

CONTINUING CIVIL ENGINEERING DESIGN CONSULTANT SERVICES AGREEMENT

This is an Agreement entered into this 12th day of July 2018, by and between **BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS**, a political subdivision of the State of Florida, hereinafter referred to as COUNTY and **Morgan & Associates Consulting Engineers, Inc.**, a corporation under the laws of the State of Florida, hereinafter referred to as CONSULTANT, whose address is 504 North Harbor City Boulevard, Melbourne, Florida 32935.

WHEREAS, the County has a need for the services of a consultant to provide civil engineering design services under a continuing contract per Florida Statute 287.055;

WHEREAS, the County issued a Request for Qualifications #RFQ-4-18-09 for such services and has selected the CONSULTANT to provide said services;

WHEREAS, this is an Agreement for professional services for projects in which the construction costs do not exceed \$2 million, for study activity when the fee for services for each study does not exceed \$200,000, or for work of a specified nature projects, that may be funded or submitted for reimbursement by/through the Federal Emergency Management Agency, as outlined herein.

For and in consideration of the mutual agreement hereinafter contained, the COUNTY hereby retains the CONSULTANT and the CONSULTANT hereby covenants to provide continuing mechanical/electrical/plumbing design services as prescribed herein.

SECTION I - GENERAL IDENTIFICATION OF SERVICES

All continuing civil engineering design services provided by the CONSULTANT for the COUNTY shall be identified in Work Orders. Work Orders shall entail a description of services to be performed, a statement of fees, proposed schedule for compensation, a projected schedule for completion of the work, project team members assigned to supervise/perform services provided under the Work Order, and any other terms or conditions specific to the Work Order to be performed by the CONSULTANT, including terms that may be specific to projects that may be funded or submitted for reimbursement by/through the Federal Emergency Management Agency. A Work Order shall not give rise to any contractual rights until approved by the COUNTY in the form of a written Notice to Proceed signed by an authorized representative of the COUNTY. The written Notice to Proceed and specific Work Order, as approved by the COUNTY, shall together constitute an addendum to this Agreement.

The Federal Emergency Management Agency (FEMA) Clauses and Certifications included herein, or attached hereto, control over any conflicting clauses contained within the separate Agreements, covering the work for each Project, between the COUNTY and the CONSULTANT, when the Work involved will be submitted by/through FEMA for reimbursement to the COUNTY. The FEMA Clauses and Certifications are attached hereto, and incorporated by this reference,

as Attachment "A."

SECTION II - COUNTY OBLIGATIONS

The COUNTY shall furnish to the CONSULTANT, upon request, any data available in the COUNTY'S files pertaining to the work to be performed under this Agreement.

SECTION III - CONTINUING DESIGN CONSULTANT SERVICES

Upon receipt of a Notice to Proceed on a Work Order, CONSULTANT agrees to perform continuing civil engineering design services associated with the requested work in accordance with the negotiated terms of the applicable Work Order, and in accordance with accepted professional standards and practices. The CONSULTANT agrees to correct any errors and omissions and prepare any revisions which may be required because the CONSULTANT'S plans and specifications were found defective, without any increase in price of the applicable Work Order. This remedy shall be cumulative to all other remedies available under law.

In connection with continuing civil engineering design services to be rendered pursuant to this Agreement, the CONSULTANT further agrees to:

- A. Maintain an adequate staff of qualified personnel;
- B. Comply with federal, state and local laws applicable to the work;
- C. Cooperate fully with the COUNTY in the scheduling and coordination of all phases of the work;
- D. Cooperate and coordinate with other COUNTY consultants, as directed by the COUNTY;
- E. Report the status of the work to the COUNTY upon request and hold pertinent data, calculations, field notes, records, sketches and other projects open to the inspection of the COUNTY or its authorized agent at any time;
- F. Submit for COUNTY review design computations, sketches and other data representative of the work's progress at the percentage stages of completion which may be stipulated in the applicable Work Order. **This shall include a Division 16 Estimate of Probable Construction Cost at each design submittal.** Submit for COUNTY approval the final work product upon incorporation of any modifications requested by the COUNTY during any previous reviews. Any COUNTY approval of the CONSULTANT'S plans, design or specifications shall not be deemed to diminish the CONSULTANT'S responsibility;
- G. Confer with the COUNTY during the further development and implementation of improvements for which the CONSULTANT has provided design or other services;
- H. Interpret plans and other documents, correct CONSULTANT errors and omissions and prepare any necessary plan revisions not involving change in the scope of work required, at no additional cost;
- I. Prior to final approval of the work by the COUNTY, as Owner, the CONSULTANT

shall submit any of CONSULTANT'S construction documents to any review committee, third party consultant or any county, city, state or federal agency from which a permit or other approval is required, and revise CONSULTANT'S construction documents as may be required by such permitting or approval agencies. Any approval obtained from the COUNTY or any other agency shall not be deemed to diminish or discharge the CONSULTANT'S responsibility provided for in this Agreement.

Regarding any resulting construction, the CONSULTANT will review all pre-qualification documents, bids and make recommendations regarding award to the lowest responsible bidder. The CONSULTANT shall review and approve the contractor's Schedule of Values.

Prior to commencement of construction, the CONSULTANT shall attend a pre-construction conference. Representatives from the Owner, Contractor and CONSULTANT shall attend to discuss policies and procedures to be followed during the construction period, and answer questions regarding design intent, clarification or interpretation of the construction documents.

The CONSULTANT will review and approve or reject, as appropriate, all Contractor Applications for Payment submitted during the construction of work.

The CONSULTANT will review and approve or reject, as appropriate, all contractor submitted as-built drawings, warranties and operation and maintenance manuals for completeness and conformance with the contract requirements and submit to the Owner indicating their approval.

The CONSULTANT will prepare record drawings and specifications showing significant changes in the work made during construction based on marked-up prints, drawings and other data furnished by the contractor to the CONSULTANT, utilizing AutoCad Release 12 or newer software or compatible approved by the Owner. **One (1) set of reproducible record drawings, in electronic format, is to be submitted to the Owner with Certificate of Final Completion.**

The CONSULTANT will prepare and distribute meeting minutes at all design phase meetings and progress meetings, in a format approved by the Owner. In addition to the regular scheduled construction site visits and progress meetings, this Agreement shall include, at no additional cost to the Owner, the Substantial & Final Completion Inspection(s) and the warranty inspection with the appropriate written reports and certifications.

The CONSULTANT shall respond promptly and completely to all Requests For Information or clarifications regarding the drawings and specifications so as not to cause a delay in the construction schedule.

SECTION IV - TIME OF COMPLETION

The services to be rendered by the CONSULTANT for each section of the work shall commence upon receipt of a written Notice to Proceed from the COUNTY subsequent to the execution of the Agreement, and shall be completed within the time stated in the Work Order.

SECTION V - COMPENSATION

The COUNTY agrees to pay and the CONSULTANT agrees to accept, for services rendered pursuant to this Agreement, fees and other compensation computed in accordance with one or a combination of the methods outlined below, and as specified in an approved Work Order:

- A. **Hourly Rate** - the CONSULTANT shall be compensated at the attached Hourly Rate Schedule (Attachment "B") for each hour of time engaged directly in the work.
- B. **Reimbursable Expenses** - The CONSULTANT shall be compensated for certain work-related expenditures not covered by fees for consulting services, provided such expenditures are previously authorized by the COUNTY in an approved Work Order. Upon receipt of satisfactory back up materials, the CONSULTANT will be compensated for such reimbursable expenses. Such expenses may include:
 - 1. Expenses for document reproduction. These expenses shall be reimbursed on a direct cost basis.
 - 2. Mileage - These expenses shall be reimbursed at the COUNTY's authorized cost (¢) per mile.
- C. At least thirty (30) days prior to each anniversary date of this Agreement either party may request an adjustment to the rates provided for herein to apply in the forthcoming year. Failure of the parties to agree on a new rate shall constitute a basis for issuing a Notice of Termination by the COUNTY. Any proposed change in rates by the CONSULTANT shall be subject to the prior approval of the COUNTY.
- D. In the event CONSULTANT experiences any delay resulting from circumstances beyond its control, or a change in the scope of work which will result in an increase or decrease in a Work Order's price or time, CONSULTANT shall provide immediate notice to the COUNTY for consideration of additional compensation or time. Additional compensation shall be limited to direct costs resulting from the delay or change in work.

SECTION VI - PAYMENT AND PARTIAL PAYMENTS

Subject to the COUNTY'S right to withhold any amounts reasonably necessary to complete or correct defective or substandard work, the COUNTY shall make monthly payments or partial payments to the CONSULTANT for all authorized work performed during the previous calendar month in accordance with the "Florida Prompt Payment Act."

- A. The CONSULTANT shall submit signed invoices to the COUNTY;
- B. The amount of each invoice submitted shall be the amount due for all services performed to date in connection with authorized work, as certified by the CONSULTANT. Each invoice shall include any authorized reimbursable expenses and must reference the particular Work Order which authorized the services performed. The invoice shall be accompanied by copies of invoices for reimbursable expenses;

- C. Invoices for work other than lump sum shall include a breakdown for each part of the work billed for each item and personnel as identified in Attachment "A". Copies of all invoices paid by the CONSULTANT for expenses shall be included with the CONSULTANT's invoice.

SECTION VII - SCHEDULE OF WORK

The COUNTY shall have the sole right to determine on which units or sections of the work the CONSULTANT shall proceed with and in what order. Should a Work Order revision cause a change in scope, cost or schedule, the CONSULTANT shall submit such revisions for review and, if warranted, approval by the COUNTY in writing.

SECTION VIII - RIGHT OF DECISIONS

All services shall be performed by the CONSULTANT to reasonable professional standards and practices and to the reasonable requirements of the COUNTY. COUNTY staff shall decide and dispose of all claims, questions and disputes arising under this Agreement. Such determination shall be final, conclusive and binding upon the parties hereto unless such determination is clearly arbitrary or unreasonable. In the event the CONSULTANT does not concur with the decisions of the COUNTY, within ten (10) calendar days after determination by COUNTY staff, the CONSULTANT shall present any such objections in writing to COUNTY staff and, upon request, any adverse determination shall be referred to an appeal board comprised of a representative of Purchasing Services, of the County Manager's Office and of the Facilities Department for review and disposition at a hearing to be held within ten (10) calendar days after receipt of the appeal.

This paragraph does not constitute a waiver of either party's right to proceed in a court of competent jurisdiction, provided that prior to filing any suit the CONSULTANT goes through the appeal process established in this Agreement and provided further that the CONSULTANT strictly abides by the ten day time deadline set forth in this paragraph.

SECTION IX - OWNERSHIP OF DOCUMENTS

All reports, tracings, plans, specifications, maps, contract documents and other work products developed by the CONSULTANT pursuant to this Agreement shall become the property of the COUNTY. When each individual section of work requested pursuant to this Agreement is complete, all of the above work products shall be delivered to the COUNTY for its use.

SECTION X - REUSE OF DOCUMENTS

The CONSULTANT may not reuse plans, specifications or reports specifically developed by the CONSULTANT for the COUNTY without express written permission from the COUNTY. The COUNTY may reuse any plans, specifications or reports provided under this Agreement under the following conditions:

- (a) The COUNTY shall notify the CONSULTANT of such reuse;
- (b) The COUNTY and CONSULTANT shall agree to compensation for such reuse;
- (c) The provisions of Florida Statutes 287.055 (10) are followed; and
- (d) The County shall hold CONSULTANT harmless from any property damage or personal injury which may result from such reuse.

SECTION XI - NOTICES

Any legal notices from the CONSULTANT to the COUNTY shall be considered delivered when posted by certified mail or delivered in person to the COUNTY.

Any legal notices from the COUNTY to the CONSULTANT shall be considered delivered when posted by certified mail to the CONSULTANT at the last address left on file with the COUNTY or delivered in person to CONSULTANT or the CONSULTANT'S authorized representative.

Notice under this Agreement shall be given as above to the following authorized representatives:

On behalf of the County:

Brevard County Public Works - Facilities
Attn: Mary Bowers, Support Services Manager
2725 Judge Fran Jamieson Way, Building A-207
Viera, Florida 32940

On behalf of the CONSULTANT

Morgan & Associates Consulting Engineers, Inc.
Attn: Andy Kirbach, Vice President
504 North Harbor City Boulevard
Melbourne, Florida 32935

SECTION XII - AUDIT RIGHTS/PUBLIC RECORDS

The COUNTY or any of its duly authorized representatives reserves the right to audit the records of the CONSULTANT related to this Agreement at any time during the prosecution of the work included herein and for a period of three (3) years after final payment is made.

Both parties understand that Brevard County is subject to the Florida Public Records Law, Chapter 119, Florida Statutes. "Public Records" are defined "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency" Fla. Stat. 119.011(12).

Pursuant to Florida Statute Chapter 119, generally, and 119.0701 specifically, if records created by the COUNTY or the CONSULTANT related to the performance of the services under this Agreement do not fall under a specific exemption under Florida or federal law, the records - whether created or maintained by the CONSULTANT or the COUNTY- must be provided to anyone making a public records request. It will be the CONSULTANT'S duty to identify any information in records created by the CONSULTANT which it deems is exempt under Florida or federal law and identify the statute number which requires the information be held exempt.

A request to inspect or copy public records relating to this Agreement must be made directly to the COUNTY. If the COUNTY does not possess the requested records, the COUNTY shall

immediately notify the CONSULTANT of the request, and the CONSULTANT must provide the COUNTY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided pursuant to Florida Statute Chapter 119 and Brevard County Board Policy.

Should any person or entity make a public records request of the COUNTY which requires or would require the COUNTY to allow inspection or provide copies of records which the CONSULTANT maintains are exempt under the Public Records Law or otherwise confidential, it shall be the CONSULTANT'S obligation to provide the County within a reasonable time of notification by the COUNTY to the CONSULTANT of the records request, of the specific exemption or confidentiality provision to allow the County to comply with the requirements of Florida Statute 119.07(1)(e) and (f). Should the County face any kind of legal action to require or enforce inspection or production of any records provided by the CONSULTANT to the County which the CONSULTANT maintains are exempt or confidential from such inspection/production as a public record, the CONSULTANT shall hire and compensate attorney(s) who shall represent the interests of the County as well as the CONSULTANT in defending such action. The CONSULTANT shall also pay any costs to defend such action and shall pay any costs and attorney's fees which may be awarded pursuant to Fla. Stat. 119.12.

Should the CONSULTANT fail to provide the public records to the COUNTY within a reasonable time, the CONSULTANT is subject to penalties under s. 119.10.

The CONSULTANT shall ensure that all public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the CONSULTANT does not transfer the records to the COUNTY.

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

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (321) 633-2050.

SECTION XIII – SUBCONTRACTING

The CONSULTANT shall not subcontract, assign, or transfer any work under this Agreement without the written approval of the COUNTY. When applicable, the CONSULTANT shall cause the names of any subcontracted firms responsible for major portions (or separate specialty) of the work to be inserted in the pertinent documents or data.

SECTION XIV - CONTINGENT FEES

The CONSULTANT represents that no person or company was employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide employee, any fee commission, contribution, donation, gift or any other consideration, contingent upon, or resulting from award of this Agreement.

For any breach or violation of this provision, the COUNTY shall have the right to terminate this Agreement, without liability, and, at its discretion, to deduct from the contract price or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration and any damages and shall be responsible for reporting the details of such breach or violation to the proper legal authorities where and when appropriate.

SECTION XV - TERMINATION/MODIFICATION OF AGREEMENT

- A. Either party may terminate this Agreement for any reason upon thirty (30) days written notice, provided that, in the event CONSULTANT so terminates, any outstanding approved Work Order upon which a Notice to Proceed has been issued is completed by the CONSULTANT.
- B. In the event of termination by the COUNTY, the COUNTY's sole obligation to the CONSULTANT shall be payment for those portions of work satisfactorily completed which were previously authorized by approved Work Order. Such payment shall be determined on the basis of hours of work performed by the CONSULTANT and agreed upon by the COUNTY up to the time of termination. In the event of such termination, the COUNTY may, without penalty or other obligation to the CONSULTANT, elect to employ other persons to perform the same or similar services.
- C. The terms of this Agreement may be modified upon the mutual agreement of the CONSULTANT and the COUNTY as confirmed in writing.
- D. In the event that the CONSULTANT changes the firm's name, merges with another company, becomes a subsidiary, substitutes any project team members, or makes other substantial change in structure or in principals, the COUNTY reserves the right to terminate this Agreement subject to the terms prescribed above.
- E. The CONSULTANT shall not be allowed to substitute project team members named in its response, during the course of the contract, without prior written permission of the COUNTY.

SECTION XVI - DURATION OF AGREEMENT

This Agreement shall remain in full force and effect for a period of one (1) year after its date of

execution, although actual completion of services hereunder may extend beyond such term, unless this Agreement is terminated by mutual consent of the parties as otherwise provided herein. The performance of specially and properly authorized projects may extend beyond the Agreement's one-year effective term and shall be compensated in accordance with Section IV hereof. In addition, subject to the COUNTY'S sole discretion, if no change in fees under Schedule "A" or paragraph V.D. is proposed, this Agreement may be extended in one (1) year increments for up to three (3) years beyond the initial one (1) year period of the Agreement.

SECTION XVII – DEFAULT

In the event the CONSULTANT fails to comply with the provisions of this Agreement, the COUNTY may declare the CONSULTANT in default by written notification. In the event partial payment has been made for continuing architectural and engineering services not completed, the CONSULTANT shall return any sums due to the COUNTY as a result of CONSULTANT'S default within ten (10) days after notice and demand that said sums are due. The CONSULTANT shall not be compensated on a percentage of any deficient continuing architectural and engineering services which have been performed at the time the COUNTY declares a default. The COUNTY shall pay for that portion, if any, of the performed work which is used or useful by any other consultant retained by the COUNTY to finish the work to the extent that the COUNTY does not incur additional costs over those set forth in the CONSULTANT's canceled Work Order. Any default by the COUNTY for causes which are later determined to be invalid shall be considered a termination by the COUNTY for convenience and compensated as provided in Section XV.

SECTION XVIII - INDEMNIFICATION AND INSURANCE

The CONSULTANT shall provide the following described insurance policies with insurers acceptable to the COUNTY. The CONSULTANT shall provide and maintain at all times during the terms of the Agreement, without cost or expense to the COUNTY, policies of insurance generally known as comprehensive general liability and auto liability policies, and professional errors and omissions liability coverage. These policies of insurance shall cover the CONSULTANT for any and all claims, demands, and expenses whatsoever, including defense and causes for action for general damages, bodily injury and property damage arising out of or to the extent caused by negligent acts, errors or omissions of the CONSULTANT. Said policies shall provide limits in the amount not less than \$500,000 per occurrence to cover any and all claims arising in connection with any particular accident or occurrence.

The CONSULTANT shall provide and maintain Workers' Compensation insurance (as required by law) for all employees to provide services under the scope of this Agreement. The COUNTY shall be entitled to thirty (30) days written notice of any changes or cancellations of said policies. These insurance requirements shall not relieve or limit the liability of the CONSULTANT. The COUNTY does not in any way represent that these types or amounts of insurance are sufficient or adequate to protect the CONSULTANT'S interests or liabilities, but are merely minimums.

The CONSULTANT agrees to indemnify, defend and hold the COUNTY harmless against any and all claims, causes of action or liability for bodily injury, sickness, disease, death or personal injury or damage to property or loss of use resulting therefrom to the extent caused by negligent acts, errors or omissions of the CONSULTANT. The CONSULTANT agrees to indemnify and

pay on behalf of the COUNTY the cost of the COUNTY'S legal defense of all claims described herein. Such payment on behalf of the COUNTY shall be in addition to any and all other legal remedies available to the COUNTY and shall not be considered to be the COUNTY's exclusive remedy. It is agreed by the parties hereto that specific consideration has been paid under this Agreement for this hold harmless provision. The COUNTY agrees to hold the CONSULTANT harmless from any property damage or personal injury which may result from the COUNTY'S negligent acts relating to the performance of this Agreement.

SECTION XIX - QUALITY CONTROL

The CONSULTANT shall provide a high level of quality control and accuracy. The COUNTY may request additional data collection or re-analysis of data at no expense to the COUNTY. If the original data collected and/or the data analysis is found to be accurate and reasonable, the CONSULTANT shall be compensated for the additional work in accordance with Section IV of this Agreement.

The CONSULTANT acknowledges that the COUNTY will periodically evaluate the CONSULTANT's performance and that the evaluation will be used by the COUNTY in determining the CONSULTANT'S qualifications for future contracts with COUNTY.

SECTION XX - NON EXCLUSIVE AGREEMENT

The parties acknowledge that this Agreement is not an exclusive Agreement and the COUNTY may employ other architects, engineers, professional or technical personnel to furnish services for the COUNTY, as the COUNTY, in its sole discretion, finds is in the public interest. The COUNTY reserves the right to assign such work to the CONSULTANT as it may approve in the sole discretion of the COUNTY.

SECTION XXI - TRUTH IN NEGOTIATIONS

In accordance with the provisions of Chapter 287.055, Florida Statutes, the CONSULTANT agrees to execute a truth-in-negotiations certificate (Attachment "B") and agrees the original contract price and any additions may be adjusted to exclude any significant sums by which the contract price was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs.

SECTION XXII - INTEREST OF MEMBERS OF COUNTY AND OTHERS

No officers, members or employees of the COUNTY, and no members of its governing body, and no other public official of the governing body of the locality or localities in which services for the facilities are situated or carried out, who exercised any functions or responsibilities in the review or approval of the undertaking or carrying out of this project, shall participate in any decision relating to this Agreement which affects their personal interest, or have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

The CONSULTANT shall not engage the services of any person or persons now employed by the County, including any department, agency, board or commission thereof, to provide the services relating to this Agreement without the written consent from the County.

SECTION XXIII - INTEREST OF CONSULTANT

The CONSULTANT covenants that it presently has no conflict of interest and shall not acquire any interest, direct or indirect, which shall conflict in any manner or degree with the performance of services required to be performed under this Agreement. The CONSULTANT further covenants that, in the performance of this Agreement, no person having any such conflict of interest shall be employed by the Consultant.

SECTION XXIV - ENTIRETY OF AGREEMENT

This writing, together with Work Orders and signed Authorizations to Proceed that may follow, embody the entire Agreement and understanding between the parties hereto, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein.

No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing, signed by both parties hereto as an addendum to this Agreement, or as specifically prescribed in a Work Order.

SECTION XXV – GOVERNING LAW

This Agreement, regardless of where executed, shall be governed by and construed according to the laws of the State of Florida.

SECTION XVI – VENUE

Venue for any legal action by any party to this agreement to interpret, construe or enforce this Agreement, shall be in a court of competent jurisdiction in and for Brevard County, Florida and any trial shall be nonjury and any trial shall be non-jury.

SECTION XVII – ATTORNEYS FEES

In the event either party sues the other to enforce the terms of this Agreement, or any Work Orders issued hereunder, each party shall bear its own attorney's fees and costs.

SECTION XVIII – CONSTRUCTION OF AGREEMENT

The parties hereby acknowledge that they fully reviewed this Agreement, its attachments and had the opportunity to consult with legal counsel of their choice, and that this Agreement shall not be construed against any party as if they were the drafter of this Agreement.

(intentionally left blank)

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year first above written.

ATTEST:



Scott Ellis, Clerk

BREVARD COUNTY BOARD OF
COUNTY COMMISSIONERS



Rita Pritchett – Chairman
As Approved By The Board: _____

Morgan & Associates Consulting
Engineers, Inc.



By: ANDY KIRSHAUP, P.E.
VICE PRESIDENT

ATTACHMENT "A"

FEMA CLAUSES AND CERTIFICATIONS

During the performance of this Agreement, the CONSULTANT agrees as follows:

1. The CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The CONSULTANT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places, available to all employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause.
2. The CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
3. The CONSULTANT will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or worker's representatives of the CONSULTANT's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The CONSULTANT will comply with all provisions of Executive Order 11246 of September 24, 1965, and the rules, regulations and relevant orders of the Secretary of Labor.
5. The CONSULTANT will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
6. In the event of the CONSULTANT's non-compliance with the non-discrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the CONSULTANT may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The CONSULTANT will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The

CONSULTANT will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance, provided, however, that in the event the CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

8. **Clean Air Act and the Federal Water Pollution Control Act:** (For all contracts in excess of \$150,000)

A. **Clean Air Act –**

- i. The CONSULTANT agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- ii. The CONSULTANT agrees to report each violation to the COUNTY through its Facilities Department and understands that the Brevard County Facilities Department will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- iii. The CONSULTANT agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

B. **Federal Water Pollution Control Act -**

- i. The CONSULTANT agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- ii. The CONSULTANT agrees to report each violation to the COUNTY through its Facilities Department and understands and agrees that the Brevard County Facilities Department will, in turn, report each violation to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- iii. The CONSULTANT agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

9. **Suspension and Debarment:**

- A. This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the CONSULTANT is required to verify that neither the CONSULTANT, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- B. The CONSULTANT must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- C. This certification is a material representation of fact relied upon by the COUNTY. If it is later determined that the CONSULTANT did not comply with 2 C.F.R. pt.

180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of Florida (Division of Emergency Management) and the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

- D. The CONSULTANT agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this Agreement is valid. The CONSULTANT agrees to include a provision requiring such compliance in its lower tier covered transactions.

10. **Byrd Anti-Lobbying Amendment, 31 U.S.C. . § 1352 (as amended):**

Contractors, including the CONSULTANT, who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee or a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier-to-tier up to the recipient.

11. **Procurement of Recovered Materials:**

In the performance of this Agreement, the CONSULTANT shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

- A. Competitively within a timeframe providing for compliance with the Agreement performance schedule;
- B. Meeting Agreement performance requirements; or
- C. At a reasonable price.

Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines website at <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

12. **Additional FEMA Requirements:**

A. **Access to Records:**

- i. The CONSULTANT agrees to provide the COUNTY, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers and records of the CONSULTANT which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions.
- ii. The CONSULTANT agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

- iii. The CONSULTANT agrees to provide the FEMA Administrator or his authorized representative access to construction or other work sites pertaining to the work being completed under the Agreement.

B. **DHS (Department of Homeland Security) Seal, Logo and Flags:**

The CONSULTANT shall not use DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

C. **Compliance with Federal Law, Regulations and Executive Orders:**

The CONSULTANT acknowledges that FEMA financial assistance will be used to fund this Agreement and resulting Agreements only. The CONSULTANT will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures and directives.

D. **No Obligation by Federal Government:**

The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the non-Federal entity, CONSULTANT, or any other party pertaining to any matter resulting from the Agreement.

E. **Fraud and False or Fraudulent or Related Acts:**

The CONSULTANT acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the CONSULTANT's actions pertaining to this Agreement.

ATTACHMENT "B"

**RFQ-4-18-09
CONTINUING CIVIL ENGINEERING DESIGN SERVICES
STANDARD HOURLY RATE SCHEDULE**

POSITION	HOURLY RATE
Principal	\$160.00
Project Director/Manager	\$150.00
Project Engineer	\$140.00
Engineer	\$130.00
CAD Designer	\$90.00
CAD Drafter/Operator/Technician	\$70.00
Clerical/Admin/Word Processing	\$60.00

ATTACHMENT "C"

PUBLIC ENTITY CRIME AFFIDAVIT

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid/quote/proposal on a contract to provide goods or services to a public entity, may not submit a bid/quote/proposal on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids/quotes/proposals on leases of rental property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.