

C6-20-134

02/05/2021

CONTRACT APPROVAL FORM

(Contract Management Use only)

CONTRACT TRACKING NO.
CM2962

CONTRACTOR INFORMATION

Name: Barth Associates, LLC

Address: 10030 SW 52nd Road Gainesville FL 32608
City State Zip

Contractor's Administrator Name: David Barth, PhD Title: _____

Tel#: (561) 308-9937 Fax: _____ Email: david@barthassoc.com

CONTRACT INFORMATION

Contract Name: Professional Service Agreement for NC, Florida Contract Value: NTE \$30,000.00

Brief Description: Professional service agreement for services on "as-needed" basis

Contract Dates : From: 01/01/21 to: 12/31/21 Status: New Renew Amend# WA/Task Order

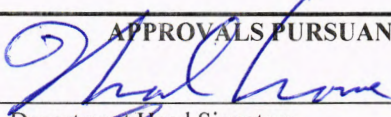
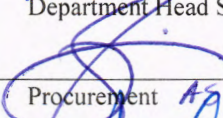
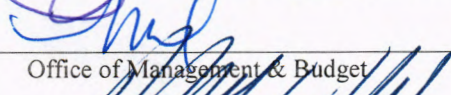
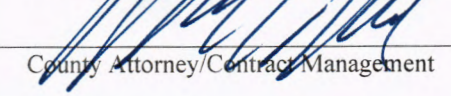
How Procured: Sole Source Single Source ITB RFP RFQ Coop. Other Professional Services

If Processing an Amendment:

Contract #: _____ Increase Amount of Existing Contract: _____

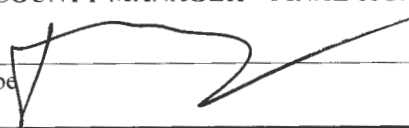
New Contract Dates: _____ to _____ TOTAL OR AMENDMENT AMOUNT: _____

APPROVALS PURSUANT TO NASSAU COUNTY PURCHASING POLICY, SECTION 6

1.		<u>1/21/2021</u>	<u>PEO</u>
	Department Head Signature	Date	Submitting Department
2.		<u>1/20/21</u>	<u>04247515-531025</u>
	Procurement <u>AS TO NO PROCUREMENT</u>	Date	Funding Source/Acct #
3.		<u>2/1/21</u>	
	Office of Management & Budget	Date	
4.		<u>2/5/21</u>	
	County Attorney/Contract Management	Date	

Comments: _____

COUNTY MANAGER – FINAL SIGNATURE APPROVAL

 2/5/21
Taco Pope Date

RETURN ORIGINAL(S) TO CONTRACT MANAGEMENT FOR DISTRIBUTION AS FOLLOWS:

Original: Clerk's Services; Contractor (original or certified copy)

Copy: Department
Procurement
Office of Management & Budget
County Attorney/Contract Management
Clerk Finance

**PROFESSIONAL SERVICE AGREEMENT
FOR NASSAU COUNTY, FLORIDA**

THIS AGREEMENT made and entered into this 5th day of February 2021, by and between the **Board of County Commissioners of Nassau County**, a political subdivision of the State of Florida, hereinafter referred to as "County", and **Barth Associates, LLC** located at 10030 SW 52nd Road, Gainesville, Florida 32608, hereinafter referred to as "Consultant":

WHEREAS, County desires to obtain professional services on an "as needed" basis for facilitation, technical assistance, and guidance related to strategic planning, recreation services planning, program development, and operational management; and

WHEREAS, said services are more fully described in the *Scope of Services*, Attachment "A", which is attached hereto and made a part hereof; and

WHEREAS, Consultant desires to render certain professional services as described in the *Scope of Services*, and has the qualifications, experience, staff and resources to perform those services; and

WHEREAS, Consultant is an expert facilitator and strategic planner specializing in planning, design and implementation of the public realm. Consultant has developed parks and recreation system master plans for more than eighty (80) communities throughout the United States, including Washington D.C., Miami-Dade County, Norfolk, Virginia, San Diego, California and Raleigh, North Carolina. Consultant has managed the planning and/or design phases of hundreds of parks and trails throughout Florida, including Orange County's West Orange Trail, Martin County's Indian Riverside Park, and Kissimmee's Lakefront Park. Consultant acted as the co-author of the American Planning Association's (APA) publication *From Recreation to Re-Creation*, and a

contributor to the APA's *Planning and Urban Design Standards* for parks and recreation needs assessments. Consultant acted as the author of the Planning Advisory Service Memo *Alternatives for Determining Parks and Recreation Levels of Service* published by the APA.

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto agree as follows:

ARTICLE 1 - EMPLOYMENT OF CONSULTANT

County hereby agrees to engage the Consultant, and Consultant hereby agrees to perform the services set forth in the *Scope of Services*.

ARTICLE 2 - SCOPE OF SERVICES

2.1 Consultant shall provide professional services in accordance with the *Scope of Services* set forth in Attachment "A", attached hereto and incorporated by reference.

2.2 The services shall be performed on an "as needed" basis per a scope of work determined by the Planning and Economic Opportunity (PEO) Director or his designee relative to County's recreation planning needs.

ARTICLE 3 - COUNTY'S RESPONSIBILITY

Except as provided in the *Scope of Service*, County's responsibilities are to furnish required information, services, render approvals and decisions as necessary for the orderly progress of Consultant's services. County hereby designates PEO to act on County's behalf with respect to the *Scope of Services*. The Director of PEO, under the supervision of the County Manager shall have complete authority to transmit instructions, receive information, interpret and define County's policies and decisions with respect to materials, elements and systems pertinent to Consultant's services.

ARTICLE 4 - TERM OF AGREEMENT

The term of this Agreement shall be for one (1) year beginning January 1, 2021 and ending December 31, 2021. The performance period of this Agreement may be extended upon mutual agreement between both parties in one (1) year increments. Total contract length, including the extensions, shall not exceed five (5) years. Any agreement or amendment to the Agreement shall be subject to fund availability and mutual written agreement between County and Consultant.

ARTICLE 5 - COMPENSATION

5.1 Consultant shall be compensated on an hourly basis in accordance with the Fee Schedule outlined in Attachment "A", plus reimbursable expenses in accordance with §112.061, Florida Statutes, with a total sum not to exceed \$30,000.00 per year.

5.2 Consultant shall submit an updated Fee Schedule for the approval of the County PEO Director at the beginning of each new contract extension.

5.3 Consultant shall prepare and submit to the Director of PEO, for approval, a monthly invoice for the services rendered under this Agreement. Invoices for services shall be paid within forty-five (45) days, in accordance with the Florida Prompt Payment Act. County reserves the right to withhold payment to Consultant for failure to perform the work in accordance with the provisions of this Agreement, and County shall promptly notify Consultant if any invoice or report is found to be unacceptable and will specify the reasons therefor.

ARTICLE 6 - STANDARD OF CARE

Consultant shall exercise the same degree of care, skill, and diligence in the performance of the services as is ordinarily provided by a professional under similar circumstances, and Consultant shall, at no additional cost to County, re-perform services

which fail to satisfy the foregoing standard of care.

ARTICLE 7 – DOCUMENTS

The documents which comprise this Agreement between County and Consultant are attached hereto and made a part hereof and consist of the following:

- 7.1** This Agreement;
- 7.2** The *Scope of Services* attached hereto Attachment "A";
- 7.3** Any work authorizations, written amendments, modifications or addenda to this Agreement.

ARTICLE 8 - EQUAL OPPORTUNITY EMPLOYMENT

In connection with the work to be performed under this Agreement, Consultant agrees to comply with the applicable provisions of State and Federal Equal Employment Opportunity statutes and regulations.

ARTICLE 9 - INDEMNIFICATION

Consultant shall indemnify and hold harmless County and its officers and employees from liabilities, damages, losses, and costs, including but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of Consultant and other persons employed or utilized by Consultant, in the performance of the Agreement.

ARTICLE 10 - INDEPENDENT CONSULTANT

Consultant undertakes performance of the services as an independent consultant under this Agreement and shall be wholly responsible for the methods of performance. County shall have no right to supervise the methods used, but County shall have the right to observe such performance. Consultant shall work closely with County in performing services under this Agreement.

ARTICLE 11 – EXTENT OF AGREEMENT

11.1 This Agreement represents the entire and integrated agreement between County and Consultant and supersedes all prior negotiations, representations, or agreement, either written or oral.

11.2 This Agreement may only be amended, supplemented, modified, changed or canceled by a duly executed written instrument.

ARTICLE 12 - COMPLIANCE WITH LAWS

In performance of the services, Consultant will comply with applicable regulatory requirements including federal, state, and local laws, rules regulations, orders, codes, criteria and standards.

ARTICLE 13 - INSURANCE

Consultant shall purchase and maintain such commercial (occurrence form) or comprehensive general liability, workers compensation, professional liability, and other insurance as is appropriate for the services being performed hereunder by Consultant, its employees or agents. The amounts and types of insurance shall conform to the requirements set forth in Exhibit "1", attached hereto.

ARTICLE 14 – ACCESS TO PREMISES

County shall be responsible for providing access to all project sites (if required), and for providing project-specific information.

ARTICLE 15 - TERMINATION OF AGREEMENT

15.1 Termination for Convenience: This Agreement may be terminated by County for convenience, upon thirty (30) days written notice to Consultant. In such event, Consultant shall be paid its compensation for services performed prior to the termination date.

15.2 Default by Consultant: In addition to all other remedies available to County, County may terminate this Agreement for cause should Consultant neglect, fail to perform, or observe any of the terms, provisions, conditions, or requirements herein contained. Prior to termination, County shall provide written notice of the specific conditions warranting default, and County shall allow thirty (30) days for Consultant to cure.

ARTICLE 16 - NONDISCLOSURE OF PROPRIETARY INFORMATION

Consultant shall consider all information provided by County and all reports, studies, calculations, and other documentation resulting from Consultant's performance of the services to be proprietary unless such information is available from public sources. Consultant shall not publish or disclose proprietary information for any purpose other than the performance of the services without the prior written authorization of County or in response to legal process.

ARTICLE 17 - GOVERNING LAW AND VENUE

This Agreement shall be governed by the laws of the State of Florida. All legal action necessary to enforce the Agreement will be held in Nassau County, Florida.

ARTICLE 18 - MISCELLANEOUS

18.1 Non-waiver: A waiver by either County or Consultant of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

18.2 Severability: Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

18.3 Public Records:

County is a public agency subject to Chapter 119, Florida Statutes. IF CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (904) 530-6010, records@nassaucountyfl.com, 96135 NASSAU PLACE, YULEE, FLORIDA 32097. Under this Agreement, to the extent that Consultant is providing services to County, and pursuant to section 119.0701, Florida Statutes, Consultant shall:

- a. Keep and maintain public records required by the public agency to perform the service.
- b. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by

law for the duration of the Agreement term and following completion of the Agreement if Consultant does not transfer the records to the public agency.

d. Upon completion of the Agreement, transfer, at no cost, to the public agency all public records in possession of Consultant or keep and maintain public records required by the public agency to perform the service. If Consultant transfers all public records to the public agency upon completion of the Agreement, Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Consultant keeps and maintains public records upon completion of the Agreement, Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

18.4 The provisions of this section shall not prevent the entire Agreement from being void should a provision, which is of the essence of the Agreement, be determined to be void.

ARTICLE 19 - SUCCESSORS AND ASSIGNS

County and Consultant each binds itself and its director, officers, partners, successors, executors, administrators, assigns and legal representatives to the other party to this Agreement and to the partners, successors, executors, administrators, assigns, and legal representatives.

ARTICLE 20 - CONTINGENT FEES

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 any other consideration contingent upon or resulting from the award or making of this Agreement.

ARTICLE 21 - OWNERSHIP OF DOCUMENTS

Consultant shall be required to work in harmony with other consultants relative to providing information requested in a timely manner and in the specified form. All documents, records, disks, original drawings, or other information shall become the property of County upon completion for its use and distribution as may be deemed appropriate by County.

ARTICLE 22 - FUNDING

This Agreement shall remain in full force and effect only as long as the expenditures provided for in the Agreement have been appropriated by County in the annual budget for each fiscal year of this Agreement, and is subject to termination based on lack of funding.

ARTICLE 23 - NOTICE

23.1 Whenever either party desires or is required under this Agreement to give notice to any other party, it must be given by written notice either delivered in person, sent by U.S. Certified Mail, U.S. Express Mail, air or ground courier services, or by messenger service, as follows:

COUNTY:

Nassau County Planning and Economic Opportunity
96161 Nassau Place
Yulee, Florida 32097
904-530-6300
tcrowe@nassaucountyfl.com

With a copy to the County Attorney at:

96135 Nassau Place, Suite 6
Yulee, Florida 32097
904-530-6100
contracts@nassaucountyfl.com

With a copy to the Office of Management & Budget at:

96135 Nassau Place, Suite 2
Yulee, Florida 32097
904-530-6010
tpoore@nassaucountyfl.com

CONSULTANT:

David Barth, PhD, AICP, PLA, CPRP
Barth Associates, LLC
10030 SW 52nd Road
Gainesville, FL 32608
(561) 308-9937
david@barthassoc.com

23.2 Notices shall be effective when received at the address specified above. Changes in the respective addresses to which such notice may be directed may be made from time to time by any party by written notice to the other party. Email and facsimile are acceptable notice effective when received, however, notices received (i.e.; printed) after 5:00 p.m. or on weekends or holidays, will be deemed received on the next business day. The original of the notice must additionally be mailed as required herein.

23.3 Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of Consultant and County.

ARTICLE 24 - DISPUTE RESOLUTION

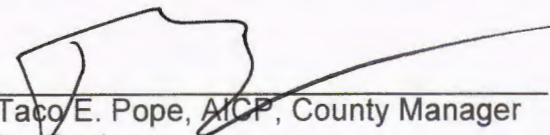
24.1 County may utilize this section, at their discretion, as to disputes regarding Agreement interpretation. County may send a written communication to Consultant by

email, overnight mail, UPS, FedEx, or certified mail. The written notification shall set forth County's interpretation of the Agreement. A response shall be provided in the same manner prior to the initial meeting with the County Manager. This initial meeting shall take place no more than twenty (20) days from the written notification of the dispute addressed to Consultant. Consultant should have a representative, at the meeting that can render a decision on behalf of Consultant.

24.2 If there is no satisfactory resolution as to the interpretation of the Agreement, the dispute may be submitted to mediation in accordance with mediation rules as established by the Florida Supreme Court. Mediators shall be chosen by the County and the cost of mediation shall be borne by Consultant. Consultant shall not stop work during the pendency of mediation or dispute resolution.

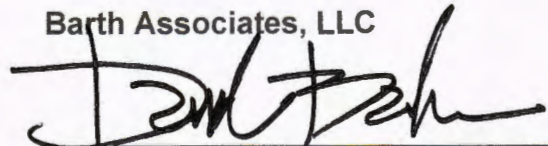
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

**Nassau County,
Board of County Commissioners**


Tracy E. Pope, AICP, County Manager
Its: Designee

Date: 2/5/21

Barth Associates, LLC


David Barth, PhD, AICP, PLA, CPRP
Its: President

Date: 1.19.2021

ATTACHMENT "A"



January 3, 2021

Thad Crowe, AICP
Planning Director, Nassau County Planning and Economic Opportunity
96161 Nassau Place, Yulee, FL 32097

Re: Professional Services Contract

Dear Thad,

Barth Associates (BA) is pleased to submit the following proposal to provide professional services to Nassau County on an "as-needed" basis. Following are our proposed Scope of Services and Fee Schedule.

SCOPE OF SERVICES:

BA may provide the following services as requested by the County:

- Review and comment on development proposals
Prepare conceptual park plans
Facilitate public engagement
Facilitate meetings and workshops
Assist in updates of land development regulations and comprehensive plan elements
Make presentations to the Board of County Commissioners and/or other groups
Conduct feasibility studies
Facilitate strategic plans
Provide design reviews
Participate in consultant selection processes
Provide other planning, design, or facilitation services requested by the County

FEE SCHEDULE:

BA will provide the services outlined above on an hourly basis plus direct expenses, or on an agreed-upon lump sum fee (as determined by the County) in accordance with the following hourly rate schedule:

Table with 4 columns: Role, Hourly Rate, Role, Hourly Rate. Rows include Principal (\$195/hr), Landscape Architect (\$150/hr), Landscape Designer (\$100/hr), Graphic Designer (\$75/hr), and Administrative Assistant (\$50/hr).

Thank you for the opportunity to continue serving Nassau County.

Handwritten signature of David Barth

David Barth, PhD

EXHIBIT "1"

GENERAL INFORMATION AND MINIMUM INSURANCE REQUIREMENTS

COMMERCIAL GENERAL LIABILITY INSURANCE

The Consultant shall purchase and maintain at the Consultant's expense Commercial General Liability insurance coverage (ISO or comparable Occurrence Form) for the life of this Contract. Modified Occurrence or Claims Made forms are not acceptable.

The Limits of this insurance shall not be less than the following limits:

Each Occurrence Limit	\$1,000,000
Personal & Advertising Injury Limit	\$1,000,000
Fire Damage Limit (any one fire)	\$ 50,000
Medical Expense Limit (any one person)	\$ 5,000
Products & Completed Operations Aggregate Limit	\$2,000,000
General Aggregate Limit (other than Products & Completed Operations) Applies Per Project	\$2,000,000

General liability coverage shall continue to apply to "bodily injury" and to "property damage" occurring after all work on the Site of the covered operations to be performed by or on behalf of the additional insureds has been completed and shall continue after that portion of "your work" out of which the injury or damage arises has been put to its intended use.

WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE

The Consultant shall purchase and maintain at the Consultant's expense Workers' Compensation and Employer's Liability insurance coverage for the life of this Contract.

The Limits of this insurance shall not be less than the following limits:

<u>Part One</u> -- Workers' Compensation Insurance -- Unlimited	
Statutory Benefits as provided in the Florida Statutes and	
<u>Part Two</u> -- Employer's Liability Insurance	
Bodily Injury By Accident	\$500,000 Each Accident
Bodily Injury By Disease	\$500,000 Policy Limit
Bodily Injury By Disease	\$500,000 Each Employee

*If leased employees are used, policy must include an Alternate Employer's Endorsement

AUTOMOBILE LIABILITY INSURANCE

The Consultant shall purchase and maintain at the Consultant's expense Automobile Liability insurance coverage for the life of this Contract.

The Limits of this insurance shall not be less than the following limits:

Combined Single Limit -- Each Accident	\$1,000,000
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Covered Automobiles shall include any auto owned or operated by the insured Consultant, insured Sub-subConsultant including autos which are leased, hired, rented or borrowed, including autos owned by their employees which are used in connection with the business of the respective Consultant or Sub-subConsultant.

PROFESSIONAL LIABILITY (ERRORS & OMISSIONS)

This additional coverage will be required for all projects involving consultants, engineering services, architectural or design/build projects, independent testing firms and similar exposures.

The Consultant shall purchase and maintain at the Consultant’s expense Professional Liability insurance coverage for the life of this Contract.

If the contract includes a requirement for Professional Liability or Errors and Omissions insurance, the minimum amount of such insurance shall be as follows:

Each Occurrence/Annual Aggregate	\$1,000,000
Project Specific	

Design Professional Liability coverage will be provided on an Occurrence Form or a Claims Made Form with a retroactive date to at least the first date of this Agreement. If provided on a Claims Made Form, the coverages must respond to all claims reported within three years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis.

Consultant shall require each of his SubConsultants to likewise purchase and maintain at their expense Commercial General Liability insurance, Workers’ Compensation and Employer’s Liability coverage, Automobile Liability insurance, Umbrella Liability Professional Liability, Environmental Liability, Builders Risk or Installation Floater (as applicable) insurance coverage meeting the same limit and requirements as the Consultants insurance.

Certificates of Insurance acceptable to Nassau County Board of County Commissioners for the Consultant/Vendor’s insurance must be received within ten (10) days of Notification of Selection and at time of signing Agreement.

Certificates of Insurance and the insurance policies required for this Agreement shall contain an endorsement that coverage afforded under the policies will not be cancelled or allowed to expire until at least thirty (30) days prior written notice has been given to Nassau County Board of County Commissioners.

Certificates of Insurance and the insurance policies required for this Agreement will include a provision that policies, except Workers’ Compensation and Professional Liability, are primary and noncontributory to any insurance maintained by the Consultant.

Nassau County Board of County Commissioners must be named as an Additional Insured and endorsed onto the Commercial General Liability (CGL), Auto Liability and Umbrella Liability policy (ies). A copy of the endorsement(s) must be supplied to Nassau County Board of County Commissioners ten (10) days following the execution of the agreement or prior to the first date of services, whichever comes first.

CGL policy Additional Insured Endorsement must include Ongoing and Completed Operations (Form CG2010 11 84 **OR** Form CG2010 04 13 and GC2037 04 13 edition or equivalent). Other Additional Insured forms might be acceptable but only if modified to delete the word “ongoing” and insert the sentence “Operations include ongoing and completed operations”.

CGL policy shall not be endorsed with Exclusion - Damage to Work performed by SubConsultants on Your Behalf (CG2294 or CG2295)

CGL policy shall not be endorsed with Contractual Liability Limitation Endorsement (CG2139) or Amendment of Insured Contract Definition (CG 2426)

CGL policy shall not be endorsed with Exclusion - Damage to Premises Rented to you (CG 2145)

CGL policy shall include broad form contractual liability coverage for the Consultants covenants to and indemnification of the Authority under this Contract

Certificates of Insurance and the insurance policies required for this Agreement shall contain a provision under General Liability, Auto Liability and Workers' Compensation to include a Waiver of Subrogation clause in favor of Nassau County Board of County Commissioners.

All Certificates of Insurance shall be dated and shall show the name of the insured Consultant, the specific job by name and job number, the name of the insurer, the policy number assigned its effective date and its termination date and a list of any exclusionary endorsements.

All Insurers must be authorized to transact insurance business in the State of Florida as provided by Florida Statute 624.09(1) and the most recent Rating Classification/Financial Category of the insurer as published in the latest edition of "Best's Key Rating Guide" (Property-Casualty) must be at least A- or above.

All of the above referenced Insurance coverage is required to remain in force for the duration of this Agreement and for the duration of the warranty period. Accordingly, at the time of submission of final application for payment, Consultant shall submit an additional Certificate of Insurance evidencing continuation of such coverage.

If the Consultant fails to procure, maintain or pay for the required insurance, Nassau County Board of County Commissioners shall have the right (but not the obligation) to secure same in the name of and for the account of Consultant, in which event, Consultant shall pay the cost thereof and shall furnish upon demand, all information that may be required to procure such insurance. Nassau County Board of County Commissioners shall have the right to back-charge Consultant for the cost of procuring such insurance. The failure of Nassau County Board of County Commissioners to demand certificates of insurance and endorsements evidencing the required insurance or to identify any deficiency in Consultants coverage based on the evidence of insurance provided by the Consultant shall not be construed as a waiver by Nassau County Board of County Commissioners of Consultant's obligation to procure, maintain and pay for required insurance.

The insurance requirements set forth herein shall in no way limit Consultants liability arising out of the work performed under the Agreement or related activities. The inclusions, coverage and limits set forth herein are minimum inclusion, coverage and limits. The required minimum policy limits set forth shall not be construed as a limitation of Consultant's right under any policy with higher limits, and no policy maintained by the Consultant shall be construed as limiting the type, quality or quantity of insurance coverage that Consultant should maintain. Consultant shall be responsible for determining appropriate inclusions, coverage and limits, which may be in excess of the minimum requirements set forth herein.

If the insurance of any Consultant or any subConsultant contains deductible(s), penalty(ies) or self-insured retention(s), the Consultant or SubConsultant whose insurance contains such provision(s) shall be solely responsible for payment of such deductible(s), penalty(ies) or self-insured retention(s).

The failure of Consultant to fully and strictly comply at all times with the insurance requirements set forth herein shall be deemed a material breach of the Agreement.