corporate Seal)

ATTEST:
KEVIN C. KARNES, CLERK OF COURT

Authority:
LEE COUNTY PORT AUTHORITY,
a political subdivision of the State of FL

By: _____
Deputy Clerk

By: _____
Chair or Vice Chair

Approved as to Form for the Reliance
of Lee County Port Authority Only:

By: _____
Office of the Port Authority Attorney

FAA APPROVED:

By: _____ N/A

Date _____

FDOT APPROVED:

By: _____ N/A

Date _____

EXHIBIT "A"

SCOPE OF SERVICES

Consultant will provide continuing General Planning and Environmental Services in conjunction with the operations, maintenance and development of the Southwest Florida International Airport and Page Field in Lee County, Florida.

Consultant will serve as an extension of staff for a variety of small, medium and large planning, environmental, and miscellaneous projects/tasks. The services provided under this Agreement are not considered "Professional Services" as defined in Section 287.055, Florida Statutes, (architecture, professional engineering, landscape architecture, registered surveying and mapping) and will not include any of those services. The services provided under this contract are considered "Other Professional Services" as defined in the Board adopted Authority Purchasing Policies.

If the Consultant or any subconsultant is requested by the Authority to prepare any early analysis, concept study, or planning effort for a project/assignment and the resulting information is used for a later solicitation, the Consultant and any subconsultant will be prohibited from submitting letters of qualification or a proposal to provide the future services for the project or contracting with another firm, as a prime or subconsultant, for the same project. The Consultant may not decline any work assigned by the Port Authority under this Agreement because of this restriction.

A broad range of professional disciplines, analysis and expertise is expected to be needed during the term of this Agreement. The specific number and mix of disciplines needed is unknown at this time. Therefore, the Authority expects that subconsultants will be recommended by the selected Consultant and during the term of this Agreement. The Port Authority will have the right to reject any individual or subconsultant firm submitted by the Consultant to provide services under this Agreement. Services to be provided are outlined below:

- Management of various subconsultant environmental and planning subcontracts and disciplines
- Management of numerous project schedules and budgets
- Management of environmental and planning related projects, including but not limited to:

A. Environmental

- Specification preparation, cost of estimates, bidding/quote coordination and on-site project administration
- Exotic and nuisance vegetation removal, trail maintenance, fence repair, prescribed burning, and fuel reduction plans
- Land management oversight, including vegetation mapping, exotic and nuisance vegetation removal, prescribed burn/fuel reduction and analyses
- Hazardous contaminated materials analyses
- Compliance with NPDES

- Site Assessments/Rehabilitation Closure Reports
- Water Use well calibration, compliance, and abandonment
- Groundwater and surface water monitoring and reporting
- UST/AST compliance and registration
- Mitigation/Wetland assessments, analyses and mapping
- Wildlife studies, Wildlife Hazard Assessments, Wildlife Hazard Management Plans and Training
- Environmental audits
- NEPA Documentation including CATEX, Environmental Assessments and Environmental Impact Statements
- Hazardous waste management
- Spill Prevention, Control and Countermeasures Plan Compliance
- Tier II Reporting
- Permit compliance, tracking and submittals
- Local, state and federal permitting and agency coordination
- Master Plan and Studies
- Hazardous Wildlife Working Group participation and ability to respond to Hazardous Wildlife issues
- Wildlife Harassment
- Sustainability
- Environmental Management Systems
- Cost Estimates
- GIS Mapping
- Miscellaneous research studies, data collection and report generation
- All other duties as deemed necessary by the Authority to successfully accomplish an airport development project

B. Planning

- Compliance, analysis and submittals for planning approvals
- Airport Master Plans and Airport Layout Plan modifications
- National Environmental Policy Act (NEPA) documentation
- Site planning/permitting
- Lee County Comprehensive Plan and Land Development Code Procedures/Amendments
- Zoning amendments
- Planning analyses
- Airspace analyses
- Airport Noise Contour Analysis
- Airport Noise Monitoring and Modeling
- Airport Zoning and Land Use Issues
- Noise Studies (including Part 150 Studies)
- Computer-Assisted Drafting/GIS Systems
- Feasibility studies, project development and conceptual analyses
- Market Need Analyses
- Market Demand Studies

- Grant application assistance
- Graphics and written/oral presentations
- Public outreach and education programs
- Attend meetings and public hearings, as required
- All other duties as deemed necessary by the Authority to successfully accomplish an airport development project

EXHIBIT "B"

BASIS OF COMPENSATION

HOURLY RATES:

Principal	\$275.00/hr.
Senior Ecologist III	\$200.00/hr.
Senior Ecologist II	\$175.00/hr.
Senior Ecologist I	\$160.00/hr.
Ecologist III	\$145.00/hr.
Ecologist II	\$130.00/hr.
Ecologist I	\$115.00/hr.
Environmental Technician	\$100.00/hr.
AutoCAD/GIS Manager	\$160.00/hr.
AutoCAD/GIS Analyst III	\$135.00/hr.
AutoCAD/GIS Analyst II	\$115.00/hr.
AutoCAD/GIS Analyst I	\$100.00/hr.
Administrative Assistant III	\$95.00/hr.
Administrative Assistant II	\$80.00/hr.
Administrative Assistant I	\$65.00/hr.
Reimbursable Expenses	Cost

REIMBURSABLES:

Bond (line dwg. with no aerials or other graphics)	\$10.00 (24x36); \$20.00 (36x48); \$25.00 (36x62); Other sizes - \$1.67 per square foot *Mounted Billed at Cost
Aerial Photos	\$30.00 (24x36); \$60.00 (36x48); \$75.00 (36x62); Other sizes - \$5 per square foot *Mounted Billed at Cost
Color Photos	\$2.75 (8.5x11); \$3.00 (8.5x14); \$3.50 (11x17)
Xerox	\$0.15 (8.5x11); \$0.25 (8.5x14); \$0.35 (11x17)
Courier	Cost
FedEx	Cost

EXHIBIT "B-1"

NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS

ITEM	BASIS OF CHARGE
Telephone (Long Distance)	At Cost
Telegraph	At Cost
Postage	At Cost
Shipping Material	At Cost
Commercial Air Travel	Coach Fare or Best Available Rate
Automobile Travel	Reimbursed as set by §112.061(7)(d)1. F.S.
Lodging(Per Person)	At Cost - Single Occupancy Rate Only
Meals	Reimbursed as per Port Authority Policy
Reproduction (Photocopy) 8-1/2" x 11"	\$ 0.10/Page
	8-1/2" x 14" \$ 0.15/Page
	11" x 14" \$ 0.15/Page
Reproduction (Blue/White Prints)	\$ 0.10/sq. ft.
Printing	At Cost
Binding	At Cost
Other	

EXHIBIT "C"

CERTIFICATE OF INSURANCE

EXHIBIT "D"

DATE: _____

TRUTH IN NEGOTIATION CERTIFICATE

This Certificate is executed and given by the undersigned as a condition precedent to entering into a Professional Services Agreement with the Board of Port Commissioners of Lee County Port Authority for the project known as: _____

Before me, the undersigned Authority, personally appeared _____, who provided _____ as identification, or _____ is personally known to me, who having personal knowledge as to the facts and statements contained herein after being duly sworn, deposed and stated under oath that:

1. This Certificate shall be attached to and constitute an integral part of the above said Professional Services Agreement as provided in Article 13.
2. The undersigned hereby certifies that the wage rates and other factual unit costs supporting the compensation on which this Professional Services Agreement is established are accurate, complete, and current on the date set forth hereinabove.
3. The truth of statements made herein may be relied upon by Authority and the undersigned is fully advised of the legal effect and obligations imposed upon him by the execution of this instrument under oath.

Executed on behalf of the Party to the Professional Services Agreement referred to as Consultant, doing business as:

Passarella & Associates, Inc.

By: _____

Print Name

Address

The foregoing instrument was acknowledged and executed before me by the above signed on this _____ day of _____, 20____.

NOTARY PUBLIC, State of _____

Name Printed or Stamped

Commission Expires: _____

Commission Number: _____

EXHIBIT "E"

LEE COUNTY PORT AUTHORITY - PROFESSIONAL SERVICES

TASK AUTHORIZATION FORM

CONTRACT (AGREEMENT) NAME: _____

TASK NO.: _____

TASK AUTHORIZATION FORM NO.: _____

Upon completion and execution of this Task Authorization Form by both parties to the Agreement, the following services are authorized:

(1) Check One: _____ A) See Agreement Referenced Above

OR

_____ B) See Attachment A

(2) Amount(s) previously Authorized under this Task: \$ _____

(3) Amount Authorized by this Authorization: \$ _____

(4) Total Amount of Authorization under this Task: \$ _____

(5) Time to complete services outlined under this Task Authorization: _____
Calendar Days

(6) It shall be understood between both parties that this Task Authorization shall not be effective until approval from the FAA and/or FDOT has been obtained, if required.

CONSULTANT'S ACCEPTANCE

Print Name of Firm	Print Authorized Name	Authorized Signature
Date: _____		

LCPA PROJECT MANAGER'S ACCEPTANCE

LCPA

Print Authorized Name	Authorized Signature	Date
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FAA/FDOT APPROVAL

FDOT: _____ Signature-FDOT Representative	FAA: _____ Signature-FAA
Representative	
Date: _____	Date: _____