

AGREEMENT BETWEEN

CITY OF MIAMI BEACH

AND

**BEA INTERNATIONAL, INC**

FOR

PROFESSIONAL ARCHITECTURAL OR ENGINEERING SERVICES

IN VARIOUS SPECIALITIES

FOR CAPITAL PROJECTS IN WHICH THE BASIC CONSTRUCTION

COST DOES NOT EXCEED \$500,000 PER PROJECT

OR FOR STUDY ACTIVITIES FOR WHICH THE FEE DOES NOT EXCEED \$25,000

JUNE 2001

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**BETWEEN THE CITY OF MIAMI BEACH AND**  
**BEA INTERNATIONAL, INC.**  
**FOR PROFESSIONAL**  
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**IN VARIOUS SPECIALITIES**  
**FOR CAPITAL PROJECTS IN WHICH THE BASIC CONSTRUCTION**  
**COST DOES NOT EXCEED \$500,000 PER PROJECT**  
**OR FOR STUDY ACTIVITIES FOR WHICH THE FEE DOES NOT EXCEED \$25,000**

This Agreement made and entered into this 6<sup>th</sup> day of JUNE, 2001, by and between the CITY OF MIAMI BEACH, a municipal corporation existing under the laws of the State of Florida (hereinafter referred to as City having its principal offices at 1700 Convention Center Drive, Miami Beach, Florida, 33139, and BEA INTERNATIONAL, INC. Suite 200, 4217 Ponce de Leon Blvd. Coral Gables, FL 33146, (hereinafter referred to as Consultant).

**WITNESSETH:**

**WHEREAS**, the City intends to undertake various capital projects within the City of Miami Beach, for a basic construction cost not to exceed Five Hundred Thousand Dollars (\$500,000) for each project, and pursuant to Section 287.055, of the Florida Statutes, known as the Consultant's Competitive Negotiation Act, and wishes to engage the Consultant to provide professional consulting services for certain Projects to be assigned by means of the issuance of a "Consultant Service Order" similar to the form shown in Schedule "A" to this Agreement, the Scope of each assigned project will be set forth in the Consultant Service Order, and the fees for the services provided will be determined as set forth in this Agreement; and

**WHEREAS**, the Consultant desires to contract with the City for performance of professional consulting services relative to those projects assigned by the City, as hereinafter set forth, services may include, but are not limited to: planning, design, conducting studies, bidding and construction administration services, all as hereinafter stipulated, as may be specifically described in the Consultant Service Order.

**NOW THEREFORE**, City and Consultant, in consideration of the mutual covenants and agreements herein contained, agree as follows:

**ARTICLE 1. DEFINITIONS**

1.1 **CITY**. The "City" shall mean the City of Miami Beach, a Florida municipal corporation having its principal offices at 1700 Convention Center Drive, Miami Beach, Florida, 33139.

1.2 **CITY COMMISSION.** "City Commission" shall mean the governing and legislative body of the City.

1.3 **CITY MANAGER.** The "City Manager" shall mean the chief administrative officer of the City. The City Manager shall be construed to include any duly authorized designees, including a Project Coordinator, and shall serve as the City's representative to whom administrative requests for approvals shall be made and who shall issue authorizations (exclusive of those authorizations reserved to the City Commission) to the Consultant.

1.4 **PROPOSAL DOCUMENTS.** "Proposal Documents" shall mean the REQUEST FOR QUALIFICATIONS No. 12-00/01, FOR PROFESSIONAL ARCHITECTURAL / ENGINEERING SERVICES IN VARIOUS PROFESSIONAL SUBSPECIALTIES ON A ROTATIONAL BASIS, FOR CAPITAL PROJECTS IN WHICH BASIC CONSTRUCTION COST DOES NOT EXCEED \$500,000 PER PROJECT, OR FOR STUDY ACTIVITIES FOR WHICH THE FEE DOES NOT EXCEED \$25,000. ( RFQ No. 12-00/01) issued by the City in contemplation of this Agreement, together with all amendments thereto, if any, and the Consultant's proposal in response thereto (Proposal), which is incorporated by reference in this Agreement and made a part hereof; provided, however, that in the event of an express conflict between the Proposal Documents and this Agreement, this Agreement shall prevail.

1.5 **CONSULTANT.** The "Consultant" is herein defined as: BEA INTERNATIONAL, INC., a Florida Corporation having its principal offices at: Suite 200, 4217 Ponce de Leon Blvd, Coral Gables, FL 33146. When the term "Consultant" is used in this Agreement it shall be deemed to include any subconsultants and any other person or entity acting under the direction or control of Consultant. Any subconsultants retained by Consultant pursuant to this Agreement and the Project shall be subject to prior written approval of the City. The following subconsultant(s) were included in the Consultant's Proposal and are hereby approved for the Project:

None

1.6 **CITY'S PROJECT COORDINATOR** The "City's Project Coordinator" shall mean the individual appointed by the City Manager who shall be the City's authorized representative to coordinate, direct, and review on behalf of the City, all matters related to the Project, except as otherwise provided herein.

1.7 **PROGRAM MANAGER** The City has contracted the services of Hazen and Sawyer, P.C. to act as Program Manager for the City's Right of Way Infrastructure Improvements Program, and URS Corporation to act as Program Manager for Facilities and Parks Projects. If an assigned project is part of either organization's scope of activities, one of these firms will act as the representative of the City in the performance of its Program Management role.

1.8 **BASIC SERVICES** "Basic Services" shall include those architectural and/or engineering

services, as required, for the planning, design, bidding/award, and construction administration, or studies for a Project, as specifically described in a Consultant Service Order, issued by the City to the Consultant hereunder.

**1.9 PROJECT** The "Project" shall mean that City Capital Project, described in a Consultant Service Order that has been approved by the City Manager, and issued to the Consultant.

**1.9.1 PROJECT COST** The "Project Cost", as established by the City, shall mean the total cost of the Project to the City including: Construction Cost, professional compensation, land cost, if any, financing cost, materials testing services, surveys, contingencies and other miscellaneous costs.

**1.9.2 PROJECT SCOPE** The "Project Scope" shall mean the description of the Project contained in the Consultant Service Order issued to the Consultant by the City hereunder, as modified by any approved change orders issued subsequently.

**1.10 CONSTRUCTION COST.** The "Construction Cost" for the Project shall mean the sum which is the total cost or estimated cost to the City of all elements of the Project designed or specified by the Consultant and approved by the City, including, at current market rates (with a reasonable allowance for overhead and profit), the cost of labor and materials and any equipment which has been designed, specified, selected or specifically provided for by the Consultant and approved by the City, and including a contingency allowance for unforeseen conditions, not to exceed ten percent (10%) of the construction cost for new construction, or twenty percent (20%) of construction cost for rehabilitation of historic buildings, and not including the compensation of the Consultant and any subconsultants, the cost of land, rights-of-way, surveys, testing, or other reimbursable expenses. For Work not constructed, the Construction Cost shall be the same as the lowest bona fide bid or competitive bid received and accepted from a responsible bidder or proposer for any and all of such Work.

**1.10.1 CONSTRUCTION COST BUDGET.** The "Construction Cost Budget" shall mean an amount budgeted by the City for Construction Cost, as specified in the Consultant Service Order issued hereunder.

**1.10.2 STATEMENT OF PROBABLE CONSTRUCTION COST.** The "Statement of Probable Construction Cost" shall mean a forecast of Construction Cost prepared by the Consultant, and submitted for the guidance of the City. For work which bids or proposals have not been let, the Construction Cost shall be the same as the latest Statement of Probable Construction Cost. The City shall have the right to verify the Statement of Probable Construction Cost or detailed cost estimate by the Consultant.

**1.11 FORCE MAJEURE.** "Force Majeure" shall mean any delay occasioned by superior or irresistible force occasioned by violence in nature without the interference of human agency such as hurricanes, tornadoes, floods, loss caused by fire and other similar unavoidable casualties; or by

changes in Federal, State or local laws, ordinances, codes or regulations, enacted after the date of this Agreement and having a substantial impact on the Project; other causes beyond the parties' control; or by any other such causes which the Consultant and the City decide in writing justify the delay; provided, however, that market conditions, labor conditions, construction industry price trends and similar matters which normally impact the bidding process shall not be considered a Force Majeure.

**1.12 CONTRACTOR / CONTRACTORS.** "Contractor" or "Contractors" shall mean those persons or entities responsible for performing the Work or providing the materials, supplies and equipment identified in the bid and Construction Documents for the Project.

**1.13 CONTRACT DOCUMENTS.** "Contract Documents" shall mean this Agreement and the Consultant Service Order issued hereunder; the Agreement between City and Contractor; Conditions of the Contract (General, Supplementary and other Conditions); Construction Documents; and any addenda issued prior to execution of the Contract for Construction. A Modification is one of the following: (1) written amendment to the Contract for Construction signed by both parties; (2) an approved Change Order; (3) a Construction Change Directive; or (4) a written order for a minor change in the Work issued by the Consultant.

**1.14 CONTRACT FOR CONSTRUCTION.** "Contract for Construction" shall mean a legally binding agreement between the City and one or more Contractors.

**1.15 CONSTRUCTION DOCUMENTS.** "Construction Documents" shall mean the final plans, specifications, drawings, documents and diagrams submitted by the Consultant pursuant to Article 2.7 of this Agreement, and the Consultant Service Order(s) issued hereunder and approved by the City.

**1.16 CONTRACT AMENDMENT.** "Contract Amendment" shall mean the written order to the Contractor approved by the City, as specified in this Agreement, and signed by the City's duly authorized representative, authorizing a change in the Project or the method and manner of performance thereof, or an adjustment in the fees and/or completion dates, as applicable. Contract Amendments shall be approved by the City Commission, if they exceed twenty-five thousand dollars (\$25,000.00), or the City Manager if they are twenty-five thousand dollars (\$25,000.00) or less in amount (or other such amount as may be specified by the City of Miami Beach Procurement Ordinance, as amended). For Contract Amendments of less than twenty-five thousand dollars (\$25,000), the City Manager shall retain the right to seek and obtain concurrence of the City Commission for the approval of any such Contract Amendment.

**1.17 ADDITIONAL SERVICES.** "Additional Services" shall mean those services described in Article 5 herein, which have been duly authorized in writing by the City Manager prior to commencement of same.

1.18 **WORK.** "Work" shall mean the work to be performed on the Project by the Contractor, pursuant to the applicable Construction Documents, whether completed or partially completed, and includes labor, materials, equipment, and services provided, or to be provided, by the Contractor to fulfill its obligations.

1.19 **SERVICES.** "Services" shall mean the services to be performed on the Project by the Consultant pursuant to this Agreement, and the Consultant Service Order(s) issued hereunder, whether completed or partially completed, and includes other labor, materials, equipment and services provided, or to be provided, by Consultant to fulfill its obligations herein.

1.20 **BASE BID.** "Base Bid" shall mean the elements contained in the Construction Documents recommended by the Consultant and approved by the City as being within the Construction Cost Budget pursuant to the Statement of Probable Construction Cost provided by Consultant. "Base Bid" shall not include "Additive Alternates" or "Deductive Alternates".

1.21 **SCHEDULES.** "Schedules" shall mean the various schedules attached to this Agreement and are referred to as follows:

Schedule A - Consultant Service Order form (Blank).

Schedule B - Consultant Compensation: The schedule of compensation to the Consultant for Services provided, and for Reimbursable Expenses, as defined, plus any Additional Services, as submitted by the Consultant and approved by the City.

Schedule C - Hourly Billing Rate Schedule: The schedule of Hourly Compensation Rates to the Consultant as submitted by the Consultant and approved by the City.

Schedule D - Project Schedule: Format for Consultant to submit proposed project schedule(s).

1.22 **SCOPE OF SERVICES.** "Scope of Services" shall mean the Project Scope as described in the Consultant Service Order(s) issued by the City hereunder, together with the Basic Services and any Additional Services approved by the City, as described in Articles 2 and 5, respectively.

## **ARTICLE 2. BASIC SERVICES**

2.1 The Consultant shall provide Basic Services for the Project as set forth hereafter. The Services for this Project will be performed by the Consultant upon receipt of a written Consultant Service Order signed by the City Manager, or his designee. Consultant shall countersign the Consultant Service Order upon receipt, and return the signed copy to the City.



2.2 The Consultant's Basic Services may consist of up to five Phases (including: planning, design, bidding/award, construction administration and additional services) as described in the Consultant Service Order.

2.3 The Consultant shall coordinate with subconsultants and other consultants, and conform to all applicable building codes and regulations. Consultant, as it relates to its Services, represents and acknowledges to the City that it is knowledgeable of codes, rules and regulations applicable in the jurisdictions in which the Project is located, including without limitation, local ordinances and codes (City of Miami Beach and Miami-Dade County), Florida Statutes, Administrative rules and regulations (including the regulations of the Florida Department of Transportation [FDOT], if applicable), and Federal laws, rules and regulations. The Consultant agrees to comply with all such laws, codes, rules, and regulations now in effect, and as may be amended or adopted at any time during the term of this Agreement, and shall further take into account all known pending changes to the foregoing, of which it should reasonably be aware. The Consultant shall insert the provisions of all required codes into the Contract Documents where applicable.

2.4 The Consultant expressly agrees that all of its duties, services and responsibilities under this Agreement shall be performed in accordance with the standard of care normally exercised in the design of projects of this nature in South Florida. In addition, Consultant represents that it is experienced and fully qualified to perform the Services contemplated by this Agreement, and that it is properly licensed pursuant to the applicable laws, rules and regulations to perform such Services. Consultant warrants that it shall be responsible for the technical accuracy of its Contract Documents.

2.5 **PLANNING SERVICES.** Consultant shall perform such Planning Services as noted in the approved Consultant Service Order.

2.6 **DESIGN SERVICES.** Based on the approved Planning documents developed under Article 2.5, Consultant shall prepare Design Documents, as noted in the approved Consultant Service Order.

2.7 **BIDDING AND AWARD SERVICES.** Consultant shall provide bidding and award services as noted in the approved Consultant Service Order.

2.8 **CONSTRUCTION PHASE SERVICES.** Consultant shall furnish construction phase services as noted in the approved Consultant Service Order.

2.9 **ADDITIONAL SERVICES.** Consultant shall provide Additional Services as noted in the approved Consultant Service Order, or in any approved amendments thereto.

2.10 **RESPONSIBILITY FOR CLAIMS AND LIABILITIES.** Approval by the City shall not constitute nor be deemed a release of the responsibility and liability of the Consultant, its employees, subcontractors, agents and consultants for the accuracy and competency of their designs, working

drawings, specifications or other documents and services; nor shall such approval be deemed to be an assumption of such responsibility by the City for a defect, error or omission in designs, working drawings, specifications or other documents prepared by the Consultant, its employees, subcontractors, agents and consultants. However, the Consultant shall be entitled to reasonably rely upon the accuracy and validity of written decisions and approvals rendered by the City and its employees.

2.11 **TIME** It is understood that time is of the essence in the completion of all Projects assigned hereunder, and in this respect the parties agree as follows:

2.12 The Consultant shall perform the Services as expeditiously as is consistent with the standard of professional skill and care required by this Agreement and the orderly progress of the Work.

2.13 The parties agree that the Consultant's Services during all phases of this Project will be performed in a manner that shall conform with the approved Project Schedule, in the form attached to this Agreement as Schedule "D". The Consultant may submit requests for an adjustment to the Project Schedule, made necessary by undue time taken by the City to approve the Consultant's submissions, and/or excessive time taken by the City to approve the Services or parts of the Services. The City shall not unreasonably refuse to approve such adjustment(s) to the Project Schedule if the request is made in a timely manner and is fully justified.

2.14 In providing the Services described in this Agreement, the Consultant shall use its best efforts to maintain, on behalf of the City, a constructive, professional, cooperative working relationship with the Program Manager, Project Coordinator, Contractor(s), and others that have been contracted to perform Services and / or Work on behalf of the City. While the Services to be provided by Consultant under this Agreement will be provided under the general direction of the City's Project Coordinator and Program Manager, it is the intent of this Agreement to allow the Consultant to coordinate the performance of all design and construction work to the extent such coordination by the Consultant is permitted by the contract documents and the Consultant Service Order.

2.15 It is further the intent of this Agreement that the Consultant shall perform its duties under this Agreement in a competent, timely and professional manner and that it shall be responsible to the City for any failure in its performance except to the extent that acts or omissions by the City or others make such performance impossible.

2.16 Whenever during the term of this Agreement, others are required to verify, review, or consider any work performed by Consultant, including but not limited to the design professionals, Contractors, and other consultants retained by the City, the intent of such requirement is to enable the Consultant to receive input from others' professional expertise to identify any discrepancies, errors or omissions that are inconsistent with industry standards for design or construction of comparable public projects; or which are inconsistent with applicable laws, codes, ordinances, and regulations; or which are inconsistent with standards or decisions provided in writing by the City's

Program Coordinator. Consultant will use reasonable care and skill in accordance with and consistent with customary professional standards in responding to items identified as discrepancies, errors and omissions by others. Consultant shall receive comments from reviewers via a set of marked-up drawings and specifications. Consultant shall address comments forwarded to it in a timely manner. The term "timely" shall be construed to mean as soon as possible under the circumstances, taking into account the requirements of the Project Schedule.

2.17 The City shall have the right at any time, and in its sole and absolute discretion, to submit for review to consulting engineers or consulting architects or other consultants, engaged by the City at its own expense for that purpose, any or all parts of the work performed by the Consultant, and the Consultant shall cooperate fully in such review at the City's request.

2.18 Consultant agrees to certify and warrant all estimates of Construction Cost prepared by Consultant. Said certifications shall be in a form approved by the City.

2.19 Consultant represents to City that all evaluations of the City's Project budget, Consultant generated Statement of Probable Construction Cost, and detailed estimates represent Consultant's best judgement as a design professional familiar with the construction industry. Consultant cannot and does not guarantee that bids or negotiated prices will not vary from any estimate of Construction Cost or evaluation prepared or agreed to by Consultant.

2.20 Consultant agrees that, when the Services to be provided hereunder relate to a professional service which, under Florida Statutes, requires a license, certification of authorization, or other form of legal entitlement to practice such services, it shall employ and/or retain only qualified personnel to provide such services.

2.21 Consultant agrees to employ and designate in writing, within five (5) calendar days after receiving a signed Consultant Service Order, a qualified licensed professional to serve as the Consultant's project manager (herein after referred to as "Project Manager"). The Project Manager shall be authorized and responsible to act on behalf of Consultant with respect to directing, coordinating and administering all aspects of Services to be provided and performed under this Agreement. The person selected by Consultant to serve as Project Manager shall be subject to approval and acceptance by City. Replacement (including reassignment) of said Project Manager shall not be made without the prior written approval of the City. Consultant further agrees to obtain a binding agreement with its Project Manager providing a minimum of one (1) month notice before assuming a different position, said notice waivable by the City at its discretion.

2.22 Consultant agrees, within fourteen (14) calendar days of receipt of written notice to do such from City, to promptly remove and replace Project Manager, or any other personnel employed or retained by Consultant, or any subconsultant or subcontractors engaged by Consultant, which request may be made by City with or without stating its cause.

2.23 Consultant herein represents to City that it has expertise in the type of professional services that will be performed and pursuant to this Agreement. Consultant agrees that all Services to be provided by Consultant pursuant to this Agreement shall be subject to City's review and approval and shall be in accordance with the generally accepted standards of professional practice in the State of Florida, as well as in accordance with all published laws, statutes, ordinances, codes, rules, regulations and requirements of any governmental agencies having jurisdiction over the Project or the Services to be performed by Consultant hereunder. In the event of any conflicts in these requirements, Consultant shall notify City of such conflict and utilize its best professional judgement to advise City regarding resolution of each such conflict.

2.24 Consultant agrees not to divulge, furnish or make available to any third person, firm or organization, with City'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 Services to be rendered by Consultant hereunder, and Consultant shall require its employees, agents, subconsultants and subcontractors to comply with the provisions of this paragraph.

2.25 The City and Consultant acknowledge that the Scope of Services does not delineate every detail and minor work task required to be performed by Consultant to complete the Project. If, during the course of the performance of the Services contemplated in this Agreement, Consultant determines that work should be performed to complete the Project which is, in the Consultant's opinion, outside the level of effort originally anticipated, whether or not the Scope of Services identifies the work items, Consultant shall notify the City's Project Coordinator, in writing, in a timely manner, and obtain said Project Coordinator's written consent, before proceeding with the work. The City's Project Coordinator must comply with Contract Amendment processing requirements as outlined in Article 1.16, prior to issuance of any written authorization to proceed with additional Services to Consultant. If Consultant proceeds with additional Services without notifying and obtaining the consent of the City's Project Coordinator, said work shall be deemed to be within the original level of effort, and deemed included as a Basic Service herein, whether or not specifically addressed in the Scope of Services. Notice to the City's Project Coordinator does not constitute authorization or approval by the City to perform the work. Performance of work by Consultant outside the originally anticipated level of effort without the prior written consent of the City shall be at Consultant's sole risk.

2.26 Consultant shall establish and maintain files of documents, letters, reports, plans, etc. pertinent to the Project. Consultant shall provide City with a copy of applicable Project correspondence for City to file in its filing system. In addition, Consultant shall provide electronic Project documents files to the City, at the completion of the Project.

2.27 It is the intent of this Agreement that the Consultant shall perform its duties under this Agreement in a competent, timely and professional manner and that it shall be responsible to the City for any failure in its performance except to the extent that acts or omissions by the City or

others make such performance impossible.

2.28 In the event Consultant is unable to timely complete the Project because of delays resulting from untimely review by City or other governmental authorities having jurisdiction over the Project or such delays which are caused by factors outside the control of Consultant, Consultant shall provide City with immediate written notice stating the reason for such delay and a revised anticipated schedule of completion. City, upon review of Consultant's submittal and such other documentation as the City may require, may grant a reasonable extension of time for completion of the Project and may provide reasonable compensation, if appropriate.

2.29 The Consultant covenants with the City to furnish its Services hereunder properly, in accordance with the standards of its profession and in conformance with all construction, building and health codes and other applicable Federal, State and local rules, regulations and laws, of which it should reasonably be aware, throughout the term of this Agreement. The City's participation in the design and construction of any Project in no way relieves the Consultant of its professional duties and responsibilities under applicable law and under the Contract Documents

### **ARTICLE 3. THE CITY'S RESPONSIBILITIES**

3.1 The City shall designate in writing a project coordinator to act as the City's representative with respect to services to be rendered under this Agreement (hereinafter referred to as Project Coordinator). The Project Coordinator shall have authority to transmit instructions, receive information, interpret and define City policies and decisions with respect to Consultant's Services on the Project. However, the Project Coordinator is not authorized to issue any verbal or written orders or instructions to Consultant that would have the effect, or be interpreted to have the effect, of modifying or changing the terms of the approved Consultant Service Order in any way whatsoever, unless such change is approved in writing by the City Manager and/or City Commission in compliance with Article 1.16 requirements, including but not limited to the following:

- a) The Consultant Service Order describing tasks to be provided and performed by Consultant hereunder;
- b) The time the Consultant is obligated to commence and complete all such Services; or
- c) The amount of compensation the City is obligated or committed to pay Consultant.

3.2 The City shall assist Consultant by placing at Consultant's disposal the information City has conveniently available pertinent to the Project, which may include previous reports and any other data relative to design or construction of the Project. It shall be fully understood that City, in making such reports, site information, and documents available to the Consultant is in no way certifying, representing and/or warranting as to the accuracy or completeness of such data, including any

information provided in the City's Request for Qualifications and backup documentation thereto. Any conclusions or assumptions drawn through examination thereof shall be the sole responsibility of the Consultant and subject to whatever measures Consultant deems necessary for final verification essential to its performance under this Agreement.

3.3 The City shall establish a Construction Cost Budget for each assigned Project, as stated in the approved Consultant Service Order.

3.4 In the City's sole discretion, the City may furnish legal, accounting and insurance counseling services as may be required at any time for the Project, including such auditing services as the City may require to verify the Consultant's applications for payment or to ascertain that Consultant has properly remitted payment due to subconsultants or vendors working on this project for which Consultant has received payment from the City.

3.5 If the City observes or otherwise becomes aware of any fault or defect in the Project or non-conformance with the Contract Documents, the City shall give prompt written notice thereof to the Consultant.

3.6 The City shall furnish required information and services and render approvals and decisions in writing as expeditiously as necessary for the orderly progress of the Consultant's Services and of the Work. No approvals required by the City during the various phases of the Project shall be unreasonably delayed or withheld; provided that the City shall at all times have the right to approve or reject any proposed submissions of Consultant for any reasonable basis.

3.7 The City Commission shall be the final authority to do or to approve the following actions or conduct by passage of an enabling resolution or amendment to this Agreement.

3.7.1 The City Commission shall be the body to consider, comment upon, or approve any amendments or modifications to this Agreement, except when noted otherwise (i.e., where delegated to the City Manager or his designee) in this Agreement.

3.7.2 The City Commission shall be the body to consider, comment upon, or approve any assignment, sale, transfer or subletting of this Agreement or any interest therein and any subcontracts made pursuant to this Agreement. Assignment and transfer shall be defined to include sale of the majority of the stock of a corporate Consultant.

3.7.3 All required City Commission approvals and authorizations shall be expressed by passage of an appropriate enabling resolution and, if an amendment, by the execution of an appropriate amendment to this Agreement.

3.7.4 The City Commission shall hear appeals from the administrative decision of the City Manager's appointed designee(s), upon the Consultant's written request, in which case the

Commission's decision shall be final.

3.7.5 The City Commission shall approve or consider all Contract Amendments that exceed the sum of twenty five thousand dollars (\$25,000.00) (or other such amount as may be specified by the City of Miami Beach Procurement Ordinance, as amended).

3.8 The City Manager or his designee(s) shall serve as the City's representative to whom administrative requests for approvals shall be made and who shall issue authorizations (exclusive of those authorizations reserved to the City Commission) to the Consultant. These authorizations shall include, without limitation: reviewing, approving, or otherwise commenting upon the schedules, plans, reports, estimates, contracts and other documents submitted to the City by the Consultant.

3.8.1 The City Manager shall decide, in his professional discretion, matters arising pursuant to this Agreement which are not otherwise expressly provided for in this Agreement, and shall attempt to render administrative decisions promptly to avoid unreasonable delay in the progress of the Consultant's services. The City Manager, in his administrative discretion, may consult with the City Commission concerning disputes or matters arising under this Agreement regardless of whether such matters or disputes are enumerated herein.

3.8.2 The City Manager shall be authorized, but not required, at the request of the Consultant, to reallocate monies already budgeted toward payment of the Consultant, provided, however, that the Consultant's compensation or other budgets established by this Agreement cannot be increased.

3.8.3 The City Manager, or his designee, shall be the sole representative of the City authorized to issue a signed, approved Consultant Service Order.

3.8.4 The City Manager may approve Contract Amendments which do not exceed the sum of twenty five thousand dollars (\$25,000.00) (or other such amount as may be specified by the City of Miami Beach Purchasing Ordinance, as amended) and which do not increase any of the budgets established herein.

3.8.5 The City Manager may, in his sole discretion, form a committee or committees, or inquire of or consult with persons for the purpose of receiving advice and recommendations relating to the exercise of his powers, duties and responsibilities under this Agreement.

#### **ARTICLE 4. RESPONSIBILITY FOR CONSTRUCTION COST**

4.1 The Construction Cost Budget, as established by the City and stated in the Consultant Service Order, shall not be exceeded without fully justifiable, extraordinary and unforeseen circumstances, such as Force Majeure, which is beyond the control of the parties. Any expenditure above this

amount shall be subject to prior City approval by passage of an enabling resolution and amendments to the appropriate agreements relative to the Project, prior to any modification of the Construction Cost. Provided further, however, that even in the event of a Force Majeure, as defined in Article 1.10, the City shall have no obligation to exceed the Construction Cost Budget limitations established herein, and, if such budget is exceeded, the City may, at its sole option and discretion, terminate this Agreement without any further liability to the City.

4.2 If the lowest bona fide base bid exceeds the Construction Cost Budget by more than five percent (5%), the City Commission shall, at its sole discretion, have any of the following options: (1) give written approval of an increase in the Construction Cost Budget; (2) reject all bids or proposals, authorize rebidding, or (if permissible) authorize a renegotiation of the Project within a reasonable time; (3) abandon the Project and terminate the Consultant's Services for the Project covered by this Agreement. without further liability to the City; (4) select as many Deductive Alternatives as may be necessary to bring the award within the Construction Cost Budget; or (5) cooperate with the Consultant in reducing the Project scope, construction schedule, and sequence of Work, as may be required to reduce the Construction Cost Budget. In the event the City elects to reduce the Project Scope, the Consultant shall provide such revisions to the Construction Documents, and provide rebidding services, as many times as reasonably requested by the City, as a Basic Service, with no additional cost to the City, in order to bring the bids within five percent (5%) of the Construction Cost Budget.

## **ARTICLE 5. ADDITIONAL SERVICES**

5.1 Additional Services for this Project will only be performed by the Consultant following receipt of a written authorization by the City Manager prior to commencement of same. Such authorization shall contain a description of the Services required; an hourly fee, as provided in Schedule "C" with a "Not to Exceed" amount of additional Reimbursable Expenses (if any); the amended Construction Cost Budget (if applicable); and an amended completion date for the Project (if any). "Not to Exceed" shall mean the maximum cumulative hourly fees allowable, which the Consultant shall not exceed without specific written authorization from the City. The "Not to Exceed" amount is not a guaranteed maximum cost for the services requested by the City and all costs applied to such shall be verifiable through time sheet and reimbursable expense reviews.

5.2 The term "Additional Services" includes services involving the Consultant or any subconsultants whether previously retained for the Services or not, or whether participating as members with Consultant or not, subject to the City's right to previously approve any change in the Consultants as set forth in this Agreement.

5.3 Additional Services may consist of the following:

5.3.1 Serving as an expert witness in connection with any public hearing, arbitration proceeding



or legal proceeding unless such preparation has arisen from the failure of the Consultant to meet the Standard of Care set forth in Article 2.

5.3.2 Preparing documents for Change Orders, or supplemental Work, initiated at the City's request and outside the scope of the Work specified in the Construction Documents, after commencement of the Construction Phase.

5.3.3 Providing such other professional services to the City relative to the Project which arise from subsequent circumstances and causes (excluding circumstances and causes resulting from error, inadvertence or omission of the Consultant) which do not currently exist or which are not contemplated by the parties at the time of execution of this Agreement.

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

## **ARTICLE 6. REIMBURSABLE EXPENSES**

6.1 Reimbursable Expenses are in addition to the compensation for Basic and Additional Services and include actual expenditures made by the Consultant and the Consultant's employees and consultants in the interest of the Project. All Reimbursable Expenses pursuant to this Article, in excess of \$500, must be authorized in advance by the City's Project Coordinator. Invoices or vouchers for Reimbursable Expenses shall be submitted by the Consultant to the City, along with supporting receipts, and other back-up material reasonably requested by the City, and Consultant shall certify as to each such invoice that the amounts and items claimed as reimbursable are "true and correct and in accordance with the Agreement".

6.2 Expenses subject to reimbursement in accordance with the above procedures may include the following:

6.2.1 The cost of testing or investigation of underground utilities, if authorized by the City's Project Coordinator.

6.2.2 Expense of reproduction, postage and handling of drawings, specifications and other documents, excluding reproductions for the office use of the Consultant and sub-consultants. Courier and postage between the Consultant and its sub-consultants are not reimbursable.

6.2.3 Expenses for reproduction and the preparation of graphics for community workshops.

6.2.4 Fees for all necessary permits shall be paid directly by City.

## ARTICLE 7. COMPENSATION FOR SERVICES

7.1 The Consultant shall be compensated the not to exceed, cost reimbursable fee listed in Schedule "B" for Basic Services, based on the "Hourly Rate Schedule" presented in Schedule "C". Payments for Basic Services shall be made within forty-five (45) calendar days of receipt and approval of an acceptable invoice by the City's Project Coordinator. Note that payments shall be made in proportion to the Services performed in each Phase so that the payments for Basic Services for each Phase shall not exceed the progress percentage noted in the Consultant's Progress Schedule, submitted with each invoice. No markup shall be allowed on subcontracted Basic Services.

7.2 Additional Services authorized in accord with Article 5 will be compensated using the hourly rates forth in Schedule "C". Request for payment of Additional Services shall be included with the monthly Basic Services payment request noted in Article 7.1 above. All Additional Services must be approved by the City's Project Coordinator prior to commencement of same as noted in Article 5. Under no circumstances shall the "Not to Exceed" amount noted in Schedule "B" be exceeded without prior written approval from the City's Project Coordinator. No markup shall be allowed on subcontracted Additional Services.

7.3 Reimbursable Expenses, as defined in Article 6, shall be paid up to the "Not to Exceed" amount noted in Schedule "B". Request for payment of Reimbursables shall be included with the monthly Basic Services payment request noted in Article 7. Proper backup must be submitted with all reimbursable requests. No markup or administrative charges shall be allowed on Reimbursable Expenses.

7.4 The City and the Consultant agree in accordance with the terms and conditions of this Agreement that:

7.4.1 If the scope of the Project or the Consultant's Services is changed substantially and materially, the amount of compensation may be equitably adjusted by mutual agreement of the parties.

7.4.2 Commencing on October 1, 2002, the Hourly Billing Rate Schedule shown in Exhibit "C" may be adjusted annually based upon the Miami - Fort Lauderdale Consumer Price Index issued by the U.S. Department of Labor, Bureau of Labor Statistics. Such adjustment shall be calculated by multiplying the ratio of the April index divided by the previous year's index by the Hourly Rate Schedule to define the new Hourly Rate Schedule; The maximum increase will be limited to three percent (3%).

7.5 No deduction shall be made from the Consultant's compensation on account of sums withheld from payments to Contractors.

7.6 Method of Billing and Payment. With respect to all Services, Consultant shall submit

billings on a monthly basis in a timely manner. These billings shall identify the nature of the work performed; the total hours of work performed by employee category and the respective hourly billing rate associated with the employee category from the Hourly Rate Schedule. In the event subconsultant work is accomplished utilizing the lump sum method, the percentage of completion shall be identified. Billings shall also itemize and summarize Reimbursables by category. Where written approval of the City is required for Reimbursables, a copy of said approval shall accompany the billing for such Reimbursable. When requested, Consultant shall provide backup for past and current invoices that records hours for all Services by employee category and reimbursable by category.

7.7 The City shall pay Consultant within forty-five (45) calendar days from receipt of Consultant's proper statement.

7.8 Final payment of the Consultant upon Project completion must be approved by the City Manager.

#### **ARTICLE 8. CONSULTANT'S ACCOUNTING RECORDS**

8.1 Consultant shall keep such records and accounts and require any and all Consultant and subconsultants to keep such records and accounts as may be necessary in order to record complete and correct entries as to personnel hours charged to the Project, and any expenses for which Consultant expects to be reimbursed. All books and records relative to the Project will be available at all reasonable times for examination and audit by City and shall be kept for a period of three (3) years after the completion of all work performed pursuant to this Agreement. Incomplete or incorrect entries in such books and records will be grounds for City's disallowance of any fees or expenses based upon such entries. All books and records which are considered public records shall, pursuant to Chapter 119, Florida Statutes, be kept by Consultant in accordance with such statutes.

#### **ARTICLE 9. OWNERSHIP AND USE OF DOCUMENTS**

9.1 Electronic files of all documents, including, but not limited to, tracings, drawings, estimates, specifications, investigations and studies completed or partially completed, shall become the property of the City upon completion, termination, or abandonment of the Project. Consultant shall deliver the above documents to the City within thirty (30) days of completion of the Project, or termination of this Agreement, or termination or abandonment of the Project. (Reference the completed Schedule "A", entitled "Consultant Service Order" for any additional requirements).

9.2 Any re-use of documents by City without written verification or adaptation by Consultant for the specific purpose intended will be without liability to Consultant.

## ARTICLE 10. TERMINATION OF AGREEMENT

10.1 Termination For Lack Of Funds. The City is a governmental entity and is subject to the appropriation of funds by its legislative body in an amount sufficient to allow continuation of its performance in accordance with the terms and conditions of this Agreement. In the event there is a lack of adequate funding for the Project, the Project may be abandoned or terminated, and the City may cancel this Agreement as provided for herein without further liability to the City.

10.2 Termination For Cause. The City may terminate this Agreement for cause in the event that the Consultant (1) violates any provisions of this Agreement or performs same in bad faith or (2) unreasonably delays the performance of the Services, upon notice to the Consultant, in writing, seven (7) days prior to termination. In the case of termination by the City for cause, the Consultant shall first be granted a thirty (30) day cure period after receipt of written notice from the City.

10.2.1 In the event this Agreement is terminated by the City for cause, the City, at its sole option and discretion, may take over the Services and complete them by contracting with another consultant(s) or otherwise. In such event, the Consultant shall be liable to the City for any additional cost incurred by the City due to such termination. "Additional Cost" is defined as the difference between the actual cost of completion of such incomplete Services, and the cost of completion of such Services which would have resulted from payments to the Consultant hereunder had the Agreement not been terminated.

10.2.2 Payment only for Services satisfactorily performed by the Consultant and accepted by the City prior to receipt of a Notice of Termination, shall be made in accordance with Article 7 herein and the City shall have no further liability for compensation, expenses or fees to the Consultant, except as set forth in Article 7.

10.2.3 Upon receipt of a written Notice of Termination, the Consultant shall promptly assemble and submit to the City, as provided herein or as required in the written notice, all documents, including drawings, calculations, specifications, correspondence, and all other relevant materials affected by such termination.

10.2.4 In the event of a termination for cause, no payments to the Consultant shall be made (1) for Services not satisfactorily performed and (2) for assembly of submittal of documents, as provided above.

10.3 Termination For Convenience. The City, in addition to the rights and options to Terminate for Cause, as set forth herein, or any other provisions set forth in this Agreement, retains the right to terminate this Agreement, at its sole option, at any time, for convenience, without cause and without penalty, when in its sole discretion it deems such termination is in the best interest of the City, upon notice to Consultant in writing fourteen (14) days prior to termination. In the event City terminates Consultant's services for its convenience, as provided herein, Consultant shall be

compensated for all Services rendered up to the time of receipt of said written termination notice, and for the assembly and submittal to the City of documents for the Services performed, in accordance with Article 7 herein, and the City shall have no further liability for compensation, expenses or fees to the Consultant, except as set forth in Article 7.

10.4 Termination By Consultant. The Consultant may only terminate this Agreement for cause in the event that the City willfully violates any provisions of this Agreement or unreasonably delays payment for the Services, upon written notice to the City, thirty (30) days prior to termination. In that event, payment for Services satisfactorily performed by the Consultant and accepted by the City prior to receipt of a Notice of Termination shall be made in accordance with Article 7 herein. In the case of termination by Consultant for cause, the City shall be granted a thirty (30) day cure period after receipt of written notice from the Consultant.

10.4.1 The Consultant shall have no right to terminate this Agreement for convenience of the Consultant.

10.5 Implementation Of Termination. In the event of termination, either for cause or for convenience, the Consultant, upon receipt of the Notice of Termination, shall (1) stop the performance of Services under this Agreement on the date and to the extent specified in the Notice of Termination; (2) place no further orders or subcontracts except for any that may be authorized, in writing, by the City, prior to their occurrence; (3) terminate all orders and subcontracts to the extent that they relate to the performance of the Services terminated by the Notice of Termination; (4) promptly assemble and submit, as provided herein, all documents for the Services performed, including drawings, calculations, specifications, correspondence, and all other relevant materials affected by the termination; and (5) complete performance of any Services as shall not have been terminated by the Notice Of Termination, And As Specifically Set Forth Therein.

10.6 Non Solicitation. The Consultant warrants that it has not employed or retained any company or person, other than an employee working solely for the Consultant, to solicit or secure this Agreement; and that it has not paid, nor agreed to pay any company or other person any fee, commission, gift or other consideration contingent upon the execution of this Agreement. For breach or violation of this warranty, the City has the right to terminate this Agreement without liability to the Consultant for any reason whatsoever.

## ARTICLE 11. INSURANCE

11.1 The Consultant shall comply throughout the term of this Agreement with the insurance requirements stipulated herein. It is agreed by the parties that the Consultant shall not commence with work on this Project until satisfactory proof of the following insurance coverage has been furnished to the City. The Consultant will maintain in effect the following insurance coverage:

(a) Professional Liability Insurance in the amount of One Million (\$1,000,000.00) Dollars per occurrence, with a maximum deductible of \$150,000 per occurrence, \$450,000 aggregate. Consultant shall notify City in writing within thirty (30) days of any claims filed or made against the Professional Liability Insurance Policy.

(b) Comprehensive General Liability Insurance in the amount of \$1,000,000.00 Single Limit Bodily Injury and Property Damage coverage for each occurrence, which will include products, completed operations, and contractual liability coverage. The City must be named as an additional insured on this policy.

(c.) Worker's compensation and employer's liability coverage within the statutory limits of the State of Florida.

11.2 The Consultant must give thirty (30) days prior written notice of cancellation or of substantial modifications in the insurance coverage, to the City Manager.

11.3 The insurance must be furnished by an insurance company rated B+:VI or better, or its equivalent, according to Bests' Guide Rating Book and must additionally be furnished by insurance companies duly authorized to do business in the State of Florida and countersigned by the company's Florida resident agent.

11.4 Consultant shall provide to City a Certificate of Insurance or a copy of all insurance policies required above. City reserves the right to require a certified copy of such policies upon request. All certificates and endorsements required herein shall state that the City shall be given thirty (30) days notice prior to expiration or cancellation of the policy.

## ARTICLE 12. INDEMNIFICATION

12.1 In consideration of a separate and specific consideration of \$10.00 and other good and valuable consideration the receipt of which is hereby acknowledged, the Consultant hereby agrees to indemnify, defend and hold the City and its employees, agents and authorized representatives harmless with respect to any and all costs, claims, damages and liability which may arise out of the performance of this Agreement as a result of the negligence, recklessness, intentionally wrongful conduct and errors or omission of the Consultant, or the Consultant's subconsultants, or any other person or entity under the direction or control of Consultant. The Consultant shall pay all claims and losses arising out of Consultant's negligent acts, recklessness, intentionally wrongful conduct, and errors or omissions and shall defend all suits, in the name of the City, its employees, agents and authorized representatives when applicable, including appellate proceedings, and shall pay all costs, judgments and reasonable attorneys' fees which may issue thereon.

### **ARTICLE 13. VENUE**

13.1 This Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein. Exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida.

### **ARTICLE 14. LIMITATION OF LIABILITY**

14.1 The City desires to enter into this Agreement only if in so doing the City can place a limit on City's liability for any cause of action for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds the amount of the fees for Services agreed upon under the terms of the Agreement, less any amount(s) paid to Consultant thereunder. Consultant hereby expresses its willingness to enter into this Agreement with Consultant's recovery from the City for any damage action for breach of contract to be limited to a maximum amount of the fee for Services agreed upon under the terms of the Agreement, less the amount of all funds actually paid by the City to the Consultant

Accordingly, and notwithstanding any other term or condition of this Agreement, Consultant hereby agrees that the City shall not be liable to Consultant for money damages due to an alleged breach by the City of this Agreement in an amount in excess of the amount of fee under any this Agreement, which amount shall be reduced by the amount actually paid by the City to Consultant for any action or claim for breach of contract arising out of the performance or non-performance of any obligations imposed upon the City by this Agreement. Nothing contained in this subparagraph or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon City's liability as set forth in Section 768.28, Florida Statutes.

### **ARTICLE 15. MISCELLANEOUS PROVISIONS**

15.1 The laws of the State of Florida shall govern this Agreement.

15.2 Terms in this Agreement which have not been defined in Article 1 shall have the same meaning as those in AIA Document A-201, General Conditions of the Contract for Construction, current as of the date of this Agreement.

15.3 Consultant agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age, national origin, disability or sexual orientation and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to sexual orientation, race, color, religion, sex, age, national origin, or disability. This provision shall include, but not be limited to, the following: employment upgrading, demotion or transfer; recruitment advertising, layoff or

compensation; and selection for training, including apprenticeships. Consultant agrees to furnish City with a copy of its Affirmative Action Policy.

15.4 Public Entity Crimes Act: In accordance with the Public Entity Crimes Act (Section 287.133, Florida Statutes), a person or affiliate who is a consultant, who has been placed on the convicted vendor list following a conviction for a public entity crime, may not submit a bid on a contract to provide any goods or services to the City, may not submit a bid on a contract with the City for the construction or repair of a public building or public work, may not submit a bid on leases of real property to the City, may not be awarded or perform work as a contractor, supplier, subcontractor, or subconsultant under a contract with the City, and may not transact business with the City in excess of the threshold amount provided in Section 287.017, Florida Statutes, for Category Two for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this Section by Consultant shall result in cancellation and may result in Consultant's debarment.

15.5 Contingent Fee: Consultant warrants that it 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 it 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 other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, City shall have the right to terminate the Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

15.6 The Consultant represents that it has made and will make reasonable investigation of all subconsultants to be utilized in the performance of work under this Agreement to determine that they possess the skill, knowledge and experience necessary to enable them to perform the services required. Nothing in this Agreement shall relieve the Consultant of its prime and sole responsibility for the performance of the work under this Agreement.

15.7 The Consultant, its consultants, agents and employees and sub contractors, shall comply with all applicable Federal, State and County laws, the Charter, related laws and ordinances of the City of Miami Beach, and with all applicable rules and regulations promulgated by local, state and national boards, bureaus and agencies as they relate to this Project.

15.8 This Agreement, or any interest herein, shall not be assigned, transferred or otherwise encumbered by Consultant, under any circumstances, without the prior written consent of City.

15.9 This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein; and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements



whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

#### ARTICLE 17. NOTICE

17.1 All written notices given to City by Consultant shall be addressed to:

City Manager  
c/o Assistant City Manager  
City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, Florida 33139

With a copy to each of the following:

Capital Projects Coordinator  
Construction Management Division  
City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, Florida 33139

and

Office of the City Attorney  
City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, Florida 33139

All written notices given to the Consultant from the City shall be addressed to:

BEA INTERNATIONAL, INC.  
Suite 200  
4217 Ponce de Leon Blvd  
Coral Gables, FL 33146

All notices mailed to either party shall be deemed to be sufficiently transmitted if sent by certified mail, return receipt requested.

IN WITNESS WHEREOF, the parties nereto have hereunto caused these presents to be signed in

City of Miami Beach

Structural Engineering Services