

R2019 0930

**SECOND AMENDMENT TO THE
ANNUAL TRAFFIC SIGNAL DESIGN**

CONTRACT NO. R2017-0985

DATED AUGUST 15, 2017, BY AND BETWEEN

SIMMONS & WHITE, INC.,

AND PALM BEACH COUNTY

JUL 0 2 2019

This SECOND AMENDMENT to the Annual Traffic Signal Design Annual Engineering Services Contract dated August 15, 2017, (R2017-0985), hereinafter "CONTRACT," by and between Simmons & White, Inc., hereinafter "ANNUAL CONSULTANT" and the Board of County Commissioners of Palm Beach County, a political subdivision of the State of Florida, hereinafter, "COUNTY," (individually "Party" and collectively "Parties").

W I T N E S S E T H

WHEREAS, on August 15, 2017, the ANNUAL CONSULTANT and COUNTY entered into a twelve month CONTRACT; and

WHEREAS, by the First Amendment (R2018-0972), the ANNUAL CONSULTANT and the COUNTY mutually agreed to amend the CONTRACT to extend the expiration date of the CONTRACT from August 14, 2018 to August 14, 2019 and to add Section 22 – Additional Reporting; and

WHEREAS, the CONTRACT may be extended, at the COUNTY's option for a defined period of time, not to exceed thirty-six months total contract time, upon approval of the Board of County Commissioners; and

WHEREAS, by this Second Amendment, the ANNUAL CONSULTANT and the COUNTY mutually agree to amend the CONTRACT to extend the expiration date of the CONTRACT, as provided herein; and

WHEREAS, this is the second of two allowable one (1) year term CONTRACT extensions per section 4.1.; and

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements herein contained, the Parties agree as follows:

1. The above recitations are true and correct and incorporated herein.
2. The CONTRACT, between the ANNUAL CONSULTANT and the COUNTY is hereby amended to extend the expiration date of the CONTRACT from August 14, 2019 to August 14, 2020.
3. Section 7.1 – **Termination** is hereby deleted in its entirety and replaced with the following:

7.1 Termination

This CONTRACT may be terminated by the ANNUAL CONSULTANT upon sixty (60) days prior written notice to the COUNTY in the event of substantial failure by the COUNTY to perform in accordance with the terms of this CONTRACT through no fault of the ANNUAL CONSULTANT. It may also be terminated, in whole or in part, by the COUNTY, with cause upon five (5) business days written notice to the ANNUAL CONSULTANT or without cause upon ten (10) business days written notice to the ANNUAL CONSULTANT. Unless the ANNUAL CONSULTANT is in breach of this CONTRACT, the ANNUAL CONSULTANT shall be paid for services rendered to the COUNTY's satisfaction through the date of termination. After receipt of a Termination Notice, except as otherwise directed by the COUNTY, in writing, the ANNUAL 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.

4. Section **7.8 Subcontracting** is hereby deleted in its entirety and replaced with the following:

7.8 – Subcontracting

7.8.1 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 ANNUAL CONSULTANT is encouraged to seek additional small business enterprises for participation in subcontracting opportunities. If the ANNUAL CONSULTANT uses any subcontractors on this project the following provisions of this Article shall apply:

7.8.1.1 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 ANNUAL CONSULTANT shall promptly do so, subject to acceptance of the new subcontractor by the COUNTY.

7.8.1.2 EBO Ordinance

7.8.1.2.1 It is the policy of the Board of County Commissioners of Palm Beach County, Florida (the Board) that all segments of its business population including, but not limited to, small, local, minority and women owned businesses, have an equitable opportunity to participate in the COUNTY's procurement process, prime contract and subcontract opportunities. In pursuance of that policy, the Board adopted an Equal Business Opportunity (EBO) Ordinance which is codified in Sections 2-80.20 through 2-80.30 (as may be amended) of the Palm Beach County Code. The EBO Ordinance sets forth the COUNTY's requirements for the EBO program, and is incorporated herein and made part of this CONTRACT. Non-compliance with the EBO Ordinance must be corrected within fifteen (15) days of notice of non-compliance. Failure to comply with the EBO Ordinance may result in any of the following penalties:

- Suspension of CONTRACT;

- Withholding of funds;
- Termination of the CONTRACT based upon a material breach of CONTRACT pertaining to the EBO Program compliance;
- Suspension or debarment of ANNUAL CONSULTANT from eligibility for providing goods or services to the COUNTY for a period not to exceed three (3) years; and
- Liquidated damages equal to the difference in dollar value of S/M/WBE participation as committed to in the CONTRACT, and the dollar value of S/M/WBE participation achieved.

7.8.1.2.2 The ANNUAL CONSULTANT must adhere to the following Affirmative Procurement Initiatives (APIs):

SBE Subcontracting Goal for Professional Services

A 20% SBE subcontracting participation goal is established for this CONTRACT.

A minimum mandatory goal of 20% of the total estimated dollar value of the CONTRACT shall be subcontracted to SBEs, however the EBO Office shall reduce or waive this goal when there is inadequate availability of SBE prime and / or subconsultant firms.

The ANNUAL CONSULTANT must also adhere to the Request for Proposals for the Annual Traffic Signal Design Annual Services advertised on January 15, 2017 and January 22, 2017, and the specifications set forth in ANNUAL CONSULTANT's response, which are both incorporated herein by reference. Failure to comply with this Section of this CONTRACT is a material breach of this CONTRACT.

i. ANNUAL CONSULTANT shall report all subcontractor payment information on EBO forms 3a and 4, or as otherwise required by EBO, and, when the EBO portal is available, input subcontractor payment information directly into the COUNTY's contract management system.

ANNUAL CONSULTANT shall pay subcontractors undisputed amounts within ten (10) days after COUNTY pays the CONSULTANT. In the event of a disputed invoice, the ANNUAL CONSULTANT shall send the subcontractor(s) and COUNTY a written notice of the dispute within five (5) days after receipt of the subject invoice.

ii. ANNUAL CONSULTANT must notify the Office of EBO of changes in S/M/WBE utilization and get prior approval for any substitutions.

7.8.1.2.3 The Office of EBO has the right to review ANNUAL CONSULTANT's records and interview subcontractors.

7.8.2 The ANNUAL CONSULTANT agrees to pay its subconsultants in compliance with the Florida Prompt Payment Act. In the event ANNUAL CONSULTANT fails to comply with payments(s) to its subconsultants in accordance with the Florida Prompt Payment Act, ANNUAL CONSULTANT shall be subject to any and all penalties and sanctions available under the terms of the EBO Program, its CONTRACT with the COUNTY, or any other applicable law.

5. **Section 7.13 Access and Audits** is hereby deleted in its entirety and replaced with the following:

7.13 Access and Audits

The ANNUAL CONSULTANT shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least four (4) 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 ANNUAL CONSULTANT'S place of business.

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed COUNTY contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the ANNUAL 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 interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

6. **Section 9 – Criminal History Records Check** is hereby deleted in its entirety and replaced with the following:

Section 9 – Criminal History Records Check

The ANNUAL CONSULTANT, ANNUAL CONSULTANT'S employees, subcontractors of ANNUAL CONSULTANT and employees of subcontractors shall comply with Palm Beach County Code, Section 2-371 - 2-377, the Palm Beach County Criminal History Records Check Ordinance (Ordinance), for unescorted access to critical facilities (Critical Facilities) or criminal justice information facilities (CJI Facilities) as identified in Resolution R-2003-1274, as amended. The ANNUAL CONSULTANT is solely responsible for the financial, schedule, and/or staffing implications of this Ordinance. Further, the ANNUAL CONSULTANT acknowledges that its CONTRACT price includes any and all direct or indirect costs associated with compliance with this Ordinance, except for the applicable FDLE/FBI fees that shall be paid by the COUNTY.

This CONTRACT may include sites and/or buildings which have been designated as either critical facilities or criminal justice information facilities pursuant to the Ordinance and Resolution R2003-1274, as amended. COUNTY staff representing the COUNTY department will contact the ANNUAL CONSULTANT(S) and provide specific instructions for meeting the requirements of this Ordinance. Individuals passing the background check will be issued a badge. The ANNUAL CONSULTANT shall make every effort to collect the badges of its employees and its subcontractors' employees upon conclusion of the CONTRACT and return them to the COUNTY. If the ANNUAL CONSULTANT or its subcontractor(s) terminates an employee who has been issued a badge, the ANNUAL CONSULTANT must notify the

COUNTY within two (2) hours. At the time of termination, the ANNUAL CONSULTANT shall retrieve the badge and shall return it to the COUNTY in a timely manner.

The COUNTY reserves the right to suspend the ANNUAL CONSULTANT if the ANNUAL CONSULTANT 1) does not comply with the requirements of County Code Section 2-371 - 2-377, as amended; 2) does not contact the COUNTY regarding a terminated ANNUAL CONSULTANT employee or subcontractor employee within the stated time; or 3) fails to make a good faith effort in attempting to comply with the badge retrieval policy.

7. **Section 12 – NonDiscrimination** is hereby deleted in its entirety and replaced with the following:

Section 12 – Non-discrimination

The COUNTY is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, the ANNUAL CONSULTANT warrants and represents that throughout the term of the CONTRACT, including any renewals thereof, if applicable, 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 or expression, or genetic information. Failure to meet this requirement shall be considered default of the CONTRACT.

As a condition of entering into this CONTRACT, the ANNUAL CONSULTANT represents and warrants that it will comply with the COUNTY'S Commercial Nondiscrimination Policy as described in Resolution 2017-1770, as amended. As part of such compliance, the ANNUAL CONSULTANT shall not discriminate on the basis of race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity or expression, disability, or genetic information in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the ANNUAL CONSULTANT retaliate against any person for reporting instances of such discrimination. The ANNUAL CONSULTANT shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the COUNTY's relevant marketplace in Palm Beach County. The ANNUAL CONSULTANT understands and agrees that a material violation of this clause shall be considered a material breach of this CONTRACT and may result in termination of this CONTRACT, disqualification or debarment of the company from participating in COUNTY CONTRACTS, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

ANNUAL CONSULTANT shall include this language in its subcontracts.

8. **Section 20 – Scrutinized Companies** is hereby deleted in its entirety and replaced with the following:

Section 20 – Scrutinized Companies

As provided in F.S. 287.135, by entering into this CONTRACT or performing any work in furtherance hereof, the ANNUAL CONSULTANT certifies that it, its affiliates, suppliers,

subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies that boycott Israel List, or is engaged in a boycott of Israel, pursuant to F.S. 215.4725.

When CONTRACT value is greater than \$1 million: As provided in F.S. 287.135, by entering into this CONTRACT or performing any work in furtherance hereof, the ANNUAL CONSULTANT certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to F.S. 215.473 or is engaged in business operations in Cuba or Syria.

If the COUNTY determines, using credible information available to the public, that a false certification has been submitted by ANNUAL CONSULTANT, this CONTRACT may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this CONTRACT shall be imposed, pursuant to F.S. 287.135. Said certification must also be submitted at the time of CONTRACT renewal, if applicable.

9. Section 23 – VSS Registration Required is hereby added to the CONTRACT.

Section 23 – VSS Registration Required

In order to do business with Palm Beach County, ANNUAL CONSULTANTS are required to create a Vendor Registration Account OR activate an existing Vendor Registration Account through the Purchasing Department's Vendor Self Service (VSS) system, which can be accessed at <https://pbcvssp.co.palm-beach.fl.us/webapp/vssp/AltSelfService>. If ANNUAL CONSULTANT intends to use sub-consultants, ANNUAL CONSULTANT must also ensure that all sub-consultants are registered as consultants in VSS. All subcontractor agreements must include a contractual provision requiring that the sub-consultant register in VSS. COUNTY will not finalize a CONTRACT award until the COUNTY has verified that the ANNUAL CONSULTANT and all of its sub-consultants are registered in VSS.

10. It is the intent of the Parties hereto that this Second Amendment shall not become binding until the date executed by the COUNTY.

11. Except as hereby amended, changed or modified, all other terms, conditions and obligations of the CONTRACT, as amended on July 10, 2018 (R2018-0972), shall remain in full force and effect.

THIS SPACE LEFT BLANK INTENTIONALLY

IN WITNESS WHEREOF, the Parties have caused this Second Amendment to the CONTRACT (R2017-0985) to be executed and sealed this _____ day of JUL 02 2019, 2019.

OWNER: **R2019 0930**
Palm Beach County, Florida, a
Political Subdivision of the
State of Florida
BOARD OF COUNTY COMMISSIONERS

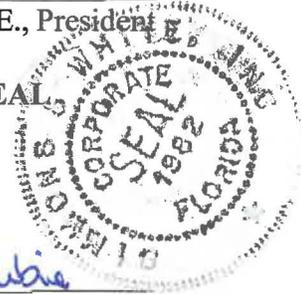
ANNUAL CONSULTANT:
Simmons & White, Inc.

BY: *Mack Bernard*
Mack Bernard, Mayor

BY: *[Signature]*
Robert F. Rennebaum, P.E., President

SEAL

CORPORATE SEAL



ATTEST:
Sharon R. Bock, Clerk & Comptroller
Circuit Court

ATTEST WITNESS:

BY: *Sarah Abercrombie*
(Print Name)

BY: *Tracey Powell*
(Print Name)
Tracey Powell
(Signature)
Deputy Clerk

[Signature]
(Signature)

BY: *Daniel R Brunet*
(Print Name)

[Signature]
(Signature)

APPROVED AS TO TERMS
AND CONDITIONS:

BY: *[Signature]*
Omelio A. Fernandez, P.E.
Director of Roadway Production

APPROVED AS TO FORM &
LEGAL SUFFICIENCY:

BY: *[Signature]*
Yelizaveta B. Herman,
Assistant County Attorney



February 12, 2019

Palm Beach County Engineering
Roadway Production Division
2300 N. Jog Road
Floor 3W
West Palm Beach, Florida 33411

Attention: Ms. Holly Knight

Reference: Traffic Signal Annual Continuing Services Contract

Dear Ms. Knight:

The purpose of this letter is state that Simmons & White, Inc. does not own any company/corporate vehicles. If you have any questions or require further clarification, please contact me directly.

Sincerely,

SIMMONS & WHITE, INC.

Robert F. Rennebaum, P.E.
President

RFR/sa x:/contracts/pbctrffic/2019/renewal/vehicleverification

2581 Metrocentre Boulevard West Suite 3 West Palm Beach Florida 33407
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Certificate of Authorization Number 3458

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