

**PROFESSIONAL SERVICES AGREEMENT**

THIS PROFESSIONAL SERVICES AGREEMENT (this "Agreement") is made effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and between the **CITY OF NAPLES AIRPORT AUTHORITY**, a political subdivision of the State of Florida (the "Authority"), and \_\_\_\_\_, a \_\_\_\_\_ authorized to transact business in the State of Florida ("Professional") (the Authority and Professional each individually a "Party" and collectively the "Parties").

**RECITALS**

A. The Professional is a \_\_\_\_\_ licensed by the \_\_\_\_\_ (License Number \_\_\_\_\_).

B. The Professional maintains insurance coverage as required under Paragraph 8 of this Agreement and has provided certificates of insurance evidencing all such insurance to the Authority.

C. The Authority anticipates instructing Professional to perform and provide the specific services described in Exhibit A attached hereto and made a part of this Agreement (the "Services").

D. Professional represents and warrants it is willing and fully competent to perform the Services pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the representations, warranties, covenants and agreements set forth under this Agreement, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Authority and Professional agree as follows:

**TERMS**

1. Services. This Agreement sets forth the general terms and conditions under which Professional shall perform and provide the Services for the Authority as the Authority instructs from time to time. The precise Services to be performed by Professional for the Authority, and the term of this Agreement or deadline for satisfactory completion of all of the Services by Professional (the "Deadline For Satisfactory Completion"), are fully described and set forth in Exhibit A.

2. Term. The term of this Agreement is from the Effective Date until terminated as provided herein. Notwithstanding anything in this Agreement to the contrary, the Authority shall have the exclusive right to terminate this Agreement, without charge or penalty, at any time and for any reason, without charge or penalty, in its sole discretion, upon thirty (30) days written notice to Professional. In the event of such termination by the Authority, (a) Professional shall be entitled to a pro-rata amount of any compensation earned under this Agreement but not paid prior to the date of termination and (b) the Authority shall be entitled to a pro-rata refund of any unearned compensation subsequent to the date of termination paid in advance to Professional hereunder.

3. Termination Event. Notwithstanding anything in this Agreement to the contrary, upon the occurrence of any of the following events (each individually a "Termination Event"), all of the rights and privileges of Professional hereunder shall, at the Authority's sole option, cease to exist and this Agreement shall automatically terminate:

(a) Professional fails to strictly comply with, fulfill, perform, keep or observe any of Professional's obligations, covenants or conditions under this Agreement within five (5) days after written demand from the Authority, time being of the essence;

(b) Professional makes any (i) intentional misrepresentation or (ii) unintentional yet material misrepresentation under this Agreement or other instrument or document delivered pursuant hereto;

(c) the loss of any of Professional's licenses, registrations or permits necessary to perform the Services or other obligations under this Agreement;

(d) the appointment of a receiver to take possession, or the attachment, execution, or other judicial seizure, of all or any part of Professional's assets or business;

(e) the Authority determines, in its reasonable discretion, that Professional is or will be unable to pay its debts as they become due in the ordinary course of Professional's business; or

(f) any voluntary or involuntary petition, or similar pleading, under any bankruptcy act, filed by or against Professional, or any other voluntary or involuntary proceeding in any court instituted to declare Professional insolvent or unable to pay its debts. In the event that under applicable law the trustee in bankruptcy or Professional has the right to affirm this Agreement and continue to perform the obligations of Professional hereunder, such trustee or Professional shall, in such time period as may be permitted by the applicable court having jurisdiction, cure all defaults of Professional hereunder outstanding as of the date of the affirmance of this Agreement and provide to the Authority such adequate security and assurances as may be necessary to ensure the Authority the continued performance of Professional's obligations under this Agreement. Further, the Authority shall receive all of the protections available to creditors under the United States Bankruptcy Code including, but not limited to, section 365 thereof, as amended from time to time.

No right, power or remedy conferred upon or reserved to the Authority under this Agreement is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Notwithstanding anything in this Agreement to the contrary, upon a Termination Event, the Authority may retain all payments due to Professional at the date of termination until all of the Authority's damages have been established and deducted from payments due.

4. Duties of Professional. Professional shall perform and complete all of the Services on or before the Deadline For Satisfactory Completion to the satisfaction of the Authority in a good and professional manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. In addition, Professional shall:

(a) furnish all of the expertise, management, information, assistance and other requirements necessary to perform the Services to the Authority's satisfaction;

(b) furnish such professional and support staff, equipment and supplies, if any, as may be specifically required to perform the Services to the Authority's satisfaction;

(c) deliver to the Authority all memoranda, reports, notes, analyses, documents and other instruments as may be reasonably requested from time to time by the Authority relating to the performance of the Services and Professional's other obligations under this Agreement;

(d) provide the Authority with prompt notification of any anticipated delays or difficulties in the performance of the Services;

(e) designate one or more individuals to act on behalf of Professional with respect to the Services and with whom the Authority may confer with respect to the Services; and

(f) at all times conduct itself in a professional and cooperative manner in the discharge of its obligations under this Agreement.

Professional covenants and agrees with the Authority that should Professional at any time become aware of any act, occurrence or omission on the part of the Authority or the Authority's commissioners, officers, employees, insurers, attorneys, agents, lessees, licensees, invitees, successors and assigns which Professional believes or has reason to suspect may give rise to a claim by Professional of bad faith, negligence, fraud or any other form of liability against the Authority, Professional shall advise the Authority in writing of such claim or potential claim within a reasonable period of time not to exceed thirty (30) days of its discovery, or Professional shall be deemed to have waived the claim and be forever barred from asserting that claim or a related claim against the Authority. The purpose of this provision is to promptly advise the Authority of any potential claim and to allow the Authority to immediately investigate, and, if necessary, remedy the allegation. Professional agrees that its failure to notify the Authority of a claim or potential claim within a reasonable period of time of its discovery not to exceed thirty (30) days shall be a complete bar to the pursuit of such claim against the Authority and the Authority's past and present commissioners, officers, employees, insurers, attorneys, agents, lessees, licensees, invitees, successors and assigns, in their individual and representative capacities.

5. Work Made for Hire; Assignment. All work product, research, notes, drawings, blueprints, models, reports, analyses, documents, instruments, data and other information prepared by Professional in connection with the Services (collectively the "Work") shall be deemed work made for hire and made in the course of the Services rendered under this Agreement. To the extent that the Work may not be considered work made for hire, all right, title and interest in the Work is hereby irrevocably assigned to the Authority by Professional. As such, the Work shall belong exclusively to the Authority.

6. Compensation and Written Invoices.

(a) Subject to the terms and conditions of this Agreement, the Authority shall pay Professional for the performance and completion of the Services at the rates and in the manner set forth in Exhibit A. Upon completion and acceptance of the Services in accordance with the terms and conditions of this Agreement to the satisfaction of the Authority, Professional shall send the Authority a written invoice detailing the time and authorized charges for such Services. All such written invoices are payable within sixty (60) days of receipt by the Authority.

(b) Notwithstanding anything in this Agreement to the contrary, should Professional fail to commence, provide, perform or complete any of the Services in a timely and diligent manner, in addition to any other rights or remedies available to the Authority, including the rights specified under Paragraphs 2 and 3 herein, the Authority, in its sole discretion, may withhold any and all payments due and owing to Professional until such time as Professional resumes performance of its obligations in such a manner so as to satisfy the Authority.

(c) After being paid by the Authority, Professional shall immediately pay all subcontractors who have submitted invoices for work already performed. If applicable, Professional shall strictly comply with the provisions of Florida Statute sections 255.071 through 255.078. Failure of Professional to pay any subcontractors shall, at the Authority's option, be considered a material breach of this Agreement and, therefore, a Termination Event hereunder.

7. Licenses. Professional represents and warrants to the Authority that it has the resources and expertise necessary to complete the Services in accordance with the terms and conditions of this Agreement. Professional agrees to obtain and maintain throughout the entire term of this Agreement all licenses, registrations and permits as are required to transact business in the United States, State of Florida, Collier County and the City of Naples, including, but not limited to, all licenses and permits required by the respective federal and state boards and other governmental agencies responsible for regulating and licensing the Services to be provided by Professional. The employees, personnel, subcontractors and agents assigned by Professional to perform the Services shall be qualified to perform the assigned duties and shall be individually licensed, registered and permitted to perform such duties if required by applicable law. Upon request of the Authority, Professional shall provide the Authority with copies of all applicable licenses, registrations and permits of Professional and Professional's employees, personnel, subcontractors and agents required under this Paragraph 7.

8. Insurance. Professional shall maintain all of the insurance coverage set forth in this Paragraph 8 uninterrupted at all times while Professional is providing Services under this Agreement. In the event Professional becomes in default of any of the insurance requirements hereunder, the Authority reserves the right to take whatever legal actions are deemed necessary to protect its interest. Professional agrees that, to the fullest extent available, all insurance policies required hereunder shall provide that the Authority is an additional insured.

(a) Workers' Compensation / Employer's Liability. Professional shall maintain workers' compensation/employer's liability insurance, and the minimum limits of such insurance, inclusive of any amount provided by an umbrella or excess policy, shall be:

Part One:	"Statutory"
Part Two:	
Each Accident	\$100,000
Disease – Policy Limit	\$500,000
Disease – Each Employee	\$100,000

(b) Commercial General Liability. Professional shall maintain commercial general liability insurance (or broad form property damage covering all Services and other work performed by Professional pursuant to this Agreement), and the minimum limits of such insurance, inclusive of any amounts provided by an umbrella or excess policy, without exclusion for independent contractors, shall be:

General Aggregate	\$1,000,000
Each Occurrence	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Products and Completed Operations	\$1,000,000

The insurance required under this Paragraph 8(b) shall include coverage for liability resulting out of, or in connection with, ongoing operations performed by, or on behalf of, Professional under this Agreement or

the use or occupancy of the Authority premises by, or on behalf of, Professional in connection with this Agreement.

(c) Business Auto Liability. Professional shall maintain business auto liability insurance (for all owned, hired and non-owned vehicles), and the minimum limits of such insurance, inclusive of any amounts provided by an umbrella or excess policy, shall be:

Each Occurrence - Bodily Injury and Property Damage Combined	\$1,000,000
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(d) Professional Liability/Malpractice. Professional shall maintain professional liability/malpractice insurance, and the minimum limits of such insurance, inclusive of any amounts provided by an umbrella or excess policy, shall be:

Each Occurrence	\$1,000,000
Annual Aggregate	\$2,000,000

The insurance required under this Paragraph 8(d) shall (i) include coverage for all Services and other work of Professional, including, but not limited to, areas with possible environmental impact, without any exclusions unless approved in writing by the Authority's Executive Director, and (ii) notwithstanding anything herein to the contrary, be maintained and continued for a minimum uninterrupted period of four (4) years following the later of completion of all of the Services by Professional or termination of this Agreement.

(e) General Requirements. Renewal certificates evidencing all of the insurance required under this Paragraph 8 shall be sent by Professional to the Authority thirty (30) days prior to the expiration date of each applicable insurance policy. Each insurance policy required under this Paragraph 8 shall provide that the Authority shall receive at least thirty (30) days prior written notice in the event of any cancellation or modification of any insurance coverage. No insurance coverage required hereunder shall have a deductible amount in excess of \$50,000 without the prior written approval of the Authority's Executive Director. All insurance coverage of Professional shall be in addition to, and shall in no way be construed or interpreted to be a limitation of, Professional's indemnification and other obligations to the Authority under Paragraph 9 of this Agreement. It is expressly agreed that Professional's policies of insurance required under this Paragraph 8 shall be primary over any insurance which the Authority may maintain or carry, and that Professional shall obtain from its insurers an endorsement waiving any other insurance clauses which may be in conflict with this provision, and evidence of such waiver shall be indicated on all insurance policies or certificates of insurance furnished to the Authority. Professional shall be responsible and liable for insuring that all of Professional's employees, personnel, subcontractors, agents, licensees or invitees who perform any of the Services carry and comply with the same insurance coverage and requirements required of Professional under this Paragraph 8. Upon the request of the Authority, Professional shall deliver to the Authority copies of all insurance policies required hereunder.

9. Indemnification. To the fullest extent permitted by applicable law, Professional shall indemnify, defend and hold harmless the Authority and the Authority's past and present commissioners, officers, employees, insurers, attorneys, agents, lessees, licensees, invitees, successors and assigns, in both their individual and representative capacities, from and against any and all liabilities, damages, losses, penalties, causes of action, claims, demands and costs, including, but not limited to, reasonable attorneys' fees and expenses of defense (through all appeals), arising out of or in connection with (a) the Services or other work performed by Professional pursuant to this Agreement, (b) the failure to fulfill any and all responsibilities, covenants and obligations of Professional under this Agreement and (c) any act or omission of Professional or Professional's employees, personnel, subcontractors, agents, licensees or

invitees. Nothing contained herein will be construed as a waiver of any immunity or limitation of liability the Authority may have under the doctrine of sovereign immunity under Florida Statute section 768.28 or otherwise. The Authority reserves the right, at its option, to participate in the defense of any suit, without relieving Professional of any of its obligations hereunder. The obligations of this Paragraph 9 will survive termination of this Agreement and will not be limited by the amount of any insurance required to be obtained or maintained under this Agreement. If the provisions of this Paragraph 9 are found to conflict in any way with Florida or other governing law, then this Paragraph 9 will be considered modified by such laws to the extent necessary to remedy the conflict.

This Paragraph 9 shall also pertain to any claims brought against the Authority by any of Professional's employees, personnel, subcontractors, agents, licensees and invitees and any other party claiming by or through Professional. Professional's obligations under this Paragraph 9 shall not be limited in any way by Professional's limit or lack of sufficient insurance protection.

10. Rules and Regulations. In performing the Services, Professional shall comply with each of the following:

(a) any and all of the Authority's (i) Rules and Regulations of the Naples Municipal Airport, Naples, Florida, as amended, (ii) regulatory and compliance regulations, as amended, and (iii) procedures, rules and other requirements on file in the offices of the Executive Director of the Authority or as hereafter promulgated, established or amended from time to time by the Authority in its sole discretion (collectively the "Airport Rules And Regulations"). The Airport Rules and Regulations are incorporated herein by reference and made a part of this Agreement. Upon request, Professional shall have the right to review any of the Airport Rules and Regulations during regular business hours at the offices of the Executive Director of the Authority; and

(b) any and all applicable laws, statues, ordinances, codes, rules, regulations, orders, and governmental permits and requirements.

11. No Waiver. The failure of the Authority to enforce at any time, or for any period of time, any one or more of the provisions of this Agreement shall not be construed to be, and shall not be, a waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision. The waiver by the Authority of a breach of any provision of this Agreement shall not be deemed a continuing waiver, or a waiver of any subsequent breach of the same or any other provision hereof.

12. Severability. The invalidity of any one or more of the provisions of this Agreement shall not affect the enforceability of any or all of the remaining provisions hereof, all of which are included conditionally upon being valid in law, and, in the event that any one or more of the provisions of this Agreement shall be declared invalid, this Agreement shall be construed as if such invalid provisions had not been included.

13. No Assignment. Professional shall not voluntarily, involuntarily or by operation of law assign, transfer or otherwise encumber this Agreement, or any rights or privileges of Professional hereunder, in whole or in part, without first obtaining in each and every instance the prior written consent of the Authority, which consent may be granted or withheld in the Authority's sole discretion for any reason whatsoever. Any assignment, transfer or encumbrance contrary to the foregoing shall be a material default and, therefore, a Termination Event under this Agreement.

14. Independent Professional. Neither Professional nor Professional's employees, personnel, subcontractors, agents, licensees and invitees shall be deemed to be a servant, employee, partner or joint

venturer of the Authority. Professional shall perform the Services and its obligations under this Agreement as an independent contractor. Neither Professional nor Professional's employees, personnel, subcontractors, agents, licensees and invitees shall hold themselves out as having the power or authority to bind or create liability for the Authority. Professional shall not be treated as an employee for purposes of FICA, FUTA, federal, state or local income tax, and Professional shall be responsible for its own employment, social security and other tax payments, as well as any other statutorily required coverage, including insurance.

15. Notices. All notices and communications under this Agreement shall be in writing and shall be delivered by hand, by nationally recognized overnight courier or by certified United States mail, return receipt requested, to the respective Parties as follows:

As to the Authority: City of Naples Airport Authority  
Attention: Christopher A. Rozansky, Executive Director  
160 Aviation Drive North  
Naples, Florida 34104

With Copy to the Authority's Attorney:

William L. Owens, Esq.  
Bond, Schoeneck & King, PLLC  
4001 Tamiami Trail North, Suite 250  
Naples, Florida 34103

As to Professional:

\_\_\_\_\_  
Attention: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notice shall be deemed conveyed upon personal delivery or receipt confirmation. Either Party may change its mailing address by giving written notice to the other Party in accordance with the requirements of this Paragraph 15.

16. Attorneys' Fees. In the event of any controversy, claim, dispute or litigation relating to this Agreement, or the breach hereof, the prevailing Party shall be entitled to recover from the non-prevailing Party the prevailing Party's costs and expenses, including, without limitation, reasonable attorneys' fees (through all appeals).

17. Governing Law and Venue. This Agreement shall be interpreted under, and its performance governed by, the laws of the State of Florida (excluding any conflict of law rule or principle that would refer to the laws of another jurisdiction). Each Party irrevocably submits to the jurisdiction of the Circuit Court of the State of Florida, Collier County, in any action or proceeding arising out of or relating to this Agreement, and each Party hereby irrevocably agrees that all claims with respect to any such action or proceeding must be brought and defended in such court; provided, however, that matters which are under the exclusive jurisdiction of the Federal courts shall be brought in the Federal District Court for the Middle District of Florida. Each Party consents to service of process by any means authorized by the applicable law of the forum in any action brought under or arising out of this Agreement, and each Party irrevocably waives, to the fullest extent each may effectively do so, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.  
**PROFESSIONAL AND THE AUTHORITY HEREBY IRREVOCABLY AND**

UNCONDITIONALLY WAIVE, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO, TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING ARISING UNDER THIS AGREEMENT.

18. Paragraph Headings. None of the Paragraph headings of this Agreement shall be construed as a limitation upon the provisions hereof. Paragraph headings having been inserted as a guide and partial index and not as a complete index of the contents of any Paragraph or other provision of this Agreement. Whenever the singular or plural number, or the masculine or feminine or neuter gender, is used in this Agreement, it shall equally include the other.

19. Counterparts. This Agreement may be executed in any number of counterparts, each such counterpart being deemed to be an original instrument, and all such counterparts shall together constitute the same Agreement. Delivery of an executed signature page by facsimile or electronic mail shall be as effective as delivery of a manually signed counterpart.

20. No Modification. No modification or change to this Agreement shall be valid or binding upon the Parties unless in writing and executed by the Party or Parties intended to be bound by it.

21. Encumbrances. Professional hereby covenants and agrees that all of Professional's rights and privileges under this Agreement are subject and subordinate to any and all rights, liens, licenses, leases, tenancies, mortgages, uses, encumbrances and other restrictions which may now or hereafter bind the Authority or encumber the Naples Municipal Airport, and to all renewals, modifications and extensions thereof. In addition, this Agreement shall be subject and subordinate to all of the provisions and obligations of the Authority under any existing or future laws, regulations, grant assurances, requirements or agreements by, from or with the United States Government or other governmental authority compliance with or the execution of which has been or will be required as a condition precedent to the operation (or granting of Federal or other governmental funds for the development) of the Authority or Naples Municipal Airport. Professional shall, upon request of the Authority, execute any subordination documents which the Authority may deem necessary, but no such documents shall be required to effectuate the subordination by Professional under this Paragraph 21.

22. Further Assurances. From and after the execution and delivery of this Agreement, Professional shall cooperate with the Authority in taking such actions, executing such instruments and granting such rights as may be reasonably necessary or requested by the Authority to effectuate the purposes of this Agreement or to evidence or perfect the rights and privileges granted and the obligations assumed hereunder.

23. No Third Party Beneficiary Intended. This Agreement is made solely for the benefit of Professional and the Authority, and their respective successors and assigns permitted hereunder, and no other person or entity shall have or acquire any right by virtue of this Agreement.

24. FAA Required Contract Provisions.

(a) Access to Records and Reports. The Professional must maintain an acceptable cost accounting system. The Professional agrees to provide the Authority, the Federal Aviation Administration, and the Comptroller General of the United States or any of their duly authorized representatives, access to any books, documents, papers, and records of the Professional which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcriptions. The Professional agrees to maintain all books, records and reports required under this Agreement for a period of not less than three years after final payment is made and all pending matters are closed.



(b) Civil Rights – General. Professional 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 Professional and sub-tier contractors from the bid solicitation period through the completion of this Agreement. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

(c) Civil Rights – Title VI Assurances - Compliance with Nondiscrimination Requirements. During the performance of this Agreement, Professional, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor” in this Paragraph 24(c)) agrees as follows:

(i) Compliance with Regulations: The contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

(ii) Non-discrimination: The contractor, with regard to the work performed by it during this Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

(iii) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor’s obligations under this Agreement and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.

(iv) Information and Reports: The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Authority or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Authority or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

(v) Sanctions for Noncompliance: In the event of a contractor’s noncompliance with the Non-discrimination provisions of this Agreement, the Authority will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

(A) Withholding payments to the contractor under this Agreement until the contractor complies; and/or

(B) Cancelling, terminating, or suspending this Agreement, in whole or in part.

(vi) Incorporation of Provisions: The contractor will include the provisions of Paragraphs 24(c)(i) through (vi) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Authority or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Authority to enter into any litigation to protect the interests of the Authority. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

(d) Transfer of Real Property Acquired or Improved Under the Activity, Facility, or Program.

(i) Professional for itself/himself/herself, its/his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (as a covenant running with the land during the term of this Agreement) that:

(A) In the event facilities are constructed, maintained, or otherwise operated on the property described in this Agreement for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Professional will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

(ii) With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, the Authority will have the right to terminate the licenses, leases, permits, etc. and this Agreement and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the licenses, leases, permits, etc. and this Agreement had never been made or issued.

(e) Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program.

(i) Professional for itself/himself/herself, its/his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (as a covenant running with the land during the term of this Agreement) that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that Professional will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.

(ii) In the event of breach of any of the above nondiscrimination covenants, the Authority will have the right to terminate the licenses, leases, permits, etc. and this Agreement and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if the licenses, leases, permits, etc. and this Agreement had never been made or issued.

(f) Title VI List of Pertinent Nondiscrimination Acts and Authorities. During the performance of this Agreement, Professional, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor” in this Paragraph 24(f)) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); and

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

(g) Disadvantaged Business Enterprise

(i) Contract Assurance (§ 26.13): Professional and its subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Professional shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the Professional 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 the Authority deems appropriate.

(ii) Prompt Payment (§26.29): The Professional agrees to pay each subcontractor under this Agreement for satisfactory performance of its contract no later than thirty (30) days from the receipt of each payment the Professional receives from the Authority. The Professional agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Authority. This clause applies to both DBE and non-DBE subcontractors.

(h) Energy Conservation Requirements. Professional and its subcontractor agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201 *et seq*).

(i) Federal Fair Labor Standards Act. All contracts and subcontracts that result from this solicitation (including this Agreement) incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers. Professional has full responsibility to monitor compliance to the referenced statute or regulation. Professional must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

(j) Occupational Safety and Health Act. All contracts and subcontracts that result from this solicitation (including this Agreement) incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Professional must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. Professional retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Professional must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

(k) Trade Restriction Certification. By submission of an offer (and execution of this Agreement), the Professional certifies that with respect to this solicitation and any resultant contract (including this Agreement), the Professional:

(i) is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (U.S.T.R.);

(ii) has not knowingly entered into any contract or subcontract for this project (including the Services) with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the U.S.T.R.; and

(iii) has not entered into any subcontract for any product to be used on this project (including the Services) that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001. The Professional must provide immediate written notice to the Authority if the Professional learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Professional must require subcontractors provide immediate written notice to the Professional if at any time it learns that its certification was erroneous by reason of changed circumstances. Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to the Professional or subcontractor:

(i) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R. or

(ii) whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such U.S.T.R. list or

(iii) who incorporates in the public works project any product of a foreign country on such U.S.T.R. list.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of the Professional is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

The Professional agrees that it will incorporate this provision for certification without modification in all lower tier subcontracts. The Professional may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by U.S.T.R., unless the Professional has knowledge that the certification is erroneous.

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Professional or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Authority cancellation of the contract or subcontract (including this Agreement) for default at no cost to the Authority or the FAA.

(l) Veteran's Preference. In the employment of labor (excluding executive, administrative, and supervisory positions), the Professional and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 U.S.C. 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

(m) Texting When Driving. In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving" (10/1/2009) and DOT Order 3902.10 "Text Messaging While Driving" (12/30/2009), the FAA encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text

messaging while driving when performing work related to a grant or sub-grant. In support of this initiative, the Authority encourages the Professional to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Professional must include the substance of this clause in all sub-tier contracts exceeding \$3,500 and involve driving a motor vehicle in performance of work activities associated with the project (including the Services).

(n) Equal Opportunity Clause. During the performance of this Agreement, the Professional agrees as follows:

(i) The Professional will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Professional will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identify or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Professional agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(ii) The Professional will, in all solicitations or advertisements for employees placed by or on behalf of the Professional, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(iii) The Professional will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Professional 's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(iv) The Professional will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(v) The Professional will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(vi) In the event of the Professional 's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Professional may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(vii) The Professional will include the portion of the sentence immediately preceding paragraph 24(n)(i) and the provisions of paragraphs 24(n)(i) through (vii) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be

binding upon each subcontractor or vendor. The Professional will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however*, That in the event Professional becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Professional may request the United States to enter into such litigation to protect the interests of the United States.

(o) Prohibition of Segregated Facilities.

(i) The Professional agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Professional agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

(ii) “Segregated facilities,” as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(iii) The Professional shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

(p) Certification of Professional and Subcontractors Regarding Debarment. By submitting a bid/proposal and providing Services under this Agreement, the Professional certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction or providing the Services hereunder. The Professional, by administering each lower tier subcontract that exceeds \$25,000 as a “covered transaction”, must verify each lower tier participant of a “covered transaction” under the project (including the Services) is not presently debarred or otherwise disqualified from participation in this federally assisted project. The Professional will accomplish this by:

(i) Checking the System for Award Management at website:  
<http://www.sam.gov>;

(ii) Collecting a certification statement similar to the Certificate Regarding Debarment and Suspension (Bidder or Offeror), above; and

(iii) Inserting a clause or condition in the covered transaction with the lower tier contract.

If the FAA later determines that a lower tier participant failed to disclose to a higher tier participant that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedies, including suspension and debarment of the non-compliant participant.

(q) Certification Regarding Lobbying. The Professional certifies by signing and submitting this Agreement, to the best of its, his or her knowledge and belief, that:

(i) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Professional, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of 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.

(ii) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(iii) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(r) Breach of Contract Terms. Any violation or breach of terms of this Agreement on the part of Professional or its subcontractors may result in the suspension or termination of this Agreement or such other action that may be necessary to enforce the rights of the parties of this Agreement. If the Authority elects to exercise its rights under this Paragraph 24(r), then the Authority will provide Professional written notice that describes the nature of the breach and corrective actions the Professional must undertake in order to avoid termination of this Agreement. The Authority reserves the right to withhold any payments to Professional until such time Professional corrects the breach or the Authority elects to terminate this Agreement. The Authority's notice under this Paragraph 24 (r) will identify a specific date by which the Professional must correct the breach. In addition to all other rights and remedies of the Authority under this Agreement, the Authority may proceed with termination of this Agreement if Professional fails to correct the breach by deadline indicated in the Authority's notice pursuant to this Paragraph 24(r). The duties and obligations imposed by this Agreement and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

(s) Clean Air and Water Pollution Control. Professional agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 U.S.C. § 740-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). Professional agrees to report any violation to the Authority immediately upon discovery. The Authority assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration. Professional must include this requirement in all subcontracts that exceeds \$150,000.

**25. Florida's Public Records Laws.**

**(a) IF PROFESSIONAL HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO PROFESSIONAL'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS**



**AGREEMENT, CONTACT THE AUTHORITY'S CUSTODIAN  
OF PUBLIC RECORDS AT (239) 643-0733,  
ADMINISTRATION@FLYNAPLES.COM AND/OR 160  
AVIATION DRIVE NORTH, NAPLES, FLORIDA 34104.**

**(b) Professional acknowledges and agrees that Professional shall be required to comply with Florida's Public Records Laws, Chapter 119, Florida Statutes. Specifically, Professional hereby covenants and agrees that it shall:**

**(i) keep and maintain public records required by the Authority to perform the services under this Agreement;**

**(ii) upon request from the Authority's custodian of public records, 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 119, Florida Statutes, or as otherwise provided by law;**

**(iii) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the term of this Agreement and following completion of this Agreement if Professional does not transfer the records to the Authority; and**

**(iv) upon completion of this Agreement, transfer, at no cost, to the Authority all public records in possession of Professional or keep and maintain public records required by the Authority to perform the services under this Agreement. If Professional transfers all public records to the Authority upon completion of this Agreement, Professional shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Professional keeps and maintains public records upon completion of this Agreement, Professional shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Authority, upon request from the Authority's custodian**

**of public records, in a format that is compatible with the information technology systems of the Authority.**

26. Entire Agreement. This Agreement represents the entire Agreement between Professional and the Authority and supersedes all prior agreements, oral or written, and all other communications relating to the subject matter hereof. Each Party has had the opportunity to review with counsel the terms of this Agreement and to negotiate the same. Therefore, any ambiguity in this Agreement shall not be construed against either Party by virtue of having drafted this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

AUTHORITY:

**CITY OF NAPLES AIRPORT AUTHORITY,**  
a political subdivision of the State of Florida

ATTEST:

By: \_\_\_\_\_  
\_\_\_\_\_, Chairman

\_\_\_\_\_  
**Christopher A. Rozansky**  
Executive Director

Approved as to form and legal sufficiency by:

\_\_\_\_\_  
**William L. Owens, Esq.**  
Counsel to the Authority

PROFESSIONAL:

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Print Title: \_\_\_\_\_

Exhibit A

Description of Services: In addition to all of the obligations of Professional hereunder, the Services to be performed and provided by Professional pursuant to this Agreement are described in Schedule 1 (titled “\_\_\_\_\_”) attached hereto and made a part of this Agreement. \_\_\_\_\_

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Deadline For Satisfactory Completion: Except as otherwise provided in this Agreement, the Deadline For Satisfactory Completion of all of the Services by Professional is \_\_\_\_\_, 20\_\_\_\_.

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Rates and Manner of Compensation: Notwithstanding anything in this Agreement to the contrary, the total compensation due Professional from the Authority for the performance and completion of all of the Services in accordance with the terms and conditions of this Agreement to the satisfaction of the Authority is \$\_\_\_\_\_. A description and breakdown of the tasks and expense categories are described in Schedule 2 (titled “\_\_\_\_\_”) attached hereto and made a part of this Agreement. \_\_\_\_\_

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Other Provisions and Obligations of Professional: In addition to the Professional’s obligations set forth herein and all common law duties, Professional shall: \_\_\_\_\_

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