MIAMI-DADE EXPRESSWAY AUTHORITY
3790 NW 21 St. // Miami, FL 33142
www.mdxway.com

MDX PROCUREMENT/CONTRACT NO.:
RFQ-17-04 (A)

MDX PROJECT/SERVICE TITLE:
LEGAL SUPPORT SERVICES
EMINENT DOMAIN

PROFESSIONAL SERVICES AGREEMENT

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MJB Initials (Consultant)

THIS AGREEMENT ("Agreement" or "Contract"), is made and entered into as of the 1st day of April, 2017 (the "Effective Date"), by and between the **Miami-Dade County Expressway Authority d/b/a as Miami-Dade Expressway Authority** (the "Authority" or "MDX"), a body politic and corporate, a public instrumentality and an agency of the State of Florida, created under Chapter 348, Part I, Florida Statutes as amended, acting by and through its Governing Board, and **Weiss Serota Helfman Cole & Bierman, P.L.** (the "Consultant"), a limited liability company duly organized and existing under the laws of Florida, located at 2525 Ponce De Leon Boulevard, Suite 700, Miami, Florida 33143 and duly authorized to conduct business in the State of Florida, Federal I.D. No. **20-8112403** (collectively, referred to herein as the "Parties" to this Agreement).

WITNESSETH:

WHEREAS, pursuant to MDX Procurement/Contract No.: RFQ-17-04 MDX competitively procured for all services necessary to provide Legal Support Services in the Area of Expertise of Eminent Domain (the "Services"); and

WHEREAS, MDX now desires to enter into an Agreement with the aforementioned Consultant.

NOW, THEREFORE in consideration of the mutual understandings and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. RECITALS

The foregoing recitals are true and correct and are incorporated herein by reference.

2. SCOPE OF SERVICES

MDX hereby retains the Consultant to provide the Services as described in **Exhibit A, Scope of Services** attached hereto and incorporated herein.

The Consultant agrees to provide the Services under this Agreement on a non-exclusive basis. At its option, MDX may elect to have any of the Services performed by other consultants or by MDX staff.

The Consultant and MDX mutually agree to furnish, each to the other, the respective service, information, and items as described in the Scope of Services.

3. TERM OF THE AGREEMENT AND COMMENCEMENT OF SERVICES

Subject to the termination provisions set forth herein, this Agreement shall become effective upon its execution by the Parties on the Effective Date.

The term of the Agreement is for three (3) years. Subject to mutual agreement of the Parties, and subject to the Consultant receiving no less than "Excellent" on all Annual Contract Performance Evaluations during the last two (2) years of the Term of the Agreement, the Term of the Agreement may be extended for up to two (2) years.

On or after the Effective Date of the Agreement, MDX will issue the Consultant a Notice to Proceed authorizing commencement of the Services.

No Services shall commence without a fully executed Task Authorization issued by MDX.

4. TERMS AND CONDITIONS

With respect to the Services under this Agreement, the Consultant agrees it shall meet all terms and conditions included in the Agreement, inclusive of Exhibits and any amendments to the Agreement (the Contract Documents).

5. SMALL BUSINESS PARTICIPATION REQUIREMENT

NOT APPLICABLE TO THIS AGREEMENT

6. LOCAL BUSINESS PARTICIPATION REQUIREMENT

NOT APPLICABLE TO THIS AGREEMENT

7. INDEMNIFICATION

Consultant's indemnification obligations to MDX, and others defined in this section as "MDX Indemnified Parties," are not limited, contained or capped by the limits provided to MDX and MDX Indemnified Parties pursuant to Section 768.28, Florida Statutes or any other sovereign immunity limitations afforded by Florida or any other applicable law.

MDX Indemnified Parties are hereby defined as MDX, all of MDX's officers, agents, employees, and successors.

The Consultant shall indemnify and hold harmless the MDX Indemnified Parties from any direct or indirect claim, loss, damage, cost, charge, judgment, attorney's fees and expense, to the extent arising out of any negligence, recklessness, or intentionally wrongful conduct by the Consultant, its agents, employees, or Subconsultants during the performance of the Contract.

The Consultant's obligation to indemnify the MDX Indemnified Parties shall be triggered by MDX's notice of claim for indemnification to the Consultant. The Consultant's inability to evaluate liability or its evaluation of liability shall not excuse the Consultant's duty to indemnify within seven (7) Calendar Days after such notice by MDX is provided by registered mail.

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Only an adjudication of judgment after the highest appeal is exhausted specifically finding MDX solely negligent shall excuse performance of this provision by the Consultant with respect to indemnification of the MDX Indemnified Parties.

The Consultant shall pay all costs and fees related to this obligation and its enforcement by MDX. MDX's failure to notify the Consultant of a claim shall not release the Consultant of the above duty to indemnify, except to the extent such failure to notify prejudices or impairs the Consultant's ability to defend.

It is specifically agreed between the parties executing the Contract that it is not intended by any of the provisions of any part of the Contract to create in the public or any member thereof, a third-party beneficiary hereunder, or to authorize anyone not a party to the Contract to maintain a suit for personal injuries, bodily injury or property damage pursuant to the terms or provisions of the Contract.

The Consultant guarantees the payment of all just claims for the Services, and other just claims against it or any Subconsultant in connection with the Contract.

The parties agree that the Contract Amount includes consideration for the Consultant's indemnity agreements.

8. INSURANCE

The Consultant shall furnish to MDX prior to the commencement of any Services under this Agreement, certificate(s) of insurance as required by the Solicitation Documents. Required insurance types and limits are contained in the Solicitation Documents and attached hereto and incorporated herein. If insurance coverage is scheduled to expire during the Term of the Agreement, the Consultant shall be responsible for submitting insurance certificates to MDX before such expiration that evidence of renewal or replacement of the expiring coverage(s). In the event that expired coverage(s) are not replaced with new or renewed coverage(s) that cover the Term of the Agreement, MDX shall suspend this Agreement and all Services associated with this Agreement until certificates evidencing the replacement or renewed coverage(s) are received by MDX; provided however, that this suspension period shall not exceed ten (10) Calendar Days, as determined solely by MDX (the "Suspension Period"). At the end of the Suspension Period, MDX may, at its sole discretion, terminate the Agreement for cause, as described in the section of this Agreement, entitled, *Termination.*

9. SOVEREIGN IMMUNITY

No provision of the Contract Documents, including this Agreement, shall be construed as a waiver of sovereign immunity by MDX.

10. INDEPENDENT CONSULTANT

10.1 Acting as an Independent Consultant

The Consultant hereby declares that it is engaged in an independent business and agrees that in the performance of this Agreement it shall act as an independent Consultant and not as an employee of MDX. The Consultant has and hereby retains full control of all the employment, compensation, and discharge of all employees of the Consultant assisting in its performance hereunder.

The Consultant shall be fully responsible for Services performed under this Agreement, and all matters relating to payment of its employees including compliance with Social Security, withholding tax, workers' compensation, immigration law compliance and all other laws and regulations governing such matters.

The Consultant shall be responsible for its own acts and those of its agents, independent contractors, and employees during the term of this Agreement. Except as otherwise specifically provided, as an independent consultant, the Consultant will be solely responsible for determining means and methods for performing the Services described in the Scope of Services.

10.2 Full and Complete Payment

The payment made to the Consultant pursuant to the requirements of the Method of Compensation under this Agreement shall be the full and complete compensation to which the Consultant is entitled. MDX shall not make any federal or state tax withholdings on behalf of the Consultant. MDX shall not be required to pay any workers' compensation insurance on behalf of the Consultant.

The Consultant agrees to indemnify MDX for any tax, retirement contribution, social security, overtime payment, or workers' compensation payment which MDX may be required to make on behalf of the Consultant or any employee, or independent contractor of the Consultant for Services performed under this Agreement.

10.3 No Authority to Act on MDX's Behalf

Except as MDX may specify in writing, the Consultant shall have no authority, express or implied, to act on behalf of MDX in any capacity whatsoever, as an agent or otherwise. The Consultant shall have no authority, express or implied, to bind MDX or its members, agents or employees, to any obligation whatsoever, unless expressly provided in this Agreement.

11. CONSULTANT, SUBCONSULTANTS, AND EMPLOYEES

The Consultant, Subconsultants, and their respective employees providing Services under this Agreement shall remain, at all times throughout the Term of the Agreement, authorized to do business within the State of Florida.

Initial personnel, classifications and rates of personnel, and Subconsultants have been approved by MDX at the time of execution of the Agreement. Any subsequent changes in personnel and Subconsultants shall require prior written approval from MDX as further detailed herein.

The Consultant will use due care in performing the Services and will have due regard for acceptable standard and principles. The Consultant's standard of care shall not be altered by the application, interpretation, or construction of any other provision of this Agreement

11.1 Consultant's Personnel

The Consultant shall maintain adequate, dedicated, qualified, reliable and committed personnel for the performance of the Services. Such personnel must perform the Services, at a minimum, with a degree of care and skill common of the profession.

The Consultant warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the 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 the Consultant, any fee, commission, percentage, gift, or any other consideration monetary or non-monetary, contingent upon or resulting from the award or making of this Agreement. It is further understood and agreed that the term "fee" shall also include brokerage and finder's fees, however denoted.

If the Consultant breaches or violates the above mentioned provision, MDX shall have the right to deduct from this Agreement or Task Authorization price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration or may in its sole discretion pursue any other remedies available to MDX including termination of this Agreement.

11.2 Removal of Consultant's Personnel

If, in the opinion of MDX, any person assigned to the Agreement is not qualified to perform the Services or is insubordinate, disorderly, disrupts, or is detrimental to the progress of the Services, such person shall be immediately removed from the Agreement by the Consultant upon written request from MDX. Such person shall not be assign to perform the Services under this Agreement again without the written permission of MDX. Upon the

removal of such person, the Consultant shall promptly provide an acceptable substitute at no additional cost to MDX. If the Consultant fails to immediately remove such person and provide an acceptable substitute, MDX may, at its sole discretion, withhold payments due or which may become due, or may terminate the Agreement. The Consultant shall protect, indemnify, and hold harmless MDX, its agents, officers and employees from any and all claims, actions, or suits arising from such removal, discharge, or suspension of a Consultant employee based on the direction of MDX to remove from this Agreement.

11.3 Changes to Consultant's Personnel

For changes to personnel, the Consultant shall submit the following documentation for MDX's review and approval:

(1) Personnel Change Request Form (or Request for Authorization to Subcontract Work, pursuant to Section 11.5 below.)

(2) A current resume;

(3) Documentation demonstrating the personnel possesses the required technical qualifications and experience to perform the Services for which being contracted;

After the Consultant follows the steps described above, MDX shall review the submitted documentation and determine, at its sole discretion, whether or not to approve the personnel change. The Consultant shall maintain throughout the Term of this Agreement, proposed personnel and a professional staff that meets the required training and experience to provide the Services.

11.4 Subconsultants

The Consultant shall ensure that all subcontracts entered into with its Subconsultants grant MDX all of the rights and privileges of such subcontract, including but not limited to (so long as MDX is not in default of its obligations under this Agreement) MDX's right to secure materials or services from the Subconsultant which might be a part of the Subconsultant's work production.

All Subconsultants and their personnel shall be properly licensed, certified, and/or registered by the appropriate governmental authority, including Small Business and/or Local Business certifications, as may be applicable to meet the requirements of the Contract Documents and to perform the Services. Upon request, the Consultant must furnish MDX with a copy of any subcontract related to the Services. Subconsulting of any portion of the Services does not relieve the Consultant of their respective liabilities under the Agreement. MDX recognizes a Subconsultant only in the capacity of an employee or agent of the Consultant, and MDX may require the Consultant to remove the Subconsultant as in the

case of an employee of the Consultant.

11.5 Changes to Subconsultants

For changes to Subconsultants, the Consultant shall follow the same process as outlined in the section herein entitled *Changes to Consultant's Personnel.*

11.6 E-Verify Requirements

U.S. law requires companies to employ only individuals who may legally work in the United States, either U.S. citizens, or foreign citizens who have the necessary authorization. Any Consultant providing services to MDX must verify the employment eligibility of employees through the U.S. Department of Homeland Security's E-Verify system. In addition, the Consultant shall verify that Subconsultants performing Services on the Agreement utilize the E-Verify system to verify the employment eligibility of employees hired by the Subconsultant during the Contract Term.

MDX will consider the employment by any Consultant or Subconsultant of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. Such violation will be cause for unilateral cancellation of this Agreement by MDX, if it is determined that the Consultant or Subconsultant knowingly employs unauthorized aliens.

12. PROHIBITION ON ASSIGNMENT

The Consultant shall not subcontract, sell, assign, transfer or otherwise dispose of the Agreement or any portion thereof. The Consultant shall not assign or transfer the rights or responsibilities of any Services under this Agreement, to any person or firm other than the approved personnel and Subconsultants under this Agreement. The Consultant is hereby prohibited from assigning this Agreement without the express prior written consent of MDX, which consent may be withheld at MDX's sole and absolute discretion.

13. CHANGES IN THE SERVICES

Before making any additions or deletions to the Services and before undertaking any changes or revisions to such Services, the parties shall negotiate any necessary cost and schedule changes and shall enter into a Supplemental Agreement covering such modifications and the compensation to be paid to the Consultant as may be applicable. Reference herein to this Agreement shall be deemed to include any supplement hereto. Unless otherwise agreed to by MDX in writing, the Method of Compensation shall apply to all Supplemental Agreements.

When MDX requires services, which are not covered by the Scope of Services in this Agreement and MDX finds that such service is essential to the satisfactory completion of this Agreement within its intended scope, MDX will make an adjustment to this Agreement through a

Supplemental Agreement.

The basis of payment for such adjustment will be in the amount MDX determines to be fair and equitable, upon discussion and agreement with the Consultant in writing and in accordance with the relevant provisions of this Agreement, including but not limited to, the Method of Compensation.

A Supplemental Agreement shall be executed by MDX and the Consultant for any additional service not contained in this Agreement.

14. AVAILABILITY OF FUNDS

This Agreement is subject to the availability of funds in the MDX budget for each fiscal year of this Agreement. MDX will require written authorization from MDX's Chief Financial Officer ("CFO") that funds are available prior to entering into any agreement, task authorization or other binding commitment of funds.

MDX will not, during any fiscal year, expend money not approved by the CFO, incur any liability or enter into any agreement or task authorization that, by its terms, involves the expenditures of money in excess of the amounts budgeted as available for any expenditure during such fiscal year.

If MDX enters into such an agreement in writing, in violation of this section, such contract or task authorization is null and void, and MDX will not make any payments thereunder. Nothing herein contained prevents MDX from executing agreements or task authorizations for a period exceeding one (1) year, but MDX will make such agreements or task authorizations executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years.

15. CLAIMS FOR EXTRA SERVICES

In any case where the Consultant deems that extra compensation is due it for services not covered in this Agreement, the Consultant shall notify MDX in writing within twenty (20) Calendar Days of its intention to make a claim for extra compensation prior to providing such services on which the claim is based. If such notification is not given in writing within twenty (20) Calendar Days, then the Consultant hereby agrees to waive the claims for such extra compensation. Such notice by the Consultant shall in no way be construed as proving the validity of the claim.

16. SCHEDULE AND DELAYS

At the request of MDX, the Consultant agrees to provide progress reports in a format acceptable to MDX and at intervals established by MDX providing the status of Services being done by the Consultant and of the details thereof. Close collaboration and cooperation shall be maintained by the Consultant with representatives of MDX or other third parties approved by MDX. Either Party to the Agreement may request and be granted a conference.

In the event there are delays, or projected delays due to MDX regarding the approval of any of the materials submitted by the Consultant, or if there are delays or projected delays occasioned by circumstances beyond the control of the Consultant which delay is anticipated to delay the completion date, as set forth in the Agreement and/or Task Authorization, MDX may grant to the Consultant an extension of time for performance equal to the aforementioned delays or projected delays, provided there are no changes in compensation or Scope of Services. The Consultant shall not claim any financial compensation due to delays caused by the Consultant.

The Consultant agrees that the sole remedy in this event will be an extension of time for performance. The granted extension may be done in writing by the MDX Contract Manager and must include a specific time frame for the completion of the Services, provided that such time extension for completion of the Services does not impact the Term of Agreement or trigger effectiveness of contract provisions, such as liquidated damages, as may be applicable. In such case, the time extension must be approved through a Supplemental Agreement.

It shall be the responsibility of the Consultant to monitor and ensure that sufficient time remains in which to complete the requested Services. In the event any delays occur that would affect the completion date, as determined in the Contract Documents, the Consultant shall submit a written request to MDX which identifies the reason(s) for the delay and the amount of time related to each reason. MDX shall review the request and make a determination as to granting all or part of the requested extension.

In the event that the time for performance expires and the Consultant has not requested, or if MDX has denied an extension of the completion date, partial progress payments will be stopped on the date time expires. No payment shall be made for Services performed subsequent to the date time expires until a time extension is granted or all Services has been completed and accepted by MDX.

17. FORCE MAJEURE

The failure of either MDX or the Consultant to comply with any provision of this Agreement due to an act of God, hurricane, war, fire, riot, earthquake, flood, strikes, act of public enemies, or actions of governmental authorities outside of the control of either MDX or the Consultant (excepting compliance with applicable codes and regulations) will not be considered a breach of this Agreement. In this event, the time for the performance of the obligations under this Agreement will be extended for a period commensurate with the delay but the Consultant will receive no additional compensation.

18. EMERGENCY PREPAREDNESS

As may be applicable to the Services, in the event of an emergency, the Consultant shall coordinate with the MDX to identify and prepare to assume the necessary responsibilities of the Emergency

Preparedness and Response Plan developed for MDX.

19. CONTRACT PERFORMANCE EVALUATION

The Consultant's performance will be evaluated pursuant to the requirements of Article 10, entitled *Contract Performance Evaluation*, of the MDX Procurement Policy.

20. CONTRACT DOCUMENTS ORDER OF PRECEDENCE

The Parties agree that the Agreement, inclusive of Exhibits and any amendments to the Agreement (the "Contract Documents") shall control unless explicitly replaced or amended in writing and signed by both Parties.

The order of precedence for the Contract Documents shall be:

- Any Supplemental Agreements to the Agreement
- Executed Contract (excluding exhibits listed separately herein)
- Scope of Services
- Method of Compensation
- Solicitation Documents
- Proposer's Proposal

If a conflict exists between a MDX originated document and a document originated by the Consultant, the MDX document shall control. Furthermore, any document created prior to Award of the Agreement shall be superseded by documents created after Award of the Agreement.

21. STANDARDS OF CONDUCT AND CONFLICT OF INTEREST

21.1 Standards of Conduct

This section shall apply to the Consultant, its Subconsultants and any other agent or employee engaged by the Consultant. The Consultant agrees to incorporate the provisions of this section and the section of the Solicitation Documents entitled "*Conflicts of Interest*" in any subcontract into which it might enter with reference to the Services performed for this Agreement. MDX at its sole discretion may conduct an audit of the Consultant's compliance of its obligations under this section.

The Consultant covenants and agrees that it and its employees shall be bound by the

standards of conduct provided in applicable Florida Statutes as they relate to the Services performed under this Agreement, which standards shall by reference be made a part of this Agreement as though set forth in full.

The Consultant shall also abide by the MDX Procurement Policy, MDX Code of Ethics, and provisions of the executed Vendor's Bill of Rights and Responsibilities.

The Consultant shall not represent any other party before the State Legislature or any committee thereof, the office of the Governor or any member of the cabinet or any state agency, on any matter where such party's interest may be adverse to MDX without the prior written permission of MDX.

In the event the Consultant desires to represent another party before any of the aforementioned public officials, bodies or agencies on any matter where such party's interest may be adverse to MDX, it shall promptly inform the MDX Executive Director or his or her delegate in writing of the party it wishes to represent and of the nature of the proposed representation. MDX, in its sole and absolute discretion may preclude the Consultant from simultaneously representing MDX and another party when MDX determines that representation of such other party may be adverse to MDX's interest.

In making such determination, MDX shall have sole and absolute discretion to determine the role of the Consultant and the nature of its representation of MDX. Should the Consultant fail, after five (5) Business Days' notice, to resolve a conflict as determined by MDX, MDX shall have the right to terminate this Agreement.

In the event that such determination shall cause MDX to incur any increased costs due to its inability to retain the Consultant for a particular matter, the Consultant shall promptly pay such costs upon being invoiced therefore by MDX. Absent manifest error, the determination of MDX of such increased costs shall be final and binding on the Consultant.

As used in this section, the term "increased costs" shall mean:

(1) Administrative costs incurred by MDX including but not limited to legal fees, associated with the retention of another consultant to perform the services that would have been performed by the Consultant absent such conflict of interest, and

(2) The difference between the amount paid by MDX to such replacement consultant to perform such services and the amount that would have been paid by MDX to the Consultant to perform such services. MDX and the Consultant shall use their best efforts to mitigate the conflict and any increase in costs.

In the event of a dispute between the parties, the parties agree to mediation prior to any litigation to resolve said dispute.

MDX is governed in its contracts and transactions by provisions of Florida law relating to conflicts of interest, prohibited transactions, and ethics in government. All parties to contracts with MDX relating to the Services shall familiarize themselves with the Chapter 112, and Chapter 348, Florida Statutes, the MDX Procurement Policy, the MDX Code of Ethics and with general Florida law regulating MDX's ethical requirements, prohibitions and limitations with respect to procurement and contracts.

The Consultant agrees that it shall make no statement, press releases, or other publicity of any kind concerning this Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of this Agreement, without first notifying MDX and securing its consent in writing. The Consultant also agrees that it shall not publish, copyright, or patent any of the data furnished in compliance with this Agreement, it being understood that under the provisions of this Agreement such data or information is the property of MDX.

MDX shall have the right to unilaterally cancel this Agreement for refusal by the Consultant to allow public access to all documents, papers, letters or other materials, subject to provisions of Chapter 119, Florida Statutes, made or received by the Consultant in conjunction with this Agreement.

21.2 Conflicts of Interest:

The Consultant warrants that, to the best of the Consultant's knowledge and belief, there are no relevant facts or circumstances which could give rise to a potential or actual conflict of interest, including but not limited to, an Organizational Conflict of Interest, as defined herein, or a Personal Conflict of Interest, as defined herein, (hereinafter collectively referred to as "Conflict of Interest", "Conflicts of Interest" or "COI"), or that the Consultant has disclosed in writing to MDX all such relevant information relating to the Consultant, its employees, its agents or any of its Subconsultants.

The term *Organizational Conflict of Interest* as used herein means:

(a) Because of other activities or relationships with other persons or consultants, the Consultant, its employees, agents or Subconsultants or their respective employees, is/are unable or potentially unable to render impartial assistance or advice to MDX;

(b) The Consultant's, or any of its employees, agents, Subconsultants or their respective employees, objectivity in performing the Services is or might otherwise be impaired; and

(c) The Consultant, its employees, agents, Subconsultants or their respective employees, has/have an unfair competitive advantage.

The term *Personal Conflict of Interest* as used herein means a relationship of an employee, Subconsultant, or the employees of a Subconsultant with an entity that will or may impair the objectivity of the employee, Subconsultant employee, or Subconsultant in performing the Services.

21.2.1 Notification of Conflict of Interest

Prior to commencement of any Services, or immediately after becoming aware of a Conflict of Interest, whichever is sooner, the Consultant agrees to notify MDX's Executive Director or his or her delegate either:

(1) That, to the best of its knowledge and belief, no Conflict of Interest exists, or

(2) To identify to MDX any Conflict of Interest the Consultant or its agents, employees, or Subconsultants may have. In emergency situations, however, Services may begin, but notification of Conflicts of Interest shall be made in writing to MDX's Executive Director or his or her delegate within five (5) Business Days.

The Consultant agrees that if a Conflict of Interest is identified during performance, the Consultant will immediately make a full disclosure in writing to MDX's Executive Director or his or her delegate. This disclosure shall include a description of actions, which the Consultant has taken or proposes to take, after consultation with MDX, to avoid, mitigate, or neutralize the Conflict of Interest. The Consultant shall discontinue any relevant performance until notified by MDX's Executive Director or his or her delegate of any contrary action to be taken.

MDX may, at its sole discretion, withhold payments due or which may become due, suspend the Services, terminate this Agreement for convenience, in whole or in part, if it deems such termination necessary to avoid a Conflict of Interest, or pursue such other remedies as may be permitted by law or this Agreement.

If the Consultant was aware of a Conflict of Interest prior to award or discovered a Conflict of Interest after award and did not disclose it, or misrepresented relevant information to MDX, or MDX becomes aware of a Conflict of Interest that was not disclosed by the Consultant, MDX may at its sole discretion, withhold payments due or which may become due, suspend the Services, terminate the Agreement in whole or in part for default, or pursue such other remedies as may be permitted by law or this Agreement.

21.2.2 Conflict of Interest Plan

The Consultant shall prepare and submit a Conflict of Interest (COI) Plan within twenty (20) Business Days after the execution of this Agreement or any other time requested by MDX, which outlines the procedures in place to avoid, neutralize or mitigate Conflicts of Interest, whether actual or potential, personal or organizational, throughout the period of performance of the Agreement. The Consultant's COI Plan is a document which describes the procedures the Consultant uses to identify and report COI's. Generally, a corporate COI plan will describe how a company, in its entirety, addresses conflicts, and will not be contract or program specific. The plan may also describe the options a company will consider proposing to avoid, neutralize, or mitigate a COI whenever a Conflict of Interest is identified. The plan shall be evaluated and approved by MDX. The plan shall address step by step the checks and balances in place to detect any potential or actual Conflicts of Interest that could result from activities covered in the Scope of Services.

The Consultant's obligations with regard to providing notice of Conflict of Interest situations shall apply until the expiration date of this Agreement.

21.2.3 Restriction on Future Contracts

The parties to this Agreement agree that the Consultant will be restricted in its future contracting in the manner described below.

(1) The Consultant may be ineligible to participate in any MDX solicitations and ensuing MDX agreements, either as a prime Consultant or Subconsultant.

(2) The Consultant, during the life of this Agreement, shall be ineligible to enter into any agreement with individuals or firms to perform services on projects related to the Services performed under this Agreement unless otherwise authorized in writing by MDX's Executive Director or his or her delegate.

(3) The Consultant agrees in advance that if any bids/proposals are submitted for any services that would require written approval of MDX prior to entering into another agreement subject to the restrictions of this section, then the bids/proposals are submitted at the Consultant's own risk. Therefore, no claim shall be made against MDX to recover bid/proposal costs as a direct cost whether the request for authorization to enter into the other agreement is denied or approved.

21.2.4 COI Adverse Determination

A review process available to the Consultant when an adverse determination is received shall consist of a request for reconsideration to MDX's Executive Director or his or her delegate and a request for review submitted to the applicable Awards Committee. An

adverse determination resulting from a request for reconsideration by the MDX Executive Director or his or her delegate will not preclude the Consultant from requesting a review by the applicable Awards Committee. Either a request for review or a request for reconsideration must be submitted to the appropriate level within thirty (30) Calendar Days after receipt of the initial adverse determination.

21.2.5 Subconsultants Contracts

The Consultant agrees to insert in each Subconsultant agreement hereunder, provisions which shall conform substantially to the language of the subsection entitled *Conflicts of Interest*, including this paragraph. The Consultant may request in writing that MDX's Executive Director or his or her delegate exempt from this Conflicts of Interest subsection a particular Subconsultant agreement for certain technical or consultant services. MDX will review and evaluate each request on a case-by-case basis before approving or disapproving the request.

The Consultant agrees to insert in each Subconsultant agreement hereunder the requirement that any Subconsultant who performs Services as a Subconsultant pursuant to this Agreement and wishes to submit a proposal or bid, either as a prime consultant or as a Subconsultant on any MDX procurement, shall request in writing a determination from MDX that they may participate in the specific MDX procurement prior to the proposal or bid submittal date.

Such written request shall include justification as to why there is no Conflict of Interest in this situation. Failure to do so may result in the Subconsultant's proposal being deemed non-responsive.

21.2.6 Annual Disclosure Form

In addition to all other requirements of the Contract Documents related to avoidance and disclosures of Conflict of Interest, the Consultant is also required to annually submit to the MDX Ethics Officer the MDX Annual Disclosure Form, incorporated herein by reference and found in the MDX website, and provide the following information:

(1) Any relationship that the Consultant has that will afford a current or future financial benefit to the Consultant, or to a relative or business associate of the Consultant, and which a reasonable person would conclude has the potential to create a prohibited Conflict of Interest.

(2) Whether a relative of the Consultant is registered to lobby the Executive Branch of the State of Florida or the Florida Constitution Review Committee and, if so, the names of such lobbyist's clients must be provided in writing to the MDX Ethics Officer.

(3) Any and all interest in real property held by the Consultant or the immediate family member of the Consultant, if such real property is located in or within a ½ mile radius of any actual or prospective MDX project. Prior to the execution of the Agreement, the Consultant has been provided a corridor map and a related property ownership list for all real property within the disclosure area, and an alignment map with a list of associated owners.

The MDX Annual Disclosure Form must be submitted by the Consultant on the Effective Date of the Agreement and updated every year on the same date. It is the Consultant's responsibility to obtain from MDX an updated corridor map and a property ownership list for all real property within the disclosure area, and an alignment map with a list of associated owners in order to properly complete the MDX Annual Disclosure Form. Failure by the Consultant to timely submit the MDX Annual Disclosure Form is a default under the Agreement and MDX, at its sole discretion, may enforce all applicable provisions under the Agreement, including and up to termination of the Agreement.

22. CONVICTED VENDORS LIST AND DEBARMENT

The Consultant represents that it is not currently on the convicted vendor list, or debarred as described in the sections of the Solicitation Documents entitled, *Sworn Statement on Public Entity Crimes and Debarment Requirement* and that it shall notify MDX immediately if, during this Agreement, it is placed on said list. The Consultant agrees that placement on said list constitutes grounds for immediate termination of this Agreement by MDX.

By execution of this Agreement, the Consultant further certifies that the information provided in the executed Sworn Statement on Public Entity Crimes and Debarment form(s) for both the Consultant and the Subconsultants as submitted with the Proposal, remains true and correct.

The Consultant agrees to indemnify MDX for any costs and expenses, including but not limited to reasonable audit costs, attorneys' fees and expert witness fees that MDX incurs due to any fraudulent statements made by the Consultant in regards to this certification.

23. PROOF OF VEHICLE REGISTRATION

The Consultant shall register all vehicles used in the course of performing the Services as required by Chapter 320, Florida Statutes. If the Consultant fails to register any motor vehicle that it operates in Florida, pursuant to Chapter 320, Florida. Statutes, MDX may disqualify the Consultant from proposing on future MDX procurements, or MDX may suspend the Consultant from this and/or other MDX agreements.

24. COMPLIANCE WITH LAWS

The Consultant, its employees and representatives shall at all times comply with the federal, state, and local laws and ordinances, statutes, rules, regulations and orders of governmental authorities applicable to the Services or payment of Services thereof, and shall not discriminate on the grounds of race, color, religion, sex, sexual orientation, age or national origin in the performance of the Services under this Agreement.

25. EXECUTION OF THE AGREEMENT

If the Consultant is a firm or company owned by an individual, this Agreement shall be executed in the name of the firm or company by the manual signature of the individual or sole proprietor.

If the firm is a Partnership, this Agreement shall be executed in the name of the partnership by the manual signature of the general partner.

If a corporation, the Agreement shall be executed in the name of the Corporation and shall bear the corporate seal and be signed by the President, the Vice-President, or a representative of the Consultant who is authorized either by position or by corporate resolution to contractually bind the Consultant in all aspects of the Agreement.

If a joint venture, the Agreement shall be executed in the name of the joint venture and be signed by a person authorized to sign on behalf of the joint venture.

26. ERRORS OR OMISSIONS IN CONTRACT DOCUMENTS

The Consultant shall not take advantage of any apparent error or omissions which the Consultant discovers in the Contract Documents, but shall immediately notify MDX of such discovery. MDX will make such corrections and interpretations as necessary to reflect the intent of the Contract Documents.

27. OWNERSHIP OF DOCUMENTS

All tracings, documents, studies, data and/or reports prepared or obtained under the Contract Documents shall be considered works make for hire and shall become property of MDX without restriction or limitation on their use, and shall be made available upon request to MDX at any time. The Consultant shall therefore agree not to publish, copyright or patent any of the data furnished in compliance with the Agreement. MDX shall have the right to visit the offices of the Consultant for review of the Services at any time. The Consultant shall not be liable for use by MDX of said documents, studies, or other data for any purpose other than that intended by the terms of the Contract Documents.

28. AUDIT AND EXAMINATION OF CONTRACT RECORDS

MDX reserves the right at any time, and for any reason to review, audit, copy, examine and investigate in any manner, any Contract Records (as herein defined) of the Consultant or any Subconsultant. The Consultant shall include in its contract with any Subconsultant similar provisions as detailed herein and Subconsultants' agreements shall comply with the provisions of this section.

Contract Records shall include, but are not limited to, all information, communications and data, whether in writing or stored on a computer, computer disks, microfilm, writings, working papers, drafts, computer printouts, field notes, charts or any other data compilations, books of account, photographs, videotapes and audio tapes, supporting documents, any other papers or preserved data related to the Agreement or the Consultant's performance of the Agreement determined necessary by MDX for any purpose.

Such records shall also include, but not be limited to, time sheets, task authorizations, direct expense reimbursable records, the Consultant's general accounting records relating to its obligations and Services under this Agreement, together with supporting documents and records of the Consultant and all Subconsultants performing Services under this Agreement and all other records of the Consultant and Subconsultants considered necessary by MDX for a proper audit of all costs associated with this Agreement.

If MDX requests access to or review of any Contract Documents and the Consultant refuses such access or review, the Consultant shall be deemed in default of the Agreement. Such default shall, without any other or additional actions, constitute grounds for termination of the Agreement. This provision shall not be limited in any manner by the existence of any Consultant claims or pending litigation relating to the Agreement.

29. PUBLIC RECORDS

The Consultant shall enable reasonable and convenient access to all documents, papers, letters, or other material to any person making a request for such documents pursuant to the provisions of Chapter 119, Florida Statutes, for documents made or received by the Consultant in conjunction with the Agreement. Failure to promptly afford such access may be grounds for immediate unilateral cancellation of the Agreement by MDX and the Consultant shall indemnify MDX against any costs or penalties MDX may incur as a result of the Consultant's failure to comply with, or impede MDX being able to comply with, the provisions of Chapter 119, Florida Statutes.

Upon receipt of any public records request, the Consultant shall immediately notify MDX and secure prior written consent and coordination of response to the request before releasing such records. All documents related to the Agreement as detailed herein must be provided in accordance with the section herein entitled *Audit and Examination of Contract Records.*

In the same manner, pursuant to the protection provided by Chapter 119, Florida Statutes, to the extent the Services under this Agreement require access to proprietary or confidential business or financial data of MDX or other companies, and as long as such data remains proprietary or confidential, the Consultant shall protect such data from unauthorized use and disclosure.

30. INSPECTION OF SERVICES AND DOCUMENTS AND ENDORSEMENT OF WORK PRODUCTS

MDX shall maintain the right to inspect the Services performed by the Consultant and request any documentation from the Consultant to ensure quality products and services are being provided. The Consultant shall make available to MDX, upon request, complete records of all costs incurred under the terms of this Agreement for purposes of auditing prior or current invoices. The Consultant acknowledges that all work products generated from the Services provided pursuant to this Agreement shall be subject to the provisions of Chapter 119, Florida Statutes.

31. TERMINATION

31.1 Termination by Mutual Agreement

This Agreement may be terminated by either Party by mutual agreement in writing.

32.2 Termination for Default

Should one Party fail to perform in accordance with the terms of this Agreement through no fault of the other, the non-breaching Party may terminate this Agreement upon a minimum of seven (7) Calendar Days written notice. In the event of termination, due to no fault of the Consultant, the Consultant shall be paid for services performed to the termination date, including reimbursements, if any.

32.3 Termination for Non-Performance

If MDX determines that the performance of the Consultant is not satisfactory, MDX shall have the option, at its sole discretion, of (a) immediately terminating this Agreement; or (b) notifying the Consultant of the deficiency with a requirement that the deficiency be corrected within a specified time, otherwise this Agreement shall be terminated at the end of such time. In such case, the Consultant shall be paid for Services satisfactorily performed, at the discretion of MDX, in accordance with the terms of this Agreement, except any amounts in dispute.

32.4 Termination for Convenience

The performance of Services under this Agreement may be terminated by MDX in accordance with this clause, in whole or in part, whenever MDX determines that such termination is in the best interest of MDX. MDX shall notify the Consultant of such termination with instructions as to the effective date of the termination, which effective

date shall not be less than thirty (30) Calendar Days after the date of such notification, or shall specify the stage of Services at which this Agreement is to be terminated. Upon termination, the Consultant shall be entitled to payment for Services completed to the date of termination only. The percentage of completion shall be determined by MDX.

32.5 Termination for Insolvency

MDX reserves the right to terminate or cancel this Agreement in the event the Consultant shall be placed in either voluntary or involuntary bankruptcy or an assignment shall be made for the benefit of creditors.

32.6 Relieve of Liabilities

Notwithstanding the rights of MDX to terminate this Agreement as described elsewhere in this Agreement, the Consultant shall not be relieved of liability to MDX for damages sustained by MDX, by virtue of any breach of the obligations, covenants, agreements, stipulations, representations or warranties of this Agreement by the Consultant and MDX may withhold any payment due to the Consultant up to the amount of damages claimed by MDX for the purpose of set-off, until such time as the exact amount of damages due to MDX is agreed upon or otherwise determined.

32.7 Termination Transition.

At the discretion of MDX, but no longer than thirty (30) Calendar Days from the effective date of termination, the Consultant shall provide reasonable cooperation in the transition of its responsibilities.

32. DISPUTES, DISPUTE RESOLUTION AND CLAIMS

If any dispute regarding the Consultant claims arising hereunder or relating to the Agreement and the Consultant's Services hereunder results in litigation, the prevailing Party in such litigation shall be entitled to recover reasonable attorney's fees and costs, including costs and expenses of expert witnesses.

The term "contested claim" or "claims" shall mean the initial written claim(s) submitted to MDX by the Consultant (disputed by MDX) which have not otherwise been resolved through ordinary close-out procedures of a Task Authorization and/or this Agreement prior to the initiation of litigation. The Consultant claims or portions thereof, which MDX agreed to pay or offered to pay prior to initiation of litigation, shall not be deemed contested claims for purposes of this provision.

Attorney's fees and costs awarded to the prevailing Party shall mean reasonable fees and costs incurred in connection with and measured from the date a claim is initially submitted to MDX through and including trial, appeal and collection.

In the circumstance where an original claim is subsequently modified, amended or a substituted claim is filed therefore, fees and costs shall accrue from the date of the first written claim submitted.

The term "litigation" shall include mediation proceedings. As a condition precedent to litigation, the Consultant shall have first submitted its claim (together with supporting documentation) to MDX, and MDX shall have had sixty (60) Business Days thereafter within which to respond thereto.

The purpose of this provision is to discourage frivolous or overstated claims and, as a result thereof, MDX and the Consultant agree that neither Party shall avail itself of Section 768.79, Florida Statutes, or any other like statute or rule involving offers of settlement or offers of judgment, it being understood and agreed that the purpose of such statute or rule are being served by this provision.

Should this provision be judged unenforceable or illegal, in whole or in substantial part, by a court of competent jurisdiction, this provision shall be void in its entirety and each Party shall bear its own attorney's fees and costs.

No court proceedings on any claim may be filed until the Parties have first participated in mediation.

All Services shall be performed by the Consultant in accordance with sound business and accounting practices to the satisfaction of MDX. MDX shall decide all questions, difficulties, and disputes of any nature whatsoever that may arise under or by reason of this Agreement, the prosecution and fulfillment of the Services hereunder, the character, quality, amount and value thereof; and its determination upon all claims, questions and disputes shall be final and conclusive upon the parties hereto.

Adjustment of compensation and Agreement time because of any major changes in the Services that may become necessary or desirable as the Services progress shall be left to the absolute discretion of MDX and any such adjustments shall be evidenced by Supplemental Agreements between the parties in accordance herewith.

In the event that the Consultant and MDX are not able to reach an agreement as to the amount of compensation to be paid to the Consultant for supplemental Services desired by MDX, the Consultant will be obligated to proceed with the supplemental Services in a timely manner for the amount determined by MDX to be reasonable. In such event, the Consultant will have the right to file a claim with MDX for such additional amounts as the Consultant deems reasonable; however, in no event will the filing of the claim or the resolution or litigation thereof through the courts relieve the Consultant from the obligation to timely perform the supplemental Services.

33. CONSTRUCTION OF LANGUAGE

All words used herein in the singular form will extend to and include the plural. All words used in the plural form will extend to and include the singular. All words used in any gender will extend to and include all genders. Capitalized terms used herein shall have the meaning ascribed to them in the Contract Documents.

34. CHOICE OF LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

Venue of any litigation arising out of this Agreement shall be in Miami-Dade County, Florida.

In the event of any litigation arising out of this Agreement, the Consultant agrees that service of process on the Consultant may be made on its registered agent as designated in the corporate records of the Florida Division of Corporations. The Consultant shall notify MDX in writing within thirty (30) Calendar Days of a change and the name of the successor registered agent. These provisions are in addition to any methods of service of process allowed by the Florida Statutes.

35. WAIVER OF TRIAL BY JURY:

The Consultant and MDX hereby knowingly, voluntarily and intentionally waive the right either may have to a trial by jury in respect to any litigation based hereon, or arising out of, under or in connection with this Agreement, and any agreement contemplated to be executed in conjunction herewith, or any course of conduct, course of dealing, or actions of either Party.

36. ENTIRE AGREEMENT

This Agreement embodies the whole agreement between the parties and there are no inducements, promises, terms, conditions, or obligations made or entered into by either MDX or the Consultant other than contained herein. This Agreement shall inure to the benefit of, and be binding on, the parties or the successor(s).

37. THIRD-PARTY BENEFICIARY

It is specifically agreed between the parties executing the Agreement that it is not intended by any of the provisions of any part of the Agreement to create in the public or any member thereof, a third-party beneficiary hereunder, or to authorize anyone not a party to the Agreement to maintain a suit for personal injuries, bodily injury or property damage pursuant to the terms or provisions of the Agreement.

38. NOTICE

All Notices required under this Agreement shall be in writing. Notices shall be mailed or delivered as follows, unless a Party directs in writing that notices shall be provided to it at another location:

To the Authority:	Helen M. Cordero, CPPB Manager of Procurement & Contracts Administration Miami-Dade Expressway Authority (MDX) 3790 N.W. 21st Street Miami, Florida 33142
With a copy to:	Carlos M Zaldivar, Esq. General Counsel Miami-Dade County Expressway Authority (MDX) 3790 N.W. 21st Street Miami, Florida 33142
To the Consultant:	Mitchell J. Burnstein, Esq., Member Weiss Serota Helfman Cole & Bierman, P.L. 200 East Broward Boulevard, Suite 1900 Fort Lauderdale, Florida 33301

39. SECTION HEADINGS

Any headings preceding the texts of the sections in this Agreement and any table of contents shall be solely for the convenience of reference and shall neither constitute a part of this Agreement nor affect its meaning, construction or effect.

40. SEVERABILITY

If any one or more of the covenants, agreements or provisions of this Agreement shall be held invalid, it is the intent of the parties that such covenants, agreements or provisions shall be deemed severable and that the remaining provisions remain in full force and effect.

41. ADDITIONAL TERMS

All Exhibits attached hereto contain additional terms of this Agreement and are incorporated as if actually set forth herein.

42. COOPERATIVE PURCHASING (PIGGY-BACKING).

As may be applicable, pursuant to the MDX Procurement Policy, other governmental agencies may utilized MDX contracts if the Consultant agrees to enter into a separate contract with such governmental agency(ies) incorporating the MDX contract terms and conditions.

43. ACKNOWLEDGEMENT & REPRESENTATION.

The parties to this Agreement individually represent, warrant, and agree that:

A. They have been represented by legal counsel of their choice in connection with the Agreement;

B. They are fully aware and clearly understand all of the terms and provisions contained in this Agreement;

C. They have voluntarily, with full knowledge and without coercion or duress of any kind, entered into this Agreement;

D. They are not relying on any representation, either written or oral, express or implied, made to them by any other party other than as set forth in this Agreement; and

E. The consideration received by them to enter into this Agreement and the settlement contemplated by this Agreement has been actual and adequate.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective and duly authorized officers as of the Effective Date defined herein.

MIAMI-DADE EXPRESSWAY AUTHORITY

By: _____
Javier Rodriguez, P.E.
Executive Director

WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.

By: _____
Signature of Authorized Officer

Mitchell J. Burnstein
Print Name of Authorized Officer

Member
Title of Authorized Officer

ATTEST _____
Secretary/Assistant Secretary Signature

[CONSULTANT SEAL]

Endorsed by Policy & Planning Committee: March 22, 2017

Approved by MDX Board: March 28, 2017

EXHIBITS:

The following exhibits are incorporated herein and attached hereto, unless otherwise noted:

Exhibit A	Scope of Services
Exhibit B	Method of Compensation
Exhibit C	Insurance Requirements
Exhibit D	Consultants' Proposal*
Exhibit E	Solicitation Documents*
Exhibit F	Subcontractor/Subconsultant Utilization Report
Exhibit G	Contract Performance Evaluation Form
Exhibit H	MDX Procurement Policy **
Exhibit I	MDX Code of Ethics **
Exhibit J	Request for Authorization to Subcontract Work**
Exhibit K	Personnel Change Request Form**
Exhibit L	MDX Annual Disclosure Form**

* Provided in Electronic Format

** Current Policies and Forms available on the MDX website at:
http://www.mdxway.com/doing_business/procurement