

Approved:

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Secretary

AMENDMENTS AND TASK WORK ORDERS FOR PROFESSIONAL SERVICE AGREEMENTS

PURPOSE:

To establish a uniform method for the use of amendments and task work orders for changes to professional service agreements.

REFERENCE:

Procedure 375-030-002, Acquisition of Professional Services

AUTHORITY:

Section 287.055, Florida Statutes; Rule Chapter 14-75, F.A.C.

SCOPE:

The principal users of this procedure will be district and central office professional services contracting personnel and project managers. Other affected offices include the Comptroller, the Inspector General, the General Counsel, Toll Operations, the Public Transportation Administrator, the State Transportation Planner, and the State Highway Engineer.

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1. AMENDMENTS

An amendment is any document used to modify the terms of an original agreement. Amendments may be used for supplements to scope of services; raising or lowering fee limits; time extensions; changes in method of compensation or rates; changes to names, addresses, or project identification data; scope of services clarifications; and any other change in contract terms.

Since amendments are intended to be binding on both parties to the original agreement, all amendments must be signed by a legally authorized representative for the Department (Director or their designee) as well as for the consultant firm.

For tracking purposes, each amendment to an agreement will be consecutively numbered beginning with the Number 1, and all related correspondence will reference the appropriate amendment number. Separate sequencing for supplemental amendments and other amendments may be maintained for contracts existing prior to the effective date of this procedure.

1.1 Types of Amendments

1.1.1 Supplemental Amendments

A supplemental amendment is used to modify an agreement condition, where there is a corresponding increase or decrease in total compensation. Supplemental amendments may be used to provide for unforeseen work which could not reasonably have been contemplated to assure a satisfactory product within the intent of the original agreement, raise or lower a budgetary ceiling of an indefinite quantity contract, to delete services, or to contract for an additional planned phase scheduled in the original agreement. An example of an additional planned phase is an optional design phase on a Project Development and Environment (PD&E) agreement.

Supplemental amendments are not warranted unless (1) agreement changes are necessary to assure completion of the work as intended by the original scope of services, (2) the original agreement provided for additional services, options, or phases to be negotiated at a later time, or (3) specific services are to be deleted.

Supplemental amendments may not be used to add a new scope of services outside the original intent of the agreement. For CEI contracts, supplemental amendments may be used to add compensation when construction time is extended. However, such compensation should include additional operating margin only when the time extension is significant relative to the total contract time and only when the reason for the increased time was clearly beyond the control of the consultant.

When considering the need for a supplemental amendment, the following questions

should be addressed:

- (A) Why are the services/changes needed?
- (B) How do the services differ from the original agreement and other supplemental amendments?
- (C) How do the services remain within the project limits as originally advertised?
- (D) What are the consequences if the services are not performed?
- (E) When an extension of contract time is required, how will the construction (project) letting date be affected?
- (F) Is the consultant firm or individual qualified to perform the services and/or will subconsultants be required?
- (G) Can the services be performed adequately (time and capability) in-house? If not, why?
- (H) Are these additional services the result of errors/omissions caused by the consultant?

Since supplemental services are acquired in a non-competitive environment, special emphasis must be placed on the justification and negotiation of the fees for such services. The steps involved in acquiring supplemental services, once a need is identified, are as follows:

1.1.1.1 Request for Fee Proposal

The Requesting Unit (Project Manager) or Professional Services Unit (PSU) will request a fee proposal from the consultant for the requested supplemental services. This step is not necessary for amendments that only increase funding limits for task assignment agreements. The PSU should be included on the distribution list for the request for proposal and the consultant's proposal when the proposal is requested by the Project Manager.

1.1.1.2 Proposal Review and Negotiations

Prior to negotiations, the Project Manager will perform an independent assessment of the staff hours and quantities for the proposed supplemental services. For planned supplementals for multi-phase projects and for other major supplementals (including any FHWA oversight projects with fees in excess of \$100,000), this assessment will

include a detailed in-house staff hour estimate. This step is not necessary for amendments that only increase funding limits for task assignment agreements.

Depending upon the District or Office policy, negotiations may be conducted by the Project Manager or jointly by the PSU staff and the Project Manager. The negotiations process will evaluate all cost factors with due consideration given to the original and/or previous supplemental amendment rates. Variations between the Department's and the consultant's estimate of work effort (staff-hours per job classification for each work element) should be reconciled. The negotiated fee will be at a compensation which the Department determines is fair and reasonable considering the scope and complexity of the supplemental services.

Negotiations will be in accordance with the ***Federal Acquisition Regulations, Section 112.061 Florida Statutes, and Rule Chapter 60L-9, FAC***, which address agreement cost principles and procedures.

1.1.1.3 Supplemental Amendment Request

The Project Manager will complete a ***Form 375-030-1A, Request for Supplemental Amendment***. The request will be approved by the management level determined by District or Office policy. The consultant's proposal, along with any of the Requesting Unit's review and negotiation comments, if any, will be attached to the Request for Supplemental Amendment form. In addition, a scope of services providing detailed specifications for the supplemental services and in-house estimate where appropriate will be attached. Neither attachment is necessary for amendments increasing fee limits for task assignment type agreements.

The request must provide justification for the supplemental services and clearly explain the changed condition from the original agreement. Of particular importance is the specific reason(s) why the additional work is not contained in the original agreement and clear indication that circumstances are such that the consultant would not be expected to anticipate the conditions that warrant the change.

Prior to submittal of the request package, the requesting unit will assure that adequate funds are available.

1.1.1.4 Request Review

The PSU will review the request package, the project file, the proposal, and the Requesting Unit's evaluation and proceed to finalize an amendment for the required services. If not involved in earlier negotiations for the supplemental services, the PSU must determine at this point that all rates and prices are fair, competitive, reasonable and in accordance with prevailing law, rule and procedure.

1.1.1.5 Pre-Award Review

Supplemental amendments are subject to the same pre-award review process as original agreements. If the negotiated fee is less than \$250,000 then no pre-award review is required. If the fee is in the \$250,000 - \$1,000,000 range, then the supplemental amendment requires a pre-award review if the original contract had a pre-award review. For supplemental amendments with fees in excess of \$1,000,000, a pre-award review is mandatory. Supplementals which only increase the budgetary ceiling of the original agreement do not require a pre-award review.

1.1.1.6 Preparation and Execution

The PSU will assemble and coordinate execution of the supplemental amendment. A sample supplemental amendment is provided as an attachment to this procedure. Where supplemental services not described in this original agreement are authorized, a scope of services must be attached as Exhibit "A." A method of compensation must be attached as Exhibit "B" unless reference is made in the body of the amendment to the method of compensation of the original agreement. Any new compensation elements will be in accord with those defined in ***Procedure No. 375-030-002, Acquisition of Professional Services***. When there is a commitment for use of DBE or MBE sub consultants in the supplemental services, a ***Form No. 375-030-14, DBE/MBE Utilization Agreement*** will be attached as Exhibit "D". Supplemental amendments are processed for approval and execution in the same fashion as the original agreement as defined in ***Procedure No. 375-030-002, Acquisition of Professional Services***. This includes requirements for legal review and funds approval prior to execution. For funds approval requests for agreements where other non-supplementing amendments have occurred, the funds approval request should identify those amendments.

1.1.1.7 Authorization To Commence Supplemental Work (Notice to Proceed)

If the supplemental amendment requires a ***Notice to Proceed***, the Requesting Unit's Project Manager, Professional Services Administrator, Director or District Secretary, as designated in the amendment, will provide the consultant a letter of authorization providing the date on which the work is authorized to commence and end, agreement number, project numbers, date of agreement execution, and any other necessary details.

On FHWA oversight projects, authorization must not be delivered to the consultant until the Department receives federal approval of the supplemental amendment.

Copies of this authorization must be provided to the District Professional or Contractual

Services Administrator or the Contractual Services Office, and the Office of the Comptroller. If the supplemental amendment does not refer to a **Notice to Proceed** document, then the consultant is given notice to proceed by the executed supplemental amendment itself.

The consultant must not be given authorization to commence work or be allowed to perform any work beyond the scope of the existing agreement without a properly executed supplemental amendment, or a properly executed advance authorization amendment allowing work in advance of a supplemental amendment.

1.1.2 Advance Authorization Amendments

An advance authorization amendment is a short term amendment used to authorize a consultant to proceed prior to execution of an amendment supplementing the fee of the agreement.

An advance authorization amendment remains in effect until the date of execution of the supplemental amendment or 90 days, or other specified period, from the date of the consultant's acceptance of this amendment, whichever occurs first. This type of amendment is for unusual circumstances and will only be used when the production work must continue and there is insufficient time to execute a supplemental amendment. A supplemental amendment must be executed prior to the termination date of the advance authorization amendment and include all work covered in the amendment.

If the Department authorizes additional work prior to execution of a supplemental amendment, the consultant firm or individual will be instructed in the amendment to maintain separate accountability (both staff-hours and costs) for the additional work. The separate accountability for the additional work will provide a basis from which the Department Negotiator and/or Auditor can determine the reasonableness/allowability of the proposed fee for the additional work, especially if negotiations, preparation and execution of the supplemental amendment are delayed or terminated.

As with supplemental amendments, an advance authorization amendment requires legal review and funds approval prior to execution. In addition, a page one of a **Contract Status Change Form, No. 350-020-06**, will be submitted as with supplemental amendments. A sample advance authorization amendment is provided as an attachment to this procedure. The same amendment number will be used for both the advance authorization amendment and the final supplemental amendment.

1.1.3 Time Extension Amendments

Time extensions should be considered when there are delays in the project schedule

and the end of services date will be passed before completion of services. If the consultant firm or individual caused the delay, a time extension may not be warranted, but this must be balanced with the consequence of an expired agreement. A sample time extension amendment is provided as an attachment to this procedure.

1.1.4 Assignment Agreement Amendments

When assignment of an existing agreement to another qualified consultant is necessary and meets the Department's approval, this may be accomplished by an agreement among the two consultants and the Department. This is considered an amendment to the agreement since the consultant is changed. Where practical, **Form No. 375-040-05, Agreement of Assignment**, will be used for this type of amendment. This type of amendment should only be used in limited circumstances, such as corporate dissolutions, mergers, and splits, and may not be used to circumvent competitive contracting requirements.

1.1.5 Other Amendments

Other amendments may include minor scope of services changes, minor agreement term changes, name or address changes, project identification changes, changes in rates, etc.

1.2 Processing of Amendments

For all amendments, three copies will be executed by the appropriate Department management personnel and authorized consultant personnel. Copies will be distributed as required for the original agreement as defined in **Procedure No. 375-030-002, Acquisition of Professional Services**.

All amendments will be retained with the official agreement files. The Disbursement Operations Office or District Financial Services Office will receive, at a minimum, an original copy of all amendments for invoice processing. A copy will be provided the State Comptroller along with a **Contract Status Change Form, No. 350-020-06**, if applicable.

1.3 Special Requirements for Federally-Funded Projects

Supplemental amendments to FHWA-aid projects are subject to the same basic requirements as those imposed on the initial agreement. Handling is determined according to the FHWA oversight classification, as defined in Department **Procedure 375-030-002, Acquisition of Professional Services**. Processing of FHWA approval will be as follows:

- (1) For supplemental amendments on FHWA oversight projects, the District will submit the Scope of Services and a cost estimate to the FHWA Area Engineer for review and approval as soon as available. For this purpose, the cost estimate will be completed using a staff hour estimate prepared by the Project Manager. FHWA's policy is to approve or comment within ten calendar days of receipt. The District will document the date and name of the FHWA Area Engineer providing verbal approval and request follow up confirmation by E-Mail.
- (2) For non-FHWA Oversight projects it is not necessary to submit the proposed scope of services.
- (3) Prior to execution of the supplemental amendment, the FHWA's funding authorization of the work will be requested through the District's Federal Aid Coordinator.
- (4) For all FHWA oversight projects, the District will provide a copy of the supplemental amendment to the FHWA upon execution. The executed supplemental amendment will reflect the date and name of the FHWA Area Engineer providing verbal or written approval in a margin notation.
- (5) The Consultant may be authorized to proceed immediately after execution of the supplemental amendment for non-FHWA Oversight projects. For FHWA oversight projects, the Consultant may be authorized to proceed immediately after execution if FHWA verbal or written approval has been received and documented on the amendment.
- (6) When an advance authorization amendment is issued prior to issuance of a supplemental amendment, the Consultant may be authorized to proceed with performance of services if FHWA verbal or written approval has been received and documented on the advance authorization amendment.

For projects with funding from other federal agencies, requirements may vary and should be verified prior to development of a supplemental amendment.

2. TASK WORK ORDERS

Task work orders are documents used to establish the scope, time constraints, fee and method of compensation for assignments in task assignment agreements. Task work orders will be prepared by the Project Manager or by the PSU in consultation with the Project Manager. The steps involved in preparing task work orders are as follows:

2.1 Request for Fee Proposal

The consultant will be provided a copy of the scope of services for the task and requested to provide a fee proposal. Prior to negotiations, the Project Manager will perform an independent assessment of the staff hours and quantities for the proposed services. As with supplemental amendments, this is an important step since hours and quantities are not established in the master agreement for this type of agreement. Negotiations will be conducted to resolve any differences and to insure that the fee is fair and reasonable considering the scope and complexity of the services. This includes compensation for any direct expenses which must be in accordance with the **Federal Acquisition Regulations, Section 112.061, Florida Statutes, and Rule Chapter 60L-9, F.A.C.** The Project Manager will provide a certification that an independent assessment of the staff hours and quantities for the proposed services has been performed and found to be fair, competitive, and reasonable, except where the fees for the task are specified in the original agreement. The certification will be provided with a copy of the executed task work order to the PSU.

2.2 Preparation and Execution

As with amendments, task work orders must be prepared as two party agreements. However, unlike amendments, the project manager may be delegated authority in the original agreement to execute the task work orders on behalf of the Department for this type of agreement. Therefore, a task work order may be formatted more informally in a letter form. However, it must be executed by authorized representatives of both the Department and Consultant.

At a minimum, the task work order will include a scope of services, a date for completion of services, fee amount, method of compensation, and an execution date for the task work order. The compensation elements will be in accord with those defined in **Procedure No. 375-030-002, Acquisition of Professional Services.** Added or changed rates for the prime consultant or subconsultants may not be used in task work orders without amendments to the master agreement. Subconsultants not listed in the master agreement may be added in a task work order. However, the rates for such subconsultants will be approved by the PSU prior to execution of such a task work order. A sample task work order is provided as an attachment to this procedure.

After execution by both parties, copies of the task work order will be distributed as required for original agreements as defined in **Procedure No. 375-030-002, Acquisition of Professional Services.**

3. TRAINING

No mandatory training is required by this procedure. Training in the use of amendments

and task work orders will be included in periodic Contractual Services and Project Management Meetings.

4. FORMS

The following forms are available in the Department's Forms Library.

Form 350-020-01 - Encumbrance Input Form
For electronic transmission, access ENCFORM, for hard copy access by Form Number. See Procedure 350-020-200, Contract Funds Approval, for processing this form.

Form 350-020-06 - Contract Status Change Form

Form 375-030-1A - Request for Supplemental Amendment

Form 375-040-05 - Agreement of Assignment

The following documents are provided as samples.

The samples provided in this procedure may be tailored or changed to fit specific circumstances, providing only a starting point for users. Samples are not official forms of the Department.

Supplemental Amendment
Advance Authorization Amendment
Time Extension Amendment
Task Work Order

Sample Supplemental Amendment

**State of Florida Department of Transportation
AMENDMENT
TO
STANDARD PROFESSIONAL SERVICES AGREEMENT**

Amendment No.: _____ Execution Date:

Original Contract No.: _____ Original Execution Date:
Consultant Name
Agreement Description:

Purpose of Amendment: Supplement to scope of services and fee & time extension

The terms of the original agreement, referenced above, are hereby amended as follows:

The Consultant will perform additional services as described in attached Exhibit A and the Consultant will receive for said services the increased limiting amount of \$ _____, which will make a total maximum compensation to the Consultant of \$ _____ for all services required under the original agreement as supplemented.

Compensation is to be paid in accordance with Exhibit B of the original agreement.

Consultant will complete the services described in Exhibit A by _____.

Except as hereby modified, amended, or changed, all of the terms and conditions of said original agreement and any amendments thereto will remain in full force and effect.

The following attachments are hereby incorporated into this Amendment:

Exhibit A, Scope of Services, Pages A1 - A
Exhibit D, DBE Utilization Agreement, Page D1

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

Name of Consultant

BY: _____
Authorized Signature

Name: _____

Title: _____

BY: _____
Authorized Signature

Name: _____

Title: _____

CONTRACTUAL SERVICES REVIEW: _____

LEGAL REVIEW: _____

Sample Advance Authorization Amendment

State of Florida Department of Transportation

**AMENDMENT
TO
STANDARD PROFESSIONAL SERVICES AGREEMENT**

Amendment No.: _____ Execution Date:

Original Contract No.: _____ Original Execution Date:

Consultant Name

Agreement Description:

Purpose of Amendment: Authorization to proceed with supplemental services in advance of supplemental amendment

The terms of the original agreement, referenced above, are hereby amended as follows:

The Consultant is hereby authorized to begin supplemental work to the above referenced original agreement as described in (your proposal dated (date) or (the attached Exhibit "A", Scope of Services). This supplemental work will be performed in advance of a formal supplemental amendment, effective the date of Consultant execution of this amendment subject to the conditions stipulated herein and in the original agreement and any supplements and amendments thereto.

The cost of the services performed under this amendment will be restricted to an amount not to exceed \$ _____. Costs incurred subsequent to execution of this amendment by the Consultant and defined as reimbursable in the formal supplemental amendment to be subsequently executed will be eligible for reimbursement. These costs will be included in the total compensation established by the formal supplemental amendment.

Payment for work authorized by this amendment will be in accordance with the terms of the supplemental amendment to be subsequently executed. No payment will be made under this amendment unless the parties hereto are unable to reach an agreement as to the terms of the supplement and formally terminate negotiations.

In the event the parties hereto are unable to agree upon the terms of the pending supplemental amendment, the Department will notify the Consultant as to the effective date of termination of work authorized by this amendment or specify the stage of work at which work is to be terminated. Payment will be on the basis of substantiated costs, not to exceed the amount authorized herein, and subject to the original agreement conditions, except that no operating margin shall be paid for services rendered and the combined allowance for administrative overhead and fringe benefits, expressed as a percentage of direct salary and wages, shall be subject to the Department's current overhead cap of 162%.

This amendment will remain in full force and effect until the date of execution of the pending supplemental amendment, or ninety days from the date of the Consultant's execution of this amendment, whichever occurs first.

The Consultant will maintain separate accountability of staff hours and expenses for the work authorized by this amendment, as well as the pending supplemental amendment.

Upon execution of the pending supplemental amendment, it is expressly understood and agreed that, should any conflicts arise between this amendment and the subsequent supplemental amendment, then the terms of the supplemental amendment will govern.

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

Name of Consultant

BY: _____
Authorized Signature
Name: _____
Title: _____

BY: _____
Authorized Signature
Name: _____
Title: _____

CONTRACTUAL SERVICES REVIEW:

LEGAL REVIEW:

Sample Time Extension Amendment

State of Florida Department of Transportation

**AMENDMENT
TO
STANDARD PROFESSIONAL SERVICES AGREEMENT**

Amendment No.: _____ Execution Date:

Original Contract No.: _____ Original Execution Date:

Consultant Name

Agreement Description:

Purpose of Amendment: Extension to services term

The terms of the original agreement, referenced above, are hereby amended as follows:

Section 2 B. of the Agreement is amended to extend the period within which the Consultant will complete scheduled project services to _____ months.

Except as hereby modified, amended, or changed, all of the terms and conditions of said original agreement and any amendments thereto will remain in full force and effect.

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

Name of Consultant

BY: _____
Authorized Signature

BY: _____
Authorized Signature

Name: _____

Name:

Title: _____

Title:

CONTRACTUAL SERVICES REVIEW: _____

Sample Task Work Order

RE: Task Work Order No. _____ FM No.
Contract No.
Agreement Description:

In accordance with the above referenced agreement, you are authorized, upon the date of your signature on this Task Work Order, to perform the tasks detailed in the attached Exhibit "A".

For the required services, compensation shall be the total maximum limiting amount of \$_____ which will consist of the following:

Limiting Amount for Salary Related Costs	\$
Lump Sum Amount for Operating Margin	\$
Lump Sum for Direct Expenses	\$
Total Maximum Limiting Amount	\$

Rates for salary related costs and operating margin, and progress payments for services will be in accordance with Exhibit "B", Method of Compensation, of the original agreement.

All services required by this Task Work Order will be completed on or before _____.

Status of Contractually Authorized Funding

Original Agreement	\$
Previous Task Work Orders	(\$_____)
This Task Work Order	(\$_____)
Remaining Contract Resources	\$

Please acknowledge receipt of and agreement with this Task Work Order by signing and dating all copies; keeping one copy; and returning three signed copies.

Sincerely,

Department Signature(s)

Contractual Services Reviewl: _____ (Optional)

Accepted: _____ Consultant Name

By:
Name:
Title:
Date:

Attachment: Exhibit "A"