

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: November 30, 2010 [ ] Consent [X] Regular [ ] Workshop [ ] Public Hearing

Department: Planning, Zoning and Building

Submitted By: PZB Administration

Submitted For: PBC Administration

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: Two contracts for Facilitation Services related to Mining. Funding for this project is not to exceed \$39,485. The effective date of both contracts is upon approval by the Board of County Commissioners with completion estimated to be September 30, 2011.

- A. Contract for consulting/professional service with the University of Central Florida (Rafael Montalvo)
B. Contract for consulting/professional service with Jean Scott, SLC, LLC

Summary: At the Zoning meeting on August 26, 2010, the Board of County Commissioners (BCC) directed staff to seek a university affiliated facilitator to assist the county staff and the stakeholders who have an interest in mining in the unincorporated county, to reach agreement on Unified Land Development Code changes that may be required. Rafael Montalvo is with the Florida Conflict Resolution Consortium Consensus Center at the University of Central Florida and Jim Murley is with The Center for Environmental Studies at Florida Atlantic University and will be participating as an unpaid consultant. Jean Scott is a private consultant and is a Senior Fellow at the University of Florida Center for Building Better Communities. The team of three (3) will provide facilitation and meeting support services for a workshop series addressing issues related to mining in the EAA. All three (3) facilitators were involved in the Mining Summit which was organized by the BCC on March 19, 2008. These contracts are for facilitation services in an amount not to exceed \$39,485. Unincorporated (RB)

Background and Policy Issues: Since 2006, aggregate mining in the EAA has been discussed by the BCC and has been the subject of a Summit, workshops, public hearings, etc. Although currently there are only two active mining operations in the area, the number of acres approved for mining has increased to approximately 20,000. At various discussions, members of the BCC and some members of the public have expressed concern about the BCC discretion to determine whether or not to approve additional acreage for mining and what the impact of the mining may be on the environment. These contracts for Facilitation Services will allow all the stakeholders to provide input on the issues and solutions to be resolved and allow consensus to be reached, if possible.

Attachments:

- 1. Two contracts

Recommended by: [Signature] Executive Director Date 11/19/10

Approved By: [Signature] Deputy County Administrator Date 11/29/2010

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	20 <u>11</u>	20 <u>12</u>	20 <u>13</u>	20 <u>14</u>	20 <u>15</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	<u>\$39,485</u>	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	<u>39,485</u>	=====	=====	=====	=====
No. ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included In Current Budget? Yes  No

Budget Account No: Fund 0701 Department 760 Unit 7601 Object 3401  
Reporting Category \_\_\_\_\_

**B. Recommended Sources of Funds/Summary of Fiscal Impact:** Funding for services has been approved by County Administration and will be allocated from the General Government Fund. There is no direct fiscal impact to Planning Zoning & Building Department. However, the fiscal impact will be to General Government Fund in the amount not to exceed \$39,485.

**C. Departmental Fiscal Review:** Paul Augustine

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Dev. and Control Comments:**

[Signature] 11/22/10  
ALJ 11/22/2010  
OFMB VA 11/22/10  
SM 11/22/10  
10M 11-22-10

[Signature] 11/24/10  
Contract Dev. and Control  
At the time of our review the contracts were not executed and proof of insurance was unavailable.

**B. Legal Sufficiency:**  
[Signature]  
Assistant County Attorney

**C. Other Department Review:**  
\_\_\_\_\_  
Department Director

(Revised 04/26/10)

## CONTRACT FOR CONSULTING/PROFESSIONAL SERVICES

This Contract is made as of the 30th day of November, 2010, by and between Palm Beach County, a Political Subdivision of the State of Florida, by and through its Board of Commissioners, hereinafter referred to as the COUNTY, and the Florida Institute of Government at the University of Central Florida, duly authorized to do business in the State of Florida, hereinafter referred to as the CONSULTANT, whose Federal I.D. is 592924021.

In consideration of the mutual promises contained herein, the COUNTY and the CONSULTANT agree as follows:

### ARTICLE 1 - SERVICES

The CONSULTANT'S responsibility under this Contract is to provide professional/consultation services in the area of facilitation and staffing for consensus building workshops regarding mining in the Everglades Agricultural Area, as more specifically set forth in the Scope of Work detailed in Exhibit "A."

The COUNTY'S representative/liason during the performance of this Contract shall be Barbara Alterman, telephone no. (561) 233-5008.

The CONSULTANT'S representative/liason during the performance of this Contract shall be Rafael Montalvo, telephone no. (386) 736-5488.

### ARTICLE 2 - SCHEDULE

The CONSULTANT shall commence services on November 30, 2010 and complete all services by September 30, 2011.

Reports and other items shall be delivered or completed in accordance with the detailed schedule set forth in Exhibit "A".

### ARTICLE 3 - PAYMENTS TO CONSULTANT

- A. The total amount to be paid by the COUNTY under this Contract for all services and materials including, if applicable, "out of pocket" expenses (specified in paragraph C below) shall not exceed a total contract amount of twenty four thousand four hundred eighty five Dollars (\$24,485). The CONSULTANT shall notify the COUNTY's representative in writing when 90% of the "not to exceed amount" has been reached. The CONSULTANT will bill the COUNTY on a monthly basis, or as otherwise provided, at the amounts set forth in Exhibit "B" for services rendered toward the completion of the Scope of Work. Where incremental billing for partially completed items is permitted, the total billings shall not exceed the estimated percentage of completion as of the billing date.

- B. Invoices received from the CONSULTANT pursuant to this Contract will be reviewed and approved by the COUNTY's representative, to verify that services have been rendered in conformity with the Contract. Approved invoices will then be sent to the Finance Department for payment. Invoices will normally be paid within thirty (30) days following the COUNTY representative's approval.
- C. "Out-of-pocket" expenses will be reimbursed up to an amount not to exceed five thousand Dollars (\$5,000), and in accordance with the list of the types and amounts of expenditures eligible for reimbursement as set forth in Exhibit "B." All requests for payment of "out-of-pocket" expenses eligible for reimbursement under the terms of this Contract shall include copies of paid receipts, invoices, or other documentation acceptable to the Palm Beach County Finance Department. Such documentation shall be sufficient to establish that the expense was actually incurred and necessary in the performance of the Scope of Work described in this Contract. Any travel, per diem, mileage, meals, or lodging expenses which may be reimbursable under the terms of this Contract will be paid in accordance with the rates and conditions set forth in Section 112.061, Florida Statutes.
- D. Final Invoice: In order for both parties herein to close their books and records, the CONSULTANT will clearly state "final invoice" on the CONSULTANT'S final/last billing to the COUNTY. This shall constitute CONSULTANT'S certification that all services have been properly performed and all charges and costs have been invoiced to Palm Beach County. Any other charges not properly included on this final invoice are waived by the CONSULTANT.
- E. Without changing the contract price, each invoice for payment shall be subject to the Inspector General Contract Fee of .25%, where applicable, to defray costs of the Office of the Inspector General in accordance with Ordinance 2009-049, as may be amended.

#### **ARTICLE 4 - TRUTH-IN-NEGOTIATION CERTIFICATE**

Signature of this Contract by the CONSULTANT shall also act as the execution of a truth-in-negotiation certificate certifying that the wage rates, over-head charges, and other costs used to determine the compensation provided for in this Contract are accurate, complete and current as of the date of the Contract and no higher than those charged the CONSULTANT'S most favored customer for the same or substantially similar service.

The said rates and costs shall be adjusted to exclude any significant sums should the COUNTY determine that the rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. The COUNTY shall exercise its rights under this Article 4 within three (3) years following final payment.

#### **ARTICLE 5 - TERMINATION**

This Contract may be terminated by the CONSULTANT upon sixty (60) days' prior written notice to the COUNTY's representative in the event of substantial failure by the COUNTY to

perform in accordance with the terms of this Contract through no fault of the CONSULTANT. It may also be terminated, in whole or in part, by the COUNTY, with or without cause, immediately upon written notice to the CONSULTANT. Unless the CONSULTANT is in breach of this Contract, the CONSULTANT shall be paid for services rendered to the COUNTY'S satisfaction through the date of termination. After receipt of a Termination Notice and except as otherwise directed by the COUNTY the CONSULTANT shall:

- A. Stop work on the date and to the extent specified.
- B. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
- C. Transfer all work in process, completed work, and other materials related to the terminated work to the COUNTY.
- D. Continue and complete all parts of the work that have not been terminated.

#### **ARTICLE 6 - PERSONNEL**

The CONSULTANT represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the COUNTY.

All of the services required hereunder shall be performed by the CONSULTANT or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

Any changes or substitutions in the CONSULTANT'S key personnel, as may be listed in Exhibit "A," must be made known to the COUNTY'S representative and written approval must be granted by the COUNTY'S representative before said change or substitution can become effective.

The CONSULTANT warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

All of the CONSULTANT'S personnel (and all Subcontractors) while on County premises will comply with all COUNTY requirements governing conduct, safety and security.

#### **ARTICLE 7 - SUBCONTRACTING**

The COUNTY reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractors in order to make a determination as to the capability of the subcontractor to perform properly under this Contract. The CONSULTANT is encouraged to seek additional small business enterprises for participation in subcontracting opportunities. If the CONSULTANT uses any subcontractors on this project the following provisions of this Article shall apply:

If a subcontractor fails to perform or make progress as required by this Contract, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the CONSULTANT shall promptly do so, subject to acceptance of the new subcontractor by the COUNTY.

The Palm Beach County Board of County Commissioners has established a minimum goal for SBE participation of 15% on all County solicitations.

The CONSULTANT agrees to abide by all provisions of the Palm Beach County Code establishing the SBE Program, as amended, and understands that failure to comply with any of the requirements will be considered a breach of contract.

The CONSULTANT understands that each SBE firm utilized on this Contract must be certified by Palm Beach County in order to be counted toward the SBE participation goal.

The CONSULTANT shall provide the COUNTY with a copy of the CONSULTANT's contract with any SBE subcontractor or any other related documentation upon request.

The CONSULTANT understands the requirements to comply with the tasks and proportionate dollar amounts throughout the term of this Contract as it relates to the use of SBE firms.

The CONSULTANT will only be permitted to replace a certified SBE subcontractor who is unwilling or unable to perform. Such substitutions must be done with another certified SBE in order to maintain the SBE percentages established in this Contract. Requests for substitutions of SBE's must be submitted to the COUNTY's representative and to the Office of Small Business Assistance.

The CONSULTANT shall be required to submit to the COUNTY Schedule 1 (Participation of SBE-M/WBE Contractors) and Schedule 2 (Letter of Intent) to further indicate the specific participation anticipated, where applicable.

The CONSULTANT agrees to maintain all relevant records and information necessary to document compliance pursuant to Palm Beach County Code, Chapter 2, Article III, Sections 2-71 through 2-80.13 and any revisions thereto, and will allow the COUNTY to inspect such records.

#### **ARTICLE 8 - FEDERAL AND STATE TAX**

The COUNTY is exempt from payment of Florida State Sales and Use Taxes. The COUNTY will sign an exemption certificate submitted by the CONSULTANT. The CONSULTANT shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the COUNTY, nor is the CONSULTANT authorized to use the COUNTY'S Tax Exemption Number in securing such materials.

The CONSULTANT shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this contract.

#### **ARTICLE 9 - AVAILABILITY OF FUNDS**

The COUNTY'S performance and obligation to pay under this contract for subsequent fiscal years is contingent upon annual appropriations for its purpose by the Board of County Commissioners.

#### **ARTICLE 10 - INSURANCE**

- A. CONSULTANT shall, at its sole expense, agree to maintain in full force and effect at all times during the life of this Contract, insurance coverage and limits (including endorsements), as described herein. The requirements contained herein, as well as COUNTY'S review or acceptance of insurance maintained by CONSULTANT are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by CONSULTANT under the contract.
- B. **Commercial General Liability.** CONSULTANT shall maintain Commercial General Liability at a limit of liability not less than **\$200,000** Each Occurrence. Coverage shall not contain any endorsement excluding Contractual Liability or Cross Liability unless granted in writing by County's Risk Management Department. CONSULTANT shall provide this coverage on a primary basis.
- C. **Business Automobile Liability.** CONSULTANT shall maintain Business Automobile Liability at a limit of liability not less than **\$200,000** Each Accident for all owned, non-owned and hired automobiles. In the event CONSULTANT does not own any automobiles, the Business Auto Liability requirement shall be amended allowing CONSULTANT to agree to maintain only Hired and Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto coverage form. CONSULTANT shall provide this coverage on a primary basis.
- D. **Worker's Compensation Insurance and Employers Liability.** CONSULTANT shall maintain Worker's Compensation and Employers Liability in accordance with Florida Statute Chapter 440. CONSULTANT shall provide this coverage on a primary basis.
- E. **Professional Liability.** CONSULTANT shall maintain Professional Liability or equivalent Errors and Omissions Liability at a limit of liability not less than **\$200,000** Each Claim
- F. **Right to Review.** COUNTY, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the right to review, modify, reject or accept any required policies of insurance, including limits, coverages, or endorsements, herein from time to time throughout the term of this Contract. COUNTY

reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.

#### **ARTICLE 11 - INDEMNIFICATION**

To the extent permitted under Florida law, and specifically as set forth in F.S. 768.28 (19) CONSULTANT shall protect, defend, reimburse, indemnify and hold COUNTY, its agents, employees and elected officers harmless from and against all claims, liability, expense, loss, cost, damages or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of their performance of the terms of this Contract or due to the acts or omissions of CONSULTANT.

#### **ARTICLE 12 - SUCCESSORS AND ASSIGNS**

The COUNTY and the CONSULTANT each binds itself and its partners, successors, executors, administrators and assigns to the other party and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Except as above, neither the COUNTY nor the CONSULTANT shall assign, sublet, convey or transfer its interest in this Contract without the prior written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the COUNTY, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the COUNTY and the CONSULTANT.

#### **ARTICLE 13 - REMEDIES**

This Contract shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Contract will be held in Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

#### **ARTICLE 14 - CONFLICT OF INTEREST**

The CONSULTANT represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Chapter 112, Part III, Florida Statutes. The CONSULTANT further represents that no person having any such conflict of interest shall be employed for said performance of services.

The CONSULTANT shall promptly notify the COUNTY's representative, in writing, by certified mail, of all potential conflicts of interest of any prospective business association, interest or other circumstance which may influence or appear to influence the CONSULTANT'S judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONSULTANT may undertake and request an opinion of the COUNTY as to whether the



association, interest or circumstance would, in the opinion of the COUNTY, constitute a conflict of interest if entered into by the CONSULTANT. The COUNTY agrees to notify the CONSULTANT of its opinion by certified mail within thirty (30) days of receipt of notification by the CONSULTANT. If, in the opinion of the COUNTY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONSULTANT, the COUNTY shall so state in the notification and the CONSULTANT shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the COUNTY by the CONSULTANT under the terms of this Contract.

#### **ARTICLE 15 - EXCUSABLE DELAYS**

The CONSULTANT shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of the CONSULTANT or its subcontractors and without their fault or negligence. Such causes include, but are not limited to, acts of God, force majeure, natural or public health emergencies, labor disputes, freight embargoes, and abnormally severe and unusual weather conditions.

Upon the CONSULTANT'S request, the COUNTY shall consider the facts and extent of any failure to perform the work and, if the CONSULTANT'S failure to perform was without it or its subcontractors fault or negligence, the Contract Schedule and/or any other affected provision of this Contract shall be revised accordingly, subject to the COUNTY'S rights to change, terminate, or stop any or all of the work at any time.

#### **ARTICLE 16 - ARREARS**

The CONSULTANT shall not pledge the COUNTY'S credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The CONSULTANT further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

#### **ARTICLE 17 - DISCLOSURE AND OWNERSHIP OF DOCUMENTS**

The CONSULTANT shall deliver to the COUNTY's representative for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the COUNTY under this Contract.

To the extent allowed by Chapter 119, Florida Statutes, all written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the COUNTY or at its expense will be kept confidential by the CONSULTANT and will not be disclosed to any other party, directly or indirectly, without the COUNTY'S prior written consent unless required by a lawful court order. All drawings, maps, sketches, programs, data base, reports and other data developed, or purchased, under this Contract for or at the COUNTY'S expense shall be and remain the COUNTY'S property and may be reproduced and reused at the discretion of the COUNTY.

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Contract and the consummation of the transactions contemplated hereby.

Notwithstanding any other provision in this Contract, all documents, records, reports and any other materials produced hereunder shall be subject to disclosure, inspection and audit, pursuant to the Palm Beach County Office of the Inspector General Ordinance 2009-049, as may be amended.

#### **ARTICLE 18 - INDEPENDENT CONTRACTOR RELATIONSHIP**

The CONSULTANT is, and shall be, in the performance of all work services and activities under this Contract, an Independent Contractor, and not an employee, agent, or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the CONSULTANT'S sole direction, supervision, and control. The CONSULTANT shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONSULTANT'S relationship and the relationship of its employees to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY.

The CONSULTANT does not have the power or authority to bind the COUNTY in any promise, agreement or representation.

#### **ARTICLE 19 - CONTINGENT FEES**

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 Contract 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 contingent upon or resulting from the award or making of this Contract.

#### **ARTICLE 20 - ACCESS AND AUDITS**

The CONSULTANT shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion or termination of this Contract. The COUNTY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the CONSULTANT'S place of business.

Palm Beach County has established the Office of the Inspector General in Ordinance 2009-049, as may be amended, which is authorized and empowered to review past, present and proposed County contracts, transactions, accounts and records. The Inspector General has the power to subpoena witnesses, administer oaths and require the production of records, and audit, investigate, monitor, and inspect the activities of the CONSULTANT, its officers, agents,

employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interference or impeding any investigation shall be in violation of Ordinance 2009-049, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

**ARTICLE 21 - NONDISCRIMINATION**

The CONSULTANT warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression.

**ARTICLE 22 - AUTHORITY TO PRACTICE**

The CONSULTANT hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the COUNTY's representative upon request.

**ARTICLE 23 - SEVERABILITY**

If any term or provision of this Contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Contract, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Contract shall be deemed valid and enforceable to the extent permitted by law.

**ARTICLE 24- PUBLIC ENTITY CRIMES**

As provided in F.S. 287.132-133, by entering into this contract or performing any work in furtherance hereof, the CONSULTANT certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

**ARTICLE 25 - MODIFICATIONS OF WORK**

The COUNTY reserves the right to make changes in Scope of Work, including alterations, reductions therein or additions thereto. Upon receipt by the CONSULTANT of the COUNTY'S notification of a contemplated change, the CONSULTANT shall, in writing: (1) provide a detailed estimate for the increase or decrease in cost due to the contemplated change, (2) notify the COUNTY of any estimated change in the completion date, and (3) advise the COUNTY if the contemplated change shall affect the CONSULTANT'S ability to meet the completion dates or schedules of this Contract.

If the COUNTY so instructs in writing, the CONSULTANT shall suspend work on that portion of the Scope of Work affected by a contemplated change, pending the COUNTY'S decision to proceed with the change.

If the COUNTY elects to make the change, the COUNTY shall initiate a Contract Amendment and the CONSULTANT shall not commence work on any such change until such written amendment is signed by the CONSULTANT and approved and executed on behalf of Palm Beach County.

**ARTICLE 26 - NOTICE**

All notices required in this Contract shall be sent by certified mail, return receipt requested, hand delivery or other delivery service requiring signed acceptance. If sent to the COUNTY, notices shall be addressed to:

Barbara Alterman, Executive Director  
Palm Beach County Planning, Zoning & Building  
2300 North Jog Road  
West Palm Beach, Florida 33411

With copy to: Palm Beach County Attorney's Office  
301 North Olive Avenue, Suite 601  
West Palm Beach, Florida 33401

If sent to the CONSULTANT, notices shall be addressed to:

Rafael Montalvo  
The FCRC Consensus Center  
University of Central Florida  
12443 Research Parkway, Suite 402  
Orlando, Florida 32826-3282

**ARTICLE 27 - ENTIRETY OF CONTRACTUAL AGREEMENT**

The COUNTY and the CONSULTANT agree that this Contract sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto in accordance with Article 25 - Modifications of Work.

**ARTICLE 28 - CRIMINAL HISTORY RECORDS CHECK**

The CONSULTANT shall comply with the provisions of Ordinance 2003-030, the Criminal History Records Check Ordinance ("Ordinance"), if CONSULTANT'S employees or subcontractors are required under this contract to enter a "critical facility" as identified in

Resolution R-2003-1274. The CONSULTANT acknowledges and agrees that all employees and subcontractors who are to enter a "critical facility" will be subject to a fingerprint based criminal history records check. Although COUNTY agrees to pay for all applicable FDLE/FBI fees required for criminal history record checks, the CONSULTANT shall be solely responsible for the financial, schedule, and staffing implications associated in complying with Ordinance 2003-030.

**ARTICLE 29 - REGULATIONS; LICENSING REQUIREMENTS**

The CONSULTANT shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, to include those applicable to conflict of interest and collusion. CONSULTANT is presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the services offered.

**IN WITNESS WHEREOF**, the Board of County Commissioners of Palm Beach County, Florida has made and executed this Contract on behalf of the COUNTY and CONSULTANT has hereunto set its hand the day and year above written.

**CONTRACT FOR CONSULTING/PROFESSIONAL SERVICES**

**ATTEST:**

**SHARON R. BOCK  
CLERK AND COMPTROLLER**

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS**

By: \_\_\_\_\_  
**Deputy Clerk**

By: \_\_\_\_\_  
**Chair**

**WITNESSES:**

**CONSULTANT:**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Company Name**

\_\_\_\_\_  
**Name (type or print)**

By: \_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Signature**

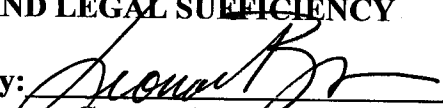
\_\_\_\_\_  
**Typed Name**

\_\_\_\_\_  
**Name (type or print)**

\_\_\_\_\_  
**Title**

**APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY**

**(corp. seal)**

By:   
**County Attorney**

**APPROVED AS TO TERMS  
AND CONDITIONS**

By: \_\_\_\_\_  
**Department Director**

**Proposal for Facilitation and Staffing Assistance  
For Palm Beach County Consensus-Building Workshops  
On Strategies to Address Mining in the EAA**

The FCRC Consensus Center proposes the team of Jim Murley, Assistant Dean for External Affairs at FAU's College for Design and Social Inquiry, Rafael Montalvo, Associate Director for the FCRC Consensus Center and Jean Scott, SLC, LLC, and Senior Fellow, University of Florida Center for Building Better Communities to provide facilitation and meeting support services for a workshop series addressing issues related to mining in the EAA, as described below.

**SCOPE OF SERVICES**

**Assessment and Process Design**

In order to develop detailed material and agendas for each step in the process, the team will:

- Review relevant background material
- Work with County staff to identify key participants and stakeholder groups

Based on the outcome of this review the team will develop detailed materials and agendas for each step in the process.

**Facilitated Public Workshop Series**

The workshops will be open to all interested parties. They will be designed to engage participants in discussion and evaluation of issues and options, and the development of draft language. Formal consensus-testing will be used to assess the degree of support enjoyed by the options and draft language. The consensus-testing will use a version of the following scale:

- Comfortable – can support as drafted
- Minor reservations – can probably support, but would like additional clarification or refinement
- Major reservations – cannot support without major changes

Reservations identified through the consensus-testing will be noted and addressed in subsequent iterations of the options or drafts.

**Outreach**

- The team will work with County staff to help ensure that key participants and stakeholder groups are identified, invited and engaged. Throughout the process, the team will maintain contact with key stakeholders to provide additional perspective on the consensus-testing conducted in the workshops. Outreach may include meetings with individual stakeholders as needed at key points in the process.

**Presentations to BCC and Advisory Boards as Needed**

The team will make up to five presentations to brief and solicit direction from the Board of County Commissioners and Advisory Boards, as requested by Palm Beach County.

### **Timeframe for Completion**

All work will be completed in accordance with the attached timeline .

### **Roles**

#### ***Facilitation Team***

- Jim Murley, Assistant Dean for External Affairs at FAU's School of Design and Social Inquiry will provide consultation and assistance on all aspects of the workshop series.
- Rafael Montalvo, Associate Director for the FCRC Consensus Center will be the lead for designing and conducting the workshop series. This will include coordinating with Palm Beach County staff in advance of the meetings, developing agenda and process materials for use during the meetings, meeting facilitation, and follow-up and review of meeting reports after the meetings. This role will also include outreach activities as needed.
- Jean Scott, SLC, LLC, Senior Fellow, University of Florida Center for Building Better Communities will be the lead for documentation of discussions that take place during meetings and report drafting and development, and co-lead for outreach. She will provide additional support in the areas of meeting materials development and facilitation support during meeting.

#### ***Palm Beach County Staff***

Palm Beach County staff will be asked to:

- Identify meeting locations and make all logistical arrangements related to holding the meeting.
- Prepare and distribute meeting invitations, with input from the facilitation team.
- Advertise and notice meetings, as appropriate.
- Identify and provide technical information needed.
- Provide, in cooperation with the facilitation team, background information, research and drafts of code language as needed to support the workshops, to include the following:
  - A 1-3 background paper describing the issues and events leading to the workshop series
  - Short, bullet-form analysis of potential code changes suggested or supported by workshop participants
  - Additional background, in bullet format or other short form appropriate for workshop use, if needed to help workshop participants understand issues or evaluate options and draft language
  - Drafts of code amendment language reflecting options supported by workshop participants, for discussion and consensus-testing in the later workshops
- Reproduce meeting materials developed by the facilitation team.



### **Potential Components of Workshop Series**

Each workshop will be 4-6 hour in length. Workshops will be scheduled between January and May 2011.

#### ***Workshop 1***

- Review staff white paper on EAA mining issues
- Discuss and refine, as appropriate, issues identified in the EAA white paper
- Review current Palm Beach County mining regulations, including applicable zoning requirements
- Identify potential new zoning strategies to address mining in the EAA

#### ***Between Workshops 1 & 2***

- Coordinator and facilitator prepare workshop report
- County staff prepare background on identified strategies

#### ***Workshop 2***

- Review activities and outcomes at Workshop 1
- Review background on identified strategies
- Consensus-test identified strategies
- Refine most promising strategies

#### ***Between Workshops 2 & 3***

- Coordinator and facilitator prepare workshop report
- County staff develop draft zoning amendment/conditions based on most promising strategies identified at Workshop 2

#### ***Workshop 3***

- Review activities and Outcomes at Workshops 1 & 2
- Review draft zoning amendment language and conditions
- Consensus-test draft
- Discuss and suggest refinements to draft
- Consensus-test suggested refinements

#### ***Between Workshops 3 & 4***

- Coordinator and facilitator prepare workshop report
- County staff refine draft based on Workshop 3 report

#### ***Workshop 4 (If needed)***

- Review activities and outcomes at Workshops 1-3
- Review proposed draft
- Consensus-test proposed draft
- Discuss and suggest refinements to proposed draft
- Consensus-test suggested refinements
- Revise proposed draft, if warranted

#### ***After Workshop 4***

- Coordinator and facilitator prepare workshop report

Exhibit A

**COST ESTIMATES**

Note: The following estimates assume separate Palm Beach County contracts with the FCRC Consensus Center at UCF and with Jean Scott, SLC, LLC. The estimates total \$39,485, and in no event will total costs exceed this amount without explicit authorization from Palm Beach County.

DATE	MEETING/HEARING
January 2011	Consensus Building Workshop #1
February 2011	Consensus Building Workshop #2
February/March 2011	<b>BCC Workshop:</b> Review Recommendations / Findings of Consensus Building Workshops
March 2011	Consensus Building Workshop #3
April 2011	Consensus Building Workshop #4 (Optional)
May 25, 2011	Land Development Regulation Advisory Board (LDRAB)
June 22, 2011	<b>BCC Zoning Hearing:</b> Request for Permission to Advertise
July 27, 2011	<b>BCC Zoning Hearing:</b> 1 <sup>st</sup> Reading
August 24, 2011	<b>BCC Zoning Hearing:</b> 2nd Reading - Adoption
<b>September 2011</b>	<b>Effective Date of ULDC Amendments Mining Moratorium Expires</b>

**FCRC Costs**

All professional time will be billed at the following rates.

Facilitator time \$187.50 per hour

***Assessment, Process Design and Outreach***

Facilitator time 10 hrs

Subtotal \$1,875

***Per Workshop Costs for Professional Time***

**Facilitator**

Planning and prep 5 hrs

Facilitation 6 hrs

Follow-up 5 hrs

Subtotal per workshop \$3,000

Subtotal 4 workshops \$12,000

**Presentations**

Facilitator Time 2

Subtotal per presentation \$375

Subtotal 5 presentations \$1,875

***Sub-Total Professional Time \$15,750***

**Expenses**

Expenses are expected to include mileage, lodging and meals as allowed per Palm Beach County policy.

***Expenses will not exceed: \$5,000***

***Sub-total Professional Time and Expenses \$20,750***

***UCF Overhead (18%) \$3,735***

***Estimated total \$24,485***

## **CONTRACT FOR CONSULTING/PROFESSIONAL SERVICES**

This Contract is made as of the 30th day of November, 2010, by and between Palm Beach County, a Political Subdivision of the State of Florida, by and through its Board of Commissioners, hereinafter referred to as the COUNTY, and Jean Scott [X] an individual, [ ] a partnership, [ ] a corporation authorized to do business in the State of Florida, hereinafter referred to as the CONSULTANT, whose Federal I.D. is N/A.

In consideration of the mutual promises contained herein, the COUNTY and the CONSULTANT agree as follows:

### **ARTICLE 1 - SERVICES**

The CONSULTANT'S responsibility under this Contract is to provide professional/consultation services in the area of facilitation and staffing for consensus building workshops regarding mining in the Everglades Agricultural Area, as more specifically set forth in the Scope of Work detailed in Exhibit "A."

The COUNTY'S representative/liaison during the performance of this Contract shall be Barbara Alterman, telephone no. (561) 233-5008.

The CONSULTANT'S representative/liaison during the performance of this Contract shall be Jean Scott, telephone no. (561) 620-3815.

### **ARTICLE 2 - SCHEDULE**

The CONSULTANT shall commence services on November 30, 2010 and complete all services by September 30, 2011.

Reports and other items shall be delivered or completed in accordance with the detailed schedule set forth in Exhibit "A".

### **ARTICLE 3 - PAYMENTS TO CONSULTANT**

- A. The total amount to be paid by the COUNTY under this Contract for all services and materials including, if applicable, "out of pocket" expenses (specified in paragraph C below) shall not exceed a total contract amount of fifteen thousand Dollars (\$15,000). The CONSULTANT shall notify the COUNTY's representative in writing when 90% of the "not to exceed amount" has been reached. The CONSULTANT will bill the COUNTY on a monthly basis, or as otherwise provided, at the amounts set forth in Exhibit "B" for services rendered toward the completion of the Scope of Work. Where incremental billing for partially completed items is permitted, the total billings shall not exceed the estimated percentage of completion as of the billing date.
- B. Invoices received from the CONSULTANT pursuant to this Contract will be reviewed and approved by the COUNTY's representative, to verify that services have been

rendered in conformity with the Contract. Approved invoices will then be sent to the Finance Department for payment. Invoices will normally be paid within thirty (30) days following the COUNTY representative's approval.

- C. "Out-of-pocket" expenses will be reimbursed up to an amount not to exceed one thousand Dollars (\$1,000), and in accordance with the list of the types and amounts of expenditures eligible for reimbursement as set forth in Exhibit "B." All requests for payment of "out-of-pocket" expenses eligible for reimbursement under the terms of this Contract shall include copies of paid receipts, invoices, or other documentation acceptable to the Palm Beach County Finance Department. Such documentation shall be sufficient to establish that the expense was actually incurred and necessary in the performance of the Scope of Work described in this Contract. Any travel, per diem, mileage, meals, or lodging expenses which may be reimbursable under the terms of this Contract will be paid in accordance with the rates and conditions set forth in Section 112.061, Florida Statutes.
- D. Final Invoice: In order for both parties herein to close their books and records, the CONSULTANT will clearly state "final invoice" on the CONSULTANT'S final/last billing to the COUNTY. This shall constitute CONSULTANT'S certification that all services have been properly performed and all charges and costs have been invoiced to Palm Beach County. Any other charges not properly included on this final invoice are waived by the CONSULTANT.

#### **ARTICLE 4 - TRUTH-IN-NEGOTIATION CERTIFICATE**

Signature of this Contract by the CONSULTANT shall also act as the execution of a truth-in-negotiation certificate certifying that the wage rates, over-head charges, and other costs used to determine the compensation provided for in this Contract are accurate, complete and current as of the date of the Contract and no higher than those charged the CONSULTANT'S most favored customer for the same or substantially similar service.

The said rates and costs shall be adjusted to exclude any significant sums should the COUNTY determine that the rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. The COUNTY shall exercise its rights under this Article 4 within three (3) years following final payment.

#### **ARTICLE 5 - TERMINATION**

This Contract may be terminated by the CONSULTANT upon sixty (60) days' prior written notice to the COUNTY's representative in the event of substantial failure by the COUNTY to perform in accordance with the terms of this Contract through no fault of the CONSULTANT. It may also be terminated, in whole or in part, by the COUNTY, with or without cause, immediately upon written notice to the CONSULTANT. Unless the CONSULTANT is in breach of this Contract, the CONSULTANT shall be paid for services rendered to the COUNTY'S satisfaction through the date of termination. After receipt of a Termination Notice and except as otherwise directed by the COUNTY the CONSULTANT shall:

- A. Stop work on the date and to the extent specified.
- B. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
- C. Transfer all work in process, completed work, and other materials related to the terminated work to the COUNTY.
- D. Continue and complete all parts of the work that have not been terminated.

#### **ARTICLE 6 - PERSONNEL**

The CONSULTANT represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the COUNTY.

All of the services required hereunder shall be performed by the CONSULTANT or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

Any changes or substitutions in the CONSULTANT'S key personnel, as may be listed in Exhibit "A," must be made known to the COUNTY'S representative and written approval must be granted by the COUNTY's representative before said change or substitution can become effective.

The CONSULTANT warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

All of the CONSULTANT'S personnel (and all Subcontractors) while on County premises will comply with all COUNTY requirements governing conduct, safety and security.

#### **ARTICLE 7 - SUBCONTRACTING**

The COUNTY reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractors in order to make a determination as to the capability of the subcontractor to perform properly under this Contract. The CONSULTANT is encouraged to seek additional small business enterprises for participation in subcontracting opportunities. If the CONSULTANT uses any subcontractors on this project the following provisions of this Article shall apply:

If a subcontractor fails to perform or make progress as required by this Contract, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the CONSULTANT shall promptly do so, subject to acceptance of the new subcontractor by the COUNTY.

The Palm Beach County Board of County Commissioners has established a minimum goal for SBE participation of 15% on all County solicitations.

The CONSULTANT agrees to abide by all provisions of the Palm Beach County Code establishing the SBE Program, as amended, and understands that failure to comply with any of the requirements will be considered a breach of contract.

The CONSULTANT understands that each SBE firm utilized on this Contract must be certified by Palm Beach County in order to be counted toward the SBE participation goal.

The CONSULTANT shall provide the COUNTY with a copy of the CONSULTANT's contract with any SBE subcontractor or any other related documentation upon request.

The CONSULTANT understands the requirements to comply with the tasks and proportionate dollar amounts throughout the term of this Contract as it relates to the use of SBE firms.

The CONSULTANT will only be permitted to replace a certified SBE subcontractor who is unwilling or unable to perform. Such substitutions must be done with another certified SBE in order to maintain the SBE percentages established in this Contract. Requests for substitutions of SBE's must be submitted to the COUNTY's representative and to the Office of Small Business Assistance.

The CONSULTANT shall be required to submit to the COUNTY Schedule 1 (Participation of SBE-M/WBE Contractors) and Schedule 2 (Letter of Intent) to further indicate the specific participation anticipated, where applicable.

The CONSULTANT agrees to maintain all relevant records and information necessary to document compliance pursuant to Palm Beach County Code, Chapter 2, Article III, Sections 2-71 through 2-80.13 and any revisions thereto, and will allow the COUNTY to inspect such records.

#### **ARTICLE 8 - FEDERAL AND STATE TAX**

The COUNTY is exempt from payment of Florida State Sales and Use Taxes. The COUNTY will sign an exemption certificate submitted by the CONSULTANT. The CONSULTANT shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the COUNTY, nor is the CONSULTANT authorized to use the COUNTY'S Tax Exemption Number in securing such materials.

The CONSULTANT shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this contract.

#### **ARTICLE 9 - AVAILABILITY OF FUNDS**



The COUNTY'S performance and obligation to pay under this contract for subsequent fiscal years is contingent upon annual appropriations for its purpose by the Board of County Commissioners.

#### **ARTICLE 10 - INSURANCE**

- A. CONSULTANT shall, at its sole expense, agree to maintain in full force and effect at all times during the life of this Contract, insurance coverage and limits (including endorsements), as described herein. CONSULTANT shall agree to provide the COUNTY with at least ten (10) days' prior notice of any cancellation, non-renewal or material change to the insurance coverages. The requirements contained herein, as well as COUNTY'S review or acceptance of insurance maintained by CONSULTANT are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by CONSULTANT under the contract.
- B. **Commercial General Liability.** CONSULTANT shall maintain Commercial General Liability at a limit of liability not less than **\$500,000** Each Occurrence. Coverage shall not contain any endorsement excluding Contractual Liability or Cross Liability unless granted in writing by County's Risk Management Department. CONSULTANT shall provide this coverage on a primary basis.
- C. **Business Automobile Liability.** CONSULTANT shall maintain Business Automobile Liability at a limit of liability not less than **\$100,000/\$300,000** for all owned, non-owned and hired automobiles. In the event CONSULTANT does not own any automobiles, the Business Auto Liability requirement shall be amended allowing CONSULTANT to agree to maintain only Hired and Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto coverage form. CONSULTANT shall provide this coverage on a primary basis.
- D. **Additional Insured.** CONSULTANT shall endorse the COUNTY as an Additional Insured with a CG 2026 Additional Insured - Designated Person or Organization endorsement, or its equivalent, to the Commercial General Liability. The Additional Insured endorsement shall read: "**Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents.**" CONSULTANT shall provide the Additional Insured endorsements coverage on a primary basis.
- E. **Waiver of Subrogation.** CONSULTANT hereby waives any and all rights of Subrogation against the County, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement to the policy, then CONSULTANT shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy which

specifically prohibits such an endorsement, or which voids coverage should CONSULTANT enter into such an agreement on a pre-loss basis.

- F. **Certificate(s) of Insurance.** Prior to execution of this Contract, CONSULTANT shall deliver to the COUNTY'S representative as identified in Article 26, a Certificate(s) of Insurance evidencing that all types and amounts of insurance coverages required by this Contract have been obtained and are in full force and effect. Such Certificate(s) of Insurance shall include a minimum ten (10) day endeavor to notify due to cancellation or non-renewal of coverage. The Certificate of Insurance shall be issued to:

Palm Beach County  
c/o Planning, Zoning and Building Department  
Attn: Barbara Alterman, Executive Director  
2300 North Jog Road  
West Palm Beach, Florida 33411

- G. **Umbrella or Excess Liability.** If necessary, CONSULTANT may satisfy the minimum limits required above for either Commercial General Liability, Business Auto Liability, and Employer's Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for either Commercial General Liability, Business Auto Liability, or Employer's Liability. The COUNTY shall be specifically endorsed as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of Insurance notes the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.
- H. **Right to Review.** COUNTY, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the right to review, modify, reject or accept any required policies of insurance, including limits, coverages, or endorsements, herein from time to time throughout the term of this Contract. COUNTY reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.

#### **ARTICLE 11 - INDEMNIFICATION**

CONSULTANT shall protect, defend, reimburse, indemnify and hold COUNTY, its agents, employees and elected officers harmless from and against all claims, liability, expense, loss, cost, damages or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of their performance of the terms of this Contract or due to the acts or omissions of CONSULTANT.

#### **ARTICLE 12 - SUCCESSORS AND ASSIGNS**

The COUNTY and the CONSULTANT each binds itself and its partners, successors, executors, administrators and assigns to the other party and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Except as above, neither the COUNTY nor the CONSULTANT shall assign, sublet, convey or

transfer its interest in this Contract without the prior written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the COUNTY, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the COUNTY and the CONSULTANT.

#### **ARTICLE 13 - REMEDIES**

This Contract shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Contract will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

#### **ARTICLE 14 - CONFLICT OF INTEREST**

The CONSULTANT represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Chapter 112, Part III, Florida Statutes. The CONSULTANT further represents that no person having any such conflict of interest shall be employed for said performance of services.

The CONSULTANT shall promptly notify the COUNTY's representative, in writing, by certified mail, of all potential conflicts of interest of any prospective business association, interest or other circumstance which may influence or appear to influence the CONSULTANT'S judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONSULTANT may undertake and request an opinion of the COUNTY as to whether the association, interest or circumstance would, in the opinion of the COUNTY, constitute a conflict of interest if entered into by the CONSULTANT. The COUNTY agrees to notify the CONSULTANT of its opinion by certified mail within thirty (30) days of receipt of notification by the CONSULTANT. If, in the opinion of the COUNTY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONSULTANT, the COUNTY shall so state in the notification and the CONSULTANT shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the COUNTY by the CONSULTANT under the terms of this Contract.

#### **ARTICLE 15 - EXCUSABLE DELAYS**

The CONSULTANT shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of the CONSULTANT or its subcontractors and without their fault or negligence. Such causes include, but are not limited to, acts of God, force majeure, natural or public health emergencies, labor disputes, freight embargoes, and abnormally severe and unusual weather conditions.

Upon the CONSULTANT'S request, the COUNTY shall consider the facts and extent of any failure to perform the work and, if the CONSULTANT'S failure to perform was without it or its subcontractors fault or negligence, the Contract Schedule and/or any other affected provision of this Contract shall be revised accordingly, subject to the COUNTY'S rights to change, terminate, or stop any or all of the work at any time.

#### **ARTICLE 16 - ARREARS**

The CONSULTANT shall not pledge the COUNTY'S credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness. The CONSULTANT further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

#### **ARTICLE 17 - DISCLOSURE AND OWNERSHIP OF DOCUMENTS**

The CONSULTANT shall deliver to the COUNTY's representative for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the COUNTY under this Contract.

To the extent allowed by Chapter 119, Florida Statutes, all written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the COUNTY or at its expense will be kept confidential by the CONSULTANT and will not be disclosed to any other party, directly or indirectly, without the COUNTY'S prior written consent unless required by a lawful court order. All drawings, maps, sketches, programs, data base, reports and other data developed, or purchased, under this Contract for or at the COUNTY'S expense shall be and remain the COUNTY'S property and may be reproduced and reused at the discretion of the COUNTY.

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Contract and the consummation of the transactions contemplated hereby.

Notwithstanding any other provision in this Contract, all documents, records, reports and any other materials produced hereunder shall be subject to disclosure, inspection and audit, pursuant to the Palm Beach County Office of the Inspector General Ordinance 2009-049, as may be amended.

#### **ARTICLE 18 - INDEPENDENT CONTRACTOR RELATIONSHIP**

The CONSULTANT is, and shall be, in the performance of all work services and activities under this Contract, an Independent Contractor, and not an employee, agent, or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the CONSULTANT'S sole direction, supervision, and control. The CONSULTANT shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONSULTANT'S

relationship and the relationship of its employees to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY.

The CONSULTANT does not have the power or authority to bind the COUNTY in any promise, agreement or representation.

**ARTICLE 19 - CONTINGENT FEES**

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 Contract 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 contingent upon or resulting from the award or making of this Contract.

**ARTICLE 20 - ACCESS AND AUDITS**

The CONSULTANT shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion or termination of this Contract. The COUNTY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the CONSULTANT'S place of business.

Palm Beach County has established the Office of the Inspector General in Ordinance 2009-049, as may be amended, which is authorized and empowered to review past, present and proposed County contracts, transactions, accounts and records. The Inspector General has the power to subpoena witnesses, administer oaths and require the production of records, and audit, investigate, monitor, and inspect the activities of the CONSULTANT, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interference or impeding any investigation shall be in violation of Ordinance 2009-049, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

**ARTICLE 21 - NONDISCRIMINATION**

The CONSULTANT warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression.

**ARTICLE 22 - AUTHORITY TO PRACTICE**

The CONSULTANT hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its

business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the COUNTY's representative upon request.

**ARTICLE 23 - SEVERABILITY**

If any term or provision of this Contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Contract, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Contract shall be deemed valid and enforceable to the extent permitted by law.

**ARTICLE 24- PUBLIC ENTITY CRIMES**

As provided in F.S. 287.132-133, by entering into this contract or performing any work in furtherance hereof, the CONSULTANT certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

**ARTICLE 25 - MODIFICATIONS OF WORK**

The COUNTY reserves the right to make changes in Scope of Work, including alterations, reductions therein or additions thereto. Upon receipt by the CONSULTANT of the COUNTY'S notification of a contemplated change, the CONSULTANT shall, in writing: (1) provide a detailed estimate for the increase or decrease in cost due to the contemplated change, (2) notify the COUNTY of any estimated change in the completion date, and (3) advise the COUNTY if the contemplated change shall affect the CONSULTANT'S ability to meet the completion dates or schedules of this Contract.

If the COUNTY so instructs in writing, the CONSULTANT shall suspend work on that portion of the Scope of Work affected by a contemplated change, pending the COUNTY'S decision to proceed with the change.

If the COUNTY elects to make the change, the COUNTY shall initiate a Contract Amendment and the CONSULTANT shall not commence work on any such change until such written amendment is signed by the CONSULTANT and approved and executed on behalf of Palm Beach County.

**ARTICLE 26 - NOTICE**

All notices required in this Contract shall be sent by certified mail, return receipt requested, hand delivery or other delivery service requiring signed acceptance. If sent to the COUNTY, notices shall be addressed to:

Barbara Alterman, Executive Director

Planning, Zoning and Building Department  
2300 North Jog Road  
West Palm Beach, Florida 33411

With copy to: Palm Beach County Attorney's Office  
301 North Olive Avenue, Suite 601  
West Palm Beach, Florida 33401

If sent to the CONSULTANT, notices shall be addressed to:

Jean Scott  
399 Paloma Avenue  
Boca Raton, Florida 33486

**ARTICLE 27 - ENTIRETY OF CONTRACTUAL AGREEMENT**

The COUNTY and the CONSULTANT agree that this Contract sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto in accordance with Article 25 - Modifications of Work.

**ARTICLE 28 - CRIMINAL HISTORY RECORDS CHECK**

The CONSULTANT shall comply with the provisions of Ordinance 2003-030, the Criminal History Records Check Ordinance ("Ordinance"), if CONSULTANT'S employees or subcontractors are required under this contract to enter a "critical facility" as identified in Resolution R-2003-1274. The CONSULTANT acknowledges and agrees that all employees and subcontractors who are to enter a "critical facility" will be subject to a fingerprint based criminal history records check. Although COUNTY agrees to pay for all applicable FDLE/FBI fees required for criminal history record checks, the CONSULTANT shall be solely responsible for the financial, schedule, and staffing implications associated in complying with Ordinance 2003-030.

**ARTICLE 29 - REGULATIONS; LICENSING REQUIREMENTS**

The CONSULTANT shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, to include those applicable to conflict of interest and collusion. CONSULTANT is presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the services offered.

**IN WITNESS WHEREOF**, the Board of County Commissioners of Palm Beach County, Florida has made and executed this Contract on behalf of the COUNTY and CONSULTANT has hereunto set its hand the day and year above written.

**ATTEST:**

**SHARON R. BOCK  
CLERK AND COMPTROLLER**

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS**

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Chair

**WITNESSES:**

**CONSULTANT:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Name (type or print)

By: \_\_\_\_\_  
Signature

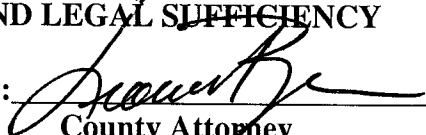
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Signature

\_\_\_\_\_  
Typed Name

\_\_\_\_\_  
Name (type or print)

\_\_\_\_\_  
Title

**APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY**

By:   
County Attorney

**APPROVED AS TO TERMS  
AND CONDITIONS**

By: \_\_\_\_\_  
Department Director



**Proposal for Facilitation and Staffing Assistance  
For Palm Beach County Consensus-Building Workshops  
On Strategies to Address Mining in the EAA**

The FCRC Consensus Center proposes the team of Jim Murley, Assistant Dean for External Affairs at FAU's College for Design and Social Inquiry, Rafael Montalvo, Associate Director for the FCRC Consensus Center and Jean Scott, SLC, LLC, and Senior Fellow, University of Florida Center for Building Better Communities to provide facilitation and meeting support services for a workshop series addressing issues related to mining in the EAA, as described below.

**SCOPE OF SERVICES**

**Assessment and Process Design**

In order to develop detailed material and agendas for each step in the process, the team will:

- Review relevant background material
- Work with County staff to identify key participants and stakeholder groups

Based on the outcome of this review the team will develop detailed materials and agendas for each step in the process.

**Facilitated Public Workshop Series**

The workshops will be open to all interested parties. They will be designed to engage participants in discussion and evaluation of issues and options, and the development of draft language. Formal consensus-testing will be used to assess the degree of support enjoyed by the options and draft language. The consensus-testing will use a version of the following scale:

- Comfortable – can support as drafted
- Minor reservations – can probably support, but would like additional clarification or refinement
- Major reservations – cannot support without major changes

Reservations identified through the consensus-testing will be noted and addressed in subsequent iterations of the options or drafts.

**Outreach**

- The team will work with County staff to help ensure that key participants and stakeholder groups are identified, invited and engaged. Throughout the process, the team will maintain contact with key stakeholders to provide additional perspective on the consensus-testing conducted in the workshops. Outreach may include meetings with individual stakeholders as needed at key points in the process.

**Presentations to BCC and Advisory Boards as Needed**

The team will make up to five presentations to brief and solicit direction from the Board of County Commissioners and Advisory Boards, as requested by Palm Beach County.

### **Timeframe for Completion**

All work will be completed in accordance with the attached timeline .

### **Roles**

#### ***Facilitation Team***

- Jim Murley, Assistant Dean for External Affairs at FAU's School of Design and Social Inquiry will provide consultation and assistance on all aspects of the workshop series.
- Rafael Montalvo, Associate Director for the FCRC Consensus Center will be the lead for designing and conducting the workshop series. This will include coordinating with Palm Beach County staff in advance of the meetings, developing agenda and process materials for use during the meetings, meeting facilitation, and follow-up and review of meeting reports after the meetings. This role will also include outreach activities as needed.
- Jean Scott, SLC, LLC, Senior Fellow, University of Florida Center for Building Better Communities will be the lead for documentation of discussions that take place during meetings and report drafting and development, and co-lead for outreach. She will provide additional support in the areas of meeting materials development and facilitation support during meeting.

#### ***Palm Beach County Staff***

Palm Beach County staff will be asked to:

- Identify meeting locations and make all logistical arrangements related to holding the meeting.
- Prepare and distribute meeting invitations, with input from the facilitation team.
- Advertise and notice meetings, as appropriate.
- Identify and provide technical information needed.
- Provide, in cooperation with the facilitation team, background information, research and drafts of code language as needed to support the workshops, to include the following:
  - A 1-3 background paper describing the issues and events leading to the workshop series
  - Short, bullet-form analysis of potential code changes suggested or supported by workshop participants
  - Additional background, in bullet format or other short form appropriate for workshop use, if needed to help workshop participants understand issues or evaluate options and draft language
  - Drafts of code amendment language reflecting options supported by workshop participants, for discussion and consensus-testing in the later workshops
- Reproduce meeting materials developed by the facilitation team.

### **Potential Components of Workshop Series**

Each workshop will be 4-6 hour in length. Workshops will be scheduled between January and May 2011.

#### ***Workshop 1***

- Review staff white paper on EAA mining issues
- Discuss and refine, as appropriate, issues identified in the EAA white paper
- Review current Palm Beach County mining regulations, including applicable zoning requirements
- Identify potential new zoning strategies to address mining in the EAA

#### ***Between Workshops 1 & 2***

- Coordinator and facilitator prepare workshop report
- County staff prepare background on identified strategies

#### ***Workshop 2***

- Review activities and outcomes at Workshop 1
- Review background on identified strategies
- Consensus-test identified strategies
- Refine most promising strategies

#### ***Between Workshops 2 & 3***

- Coordinator and facilitator prepare workshop report
- County staff develop draft zoning amendment/conditions based on most promising strategies identified at Workshop 2

#### ***Workshop 3***

- Review activities and Outcomes at Workshops 1 & 2
- Review draft zoning amendment language and conditions
- Consensus-test draft
- Discuss and suggest refinements to draft
- Consensus-test suggested refinements

#### ***Between Workshops 3 & 4***

- Coordinator and facilitator prepare workshop report
- County staff refine draft based on Workshop 3 report

#### ***Workshop 4 (If needed)***

- Review activities and outcomes at Workshops 1-3
- Review proposed draft
- Consensus-test proposed draft
- Discuss and suggest refinements to proposed draft
- Consensus-test suggested refinements
- Revise proposed draft, if warranted

#### ***After Workshop 4***

- Coordinator and facilitator prepare workshop report

Exhibit A

**COST ESTIMATES**

Note: The following estimates assume separate Palm Beach County contracts with the FCRC Consensus Center at UCF and with Jean Scott, SLC, LLC. The estimates total \$39,485, and in no event will total costs exceed this amount without explicit authorization from Palm Beach County.

DATE	MEETING/HEARING
January 2011	Consensus Building Workshop #1
February 2011	Consensus Building Workshop #2
February/March 2011	<b>BCC Workshop:</b> Review Recommendations / Findings of Consensus Building Workshops
March 2011	Consensus Building Workshop #3
April 2011	Consensus Building Workshop #4 (Optional)
May 25, 2011	Land Development Regulation Advisory Board (LDRAB)
June 22, 2011	<b>BCC Zoning Hearing:</b> Request for Permission to Advertise
July 27, 2011	<b>BCC Zoning Hearing:</b> 1 <sup>st</sup> Reading
August 24, 2011	<b>BCC Zoning Hearing:</b> 2nd Reading - Adoption
September 2011	Effective Date of ULDC Amendments Mining Moratorium Expires

Exhibit B

**Jean Scott, SLC, LLC Costs**

All professional time will be billed at the following rates.

Coordinator time \$125.00 per hour

***Assessment and Process Design***

Coordinator time 10 hrs

Subtotal \$1,250

***Per Workshop Costs for Professional Time***

Coordinator

Planning and prep 5 hrs

Facilitation 6 hrs

Follow-up 8 hrs

Subtotal per workshop \$2,375

Subtotal 4 workshops \$9,500

***Outreach (As necessary)***

Coordinator time 16 hrs \$2,000

**Presentations**

Coordinator Time 2

Subtotal per presentation \$250

Subtotal 5 presentations \$1,250

***Sub-Total Professional Time \$14,000***

**Expenses**

Expenses are expected to include mileage, lodging and meals as allowed per Palm Beach County policy.

***Expenses will not exceed: \$1,000***

***Sub-total Professional Time and Expenses \$15,000***

***Estimated total \$15,000***