

**FIRST AMENDMENT TO
AGREEMENT FOR
CONSULTING SERVICES FOR
GENERAL ENGINEERING SERVICES FOR COUNTY AIRPORT
BETWEEN
COUNTY OF CUYAHOGA
AND
R.W. ARMSTRONG & ASSOC., INC.**

This First Amendment (the "Amendment") to the Agreement for consultant services for general engineering services for county airport is entered into by and between the County of Cuyahoga (the "COUNTY") and CHA Consulting, Inc., a foreign corporation with its principal offices located at III Winners Circle, Albany, New York 12205 ("CONSULTANT," and together with the COUNTY collectively, the "Parties"), successor in interest to R.W. Armstrong & Associates, Inc. ("RWA"), effective July 29, 2013 ("Effective Date").

WHEREAS, the COUNTY and RWA entered into an Agreement (the "Original Agreement") (the Original Agreement, as amended by this Amendment is herein referred to as the "Agreement") effective as of January 22, 2013, and ending January 21, 2018 for consulting services for general engineering services for the county airport (the "Services"); and

WHEREAS, effective as of July 29, 2013, RWA integrated its operations into CONSULTANT and CONSULTANT has become the successor entity to RWA; and

WHEREAS, pursuant to a certain Assignment and Assumption Agreement dated July 29, 2013, RWA assigned all of its rights and obligations under the Original Agreement to CONSULTANT; and

WHEREAS, CONSULTANT has requested that the COUNTY execute a certain Consent to Assignment of Contracts (the "Consent"); and

WHEREAS, the COUNTY has agreed to execute the Consent, subject to CONSULTANT'S execution of this Amendment.

NOW, THEREFORE, for valuable consideration the validity and sufficiency of which is hereby acknowledged, the COUNTY and CONSULTANT agree as follows:

1. Article Two, Section 4 is hereby revised by deleting it in its entirety and replaced with the following:

"Section 4 – Insurance:

A.) CONSULTANT shall provide for commercial general liability insurance of at least ONE MILLION DOLLARS (\$1,000,000.00) per each

occurrence, and no less than TWO MILLION DOLLARS (\$2,000,000.00) in the aggregate, against claims of bodily injury and/or property damage relating to or arising under the Agreement, and shall name the COUNTY as an additional insured, upon execution of the Agreement. CONSULTANT shall also maintain business automobile liability and employer's liability coverages of at least ONE MILLION DOLLARS (\$1,000,000.00) each. CONSULTANT shall comply with Ohio workers' compensation law by maintaining status as a qualified self-insurer. CONSULTANT shall also provide for professional liability insurance for the practitioners assigned by it for at least FIVE MILLION DOLLARS (\$5,000,000.00) per claim, and no less than FIVE MILLION DOLLARS (\$5,000,000.00) in the aggregate.

B.) CONSULTANT agrees to furnish certificates of such insurance from time to time as requested by the COUNTY. Acceptance of a non-conforming certificate of insurance by the COUNTY shall not constitute a waiver of any rights of the parties under the Agreement. If no proof of insurance is provided, then the COUNTY may terminate the contract immediately. All such insurance policies shall include:

- (i) Thirty (30) days prior written notice of cancellation or material change; and
- (ii) A waiver of subrogation wherein the insurer(s) waives all rights of recovery against the COUNTY.

All insurance required under the Agreement shall be provided by insurance carrier(s) licensed to transact business and write insurance in the state(s) where operations are performed and shall carry a minimum A.M. Best's rating of A VII or above. These insurance provisions shall not affect or limit the liability of CONSULTANT stated elsewhere in the Agreement or as provided by law. CONSULTANT shall require any and all of its subcontractors to procure, maintain and pay premiums for the insurance coverages, other than professional liability, and limits of liability outlined above with respect to products, services, work and/or operations performed in connection with the Agreement. The COUNTY reserves the right to require insurance coverages in various amounts or to modify or waive insurance requirements on a case-by-case basis whenever it is determined to be in the best interest of the COUNTY."

2. The following sections shall be inserted at Article Two, Section 5 (I) –
(O):

- "I.) All of the COUNTY's obligations under the Agreement are contingent upon the County Council's appropriating the funds on an annual basis necessary for the continuation of the Agreement in

any contract year. In the event the funds necessary for the continuation of the Agreement are not appropriated or approved, the COUNTY will notify CONSULTANT of such occurrence in writing. The Agreement shall thereafter terminate and be rendered null and void on the last day of the last fiscal period for which appropriations were made. Such termination is made pursuant to and in accordance with the terms of the Agreement and shall not be considered to be a breach or default on the part of the COUNTY, and shall not result in the COUNTY having liability to CONSULTANT or any third party for any penalty, liability or any other expense.

- J.) CONSULTANT hereby indemnifies, defends and holds harmless the COUNTY and its respective officers, officials, directors, board members, employees, and agents, from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses (including attorney's fees and other costs of defense), of any nature, kind or description, that result from (a) the negligent acts or omissions of CONSULTANT, including all of its officers, owners, principals, subcontractors, employees, and agents, or (b) breach or default by CONSULTANT under any terms or provisions of the Agreement. CONSULTANT agrees that no provision of the Agreement or any other contract or agreement between CONSULTANT and the COUNTY may be interpreted to obligate the COUNTY to indemnify or defend CONSULTANT or any other party.
- K.) The Agreement shall be governed by, and shall be construed and enforced in accordance with, the laws of the State of Ohio. The parties agree that the state and federal courts sitting in Ohio will have exclusive jurisdiction over any claim arising out of the Agreement, and each party consents to the exclusive jurisdiction of such courts. CONSULTANT hereby agrees not to challenge this Governing Law and Jurisdiction provision, and further agrees not to attempt to remove any legal action outside of Cuyahoga County for any reason.
- L.) CONSULTANT shall obtain all Federal, State, County, and Local licenses, permits, and clearances necessary to fulfill its obligations under the Agreement.
- M.) CONSULTANT acknowledges that as an Ohio political subdivision, the COUNTY is prohibited by law from agreeing to indemnify any person or entity, and agrees that no provision of the Agreement or any other contract or agreement between

CONSULTANT and the COUNTY may be interpreted to obligate the COUNTY to indemnify or defend CONSULTANT or any other party.

- N.) The COUNTY shall not assume responsibility for the payment of any personal property taxes for any materials not owned by the COUNTY, nor shall the COUNTY pay any insurance premiums for any coverage of any property not owned by the COUNTY. No conditions shall alter this statement. The COUNTY is a tax-exempt No. 29 political subdivision of the State of Ohio [REDACTED]. Necessary tax exemption blanks will be furnished to CONSULTANT upon request.
- O.) All County contracts, including the Agreement, are subject to all applicable County ordinances, including, but not limited to, the Cuyahoga County Ethics Ordinance, Cuyahoga County Inspector General Ordinance, and Cuyahoga County Contracting and Purchasing Procedures Ordinance. Copies of all County ordinances are available on the County Council's web site at <http://council.cuyahogacounty.us/>.

CONSULTANT agrees to remain in compliance with all County Ethics requirements including, as applicable, Vendor Ethics Registration, Vendor Ethics Training, and Registration of all Lobbyists retained by CONSULTANT. CONSULTANT shall consult the Cuyahoga County Agency of Inspector General to ensure it is in full compliance with all County Ethics requirements. The Inspector General's website may be found at <http://inspectorgeneral.cuyahogacounty.us>.

Notwithstanding any provision herein to the contrary, in the performance of any of CONSULTANT's obligations herein, CONSULTANT shall not use or subcontract any individual or entity (including any entity that is owned or controlled by any individual) which is the subject of a debarment or suspension hearing or has otherwise been debarred or suspended by the COUNTY or any other governmental entity from performing work or services for the COUNTY. CONSULTANT shall provide to the COUNTY a list of all proposed subcontractors, individuals and entities intended to perform any of the services prior to any engagement or entering into any contract or purchase order with respect to any services to be performed under the Agreement."

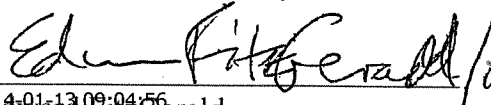
3. Except as set forth in this Amendment, the Agreement is unaffected and shall continue in full force and effect in accordance with its terms. If there is conflict between this Amendment and the Agreement, the terms of this Amendment will prevail.


IN WITNESS WHEREOF, the parties have hereunto set their hands by their duly authorized respective officer(s), and affixed the seals of said parties:

COUNTY OF CUYAHOGA

Edward FitzGerald, County Executive

CHA CONSULTING, INC.

By: Ed FitzGerald 
2014-01-13 09:04:56
Edward FitzGerald
County Executive

By: Michael A. Platt 
Name: Michael A. Platt
Title: General Counsel and EVP

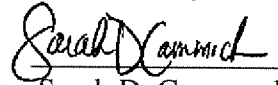
The legal form and correctness
of the Agreement is hereby approved:

Law Department

County of Cuyahoga, Ohio

Majeed G. Makhoul, Director of Law

SARAH D. GAMMOK, ASSISTANT LAW DIRECTOR

By: Sarah D. Gammock 
Name: Sarah D. Gammock
2014-01-09 17:07:53
Assistant Law Director

Date: _____