

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT for PROFESSIONAL SERVICES ("Agreement"), entered into as of this _____ day of _____, 2018 by and between INDIAN RIVER COUNTY, a political subdivision of the State of Florida, whose address is 1801 27th Street, Vero Beach FL 32960 ("COUNTY"), and MASTELLER & MOLER, INC., whose address is 1655 27th Street, Suite 2, Vero Beach, Florida 32960 ("Consultant"):

BACKGROUND RECITALS:

A. In accordance with the Consultants' Competitive Negotiations Act, Section 287.055, Florida Statutes, the COUNTY solicited Request for Qualifications #2018012 for 45th Street Milling and Resurfacing Project – 58th Avenue to 43rd Avenue ("Project") attached as Exhibit A to this Agreement and made a part by reference.

B. As a result of its response, the County has selected Consultant to provide certain professional services relating to Public Works, ("Services") as more fully set forth in in the Project Approach Section contained in the Statement of Qualifications for Indian River County RFQ #2018012 attached as Exhibit B to this Agreement and made a part by reference.

C. Consultant has submitted a Scope of Services and Fee Proposal dated February 21, 2018 attached as Exhibit C to this Agreement and made a part by reference.

D. The Consultant is willing and able to perform the Services for the COUNTY on the terms and conditions set forth below; and

E. The COUNTY and the Consultant wish to enter into this Agreement for the Consultant's Services for the Project.

NOW THEREFORE, in accordance with the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. GENERAL.

1.1 All professional services provided by the Consultant for the COUNTY shall be identified in Exhibits A, B and C (collectively, the "Exhibits") and performed in a timely, efficient, cost effective manner, and in accordance with the current professional standards of the applicable discipline. The Exhibits include a description of services to be performed; a statement of fees; a schedule of deliverables; proposed schedule for compensation; a budget establishing the amount of compensation to be paid with sufficient detail so as to identify all of the various elements of costs; a projected schedule for completion of the work to be performed by the Consultant; and any other

additional instructions or provisions relating to the specific Services authorized that does not conflict with the terms of this Agreement.

1.3 Additional services not contained in the Exhibits which would increase, decrease or which are otherwise outside the scope of Services or level of effort contemplated by the Exhibits shall be Services for which the Consultant must obtain the prior written approval of the COUNTY as provided by this Agreement. All terms for the performance of such Services must be agreed upon in a written document prior to any deviation from the terms of the Agreement, and when properly authorized and executed by both the Consultant and the COUNTY shall become an amendment to the Agreement.

1.4 The Background Recitals are true and correct and form a material part of this Agreement.

2. **COUNTY OBLIGATIONS.**

2.1 The COUNTY will provide the Consultant with a copy of any preliminary data or reports available as required in connection with the work to be performed under this Agreement, together with all available drawings, surveys, right-of-way maps, and other documents in the possession of the COUNTY pertinent to the Project. The Consultant shall satisfy itself as to accuracy of any data provided. The Consultant is responsible for bringing to the COUNTY's attention, for the COUNTY's resolution, material inconsistencies or errors in such data that come to the Consultant's attention.

2.2 The COUNTY shall arrange for access to, and make provisions for the Consultant to enter upon, public and private property (where required) as necessary for the Consultant to perform its Services, upon the timely written request of Consultant to COUNTY.

2.3 The COUNTY shall promptly execute all permit applications necessary to the Project.

2.4 The COUNTY shall examine any and all studies, reports, sketches, drawings, specifications, proposals and other documents presented by the Consultant, and render, in writing, decisions pertaining thereto within a reasonable time.

2.5 Approval by the COUNTY of any of the Consultant's work, including but not limited to drawings, design specifications, written reports, or any work products of any nature whatsoever furnished hereunder, shall not in any way relieve the Consultant of responsibility for the technical accuracy and adequacy of the work. Neither the COUNTY's review, approval or acceptance of, or payment for, any of the Services furnished under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement. The Consultant shall be and remain liable in accordance with all applicable

laws for all damages to the COUNTY caused by the negligent performance by the Consultant of any of the Services furnished under this Agreement.

2.6 The COUNTY reserves the right to appoint one or more Project Managers for the specific Services in connection with this Agreement. The Project Manager shall: (a) act as the COUNTY's agent with respect to the Services rendered hereunder; (b) transmit instructions to and receive information from the Consultant; (c) communicate the COUNTY's policies and decisions to the Consultant regarding the Services; and (d) determine, initially, whether the Consultant is fulfilling its duties, responsibilities, and obligations hereunder.

2.7 The COUNTY shall give prompt written notice to the Consultant whenever the COUNTY observes or otherwise becomes aware of any development that affects the timing or delivery of the Consultant's Services. If the Consultant has been delayed in completing its Services through no fault or negligence of either the Consultant or any sub-consultant, and, as a result, will be unable to perform fully and satisfactorily under the provisions of this Agreement, then the Consultant shall promptly notify the Project Manager. In the COUNTY's sole discretion, and upon the submission to the COUNTY of evidence of the causes of the delay, this Agreement shall be modified in writing, subject to the COUNTY'S rights to change, terminate, or stop any or all of the Services at any time in accordance with this Agreement.

2.8 The Consultant shall not be considered in default for a failure to perform if such failure arises out of causes reasonably beyond the Consultant's control and through no fault or negligence of the Consultant. The parties acknowledge that adverse weather conditions, acts of God, or other unforeseen circumstances of a similar nature, may necessitate modifications to this Agreement. If such conditions and circumstances do in fact occur, then the COUNTY and Consultant shall mutually agree, in writing, to the modifications to be made to this Agreement.

3. RESPONSIBILITIES OF THE CONSULTANT.

3.1 The Consultant agrees to perform all necessary professional engineering, project design, construction phase services, and other Services in connection with the assigned Project(s) as set forth in this Agreement.

3.2 The Consultant will endeavor not to duplicate any previous work done on any Project. Before beginning work, the Consultant shall consult with the COUNTY to clarify and define the COUNTY's requirements for the Project.

3.3 The Consultant agrees to complete the Project within the time frame specified in Exhibit C.

3.4 The Consultant will maintain an adequate staff of qualified personnel.

3.5 The Consultant will comply with all present and future federal, state, and local laws, rules, regulations, policies, codes, and guidelines applicable to the Services performed under this Agreement.

3.6 The Consultant, as a part of the consideration hereof, does hereby covenant and agree that: (1) in connection with the furnishing of Services to the COUNTY hereunder, no person shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in regard to the services to be performed by Consultant under this Agreement on the grounds of such person's race, color, creed, national origin, religion, physical disability, age or sex; and (2) the Consultant shall comply with all existing requirements concerning discrimination imposed by any and all applicable local, state, and federal rules, regulations, or guidelines, as such rules, regulations, or guidelines may be from time to time amended.

3.7 The Consultant shall, during the entire term of this Agreement, procure and keep in full force, effect, and good standing any and all necessary licenses, registrations, certificates, permits, and any and all other authorizations as are required by local, state, or federal law, in order for the Consultant to render its Services as described in this Agreement. The Consultant shall also require all sub-consultants to comply by contract with the provisions of this section.

3.8 The Consultant will prepare all necessary sketches and completed application forms to accompany the COUNTY's applications for any required federal, state, or local permits.

3.9 The Consultant will cooperate fully with the COUNTY in order that all phases of the work may be properly scheduled and coordinated.

3.10 The Consultant will cooperate and coordinate with other COUNTY consultants, as directed by the COUNTY.

3.11 The Consultant shall report the status of the Services under this Agreement to the County Project Manager upon request and hold all drawings, calculations and related work open to the inspection of the County Project Manager or his authorized agent at any time, upon reasonable request.

3.12 All documents, reports, tracings, plans, specifications, field books, survey notes and information, maps, contract documents, and other data developed by the Consultant for the purpose of this Agreement, are and shall remain the property of the COUNTY. The foregoing items will be created, maintained, updated, and provided in the format specified by the County. When all work contemplated under this Agreement is complete, all of the above data shall be delivered to the County Project Manager.

3.13 The Consultant will confer with the COUNTY during the further development of improvements for which the Consultant has provided design or other services, and the Consultant will interpret plans and other documents; correct errors

and omissions; and prepare any necessary plan revisions not involving a change in the scope of the work required, at no additional cost to the COUNTY, within thirty (30) calendar days of notice by the COUNTY, or upon a determination of the Consultant of the existence of such errors or omissions, whichever event shall first occur. The foregoing is not intended to include construction management services provided by the Consultant.

3.14 The Consultant agrees to maintain complete and accurate books and records ("Books"), in accordance with sound accounting principles and standards for all Services, costs, and expenditures under this Agreement. The Books shall identify the Services rendered during each month of the Agreement and the date and type of each Project-related expense. The COUNTY shall have the right, at any reasonable time and through any of its designated agents or representatives, to inspect and audit the Books for the purpose of verifying the accuracy of any invoice. The CONSULTANT shall retain the Books, and make them available to the COUNTY as specified above, until the later of three (3) years after the date of termination of this Agreement, or such longer time if required by any federal, state, or other governmental law, regulation, or grant requirement.

3.15 The Consultant shall not assign or transfer any work under this Agreement without the prior written consent of the COUNTY. When applicable and upon receipt of such consent from the COUNTY, the Consultant shall cause the names of the engineering and surveying firms responsible for the major portions of each separate specialty of the work to be inserted on the reports or other data.

3.16 All documents, including but not limited to drawings and specifications, prepared by the Consultant pursuant to this Agreement are related exclusively to the Services described herein and are not intended or represented to be suitable for reuse by the COUNTY or others on any other project. Reuse of any document or drawing shall be at the COUNTY's own risk. The Consultant shall not be held liable for any modifications made to the documents by others.

4. **TERM; TIME FOR COMPLETION.**

4.1 The time for completion of the Project shall be defined in the Exhibits.

5. **COMPENSATION.**

5.1 The COUNTY shall pay to the Consultant the mutually agreed professional not-to-exceed fee of THREE HUNDRED THOUSAND AND EIGHT DOLLARS (\$308,00.00) for Services rendered for the Project, to be paid in monthly installments or on a deliverable basis, as set forth in the Exhibits. Duly certified invoices, in triplicate, phased as per the Exhibits, shall be submitted to the County Project Manager, in detail sufficient for proper prepayment and post payment audit. Upon submittal of a proper invoice the County Project Manager will determine if the tasks or portions thereof have been satisfactorily completed. Upon a determination of

satisfactory completion, the County Project Manager will authorize payment to be made. All payments for services shall be made to the Consultant by the COUNTY in accordance with the Local Government Prompt Payment Act, as may be amended from time to time (Section 218.70, Florida Statutes, et seq.).

5.1.1 The Consultant acknowledges and agrees that it will not be reimbursed for any travel associated with its Services on this Project.

5.1.2 The COUNTY shall make direct payment of all permit fees paid to regulatory agencies for approvals directly attributable to the Services under the Project. These permit fees do not include those permits required for any construction contractor.

5.2 The COUNTY may at any time notify the Consultant of requested changes to the Services under this Agreement, and thereupon the COUNTY and the Consultant shall execute a mutually agreeable amendment to this Agreement.

5.3 The COUNTY shall have the sole right to reduce or eliminate, in whole or in part, any portion of the Services under the Exhibits at any time and for any reason, upon written notice to the Consultant specifying the nature and extent of the reduction. In such event, the Consultant shall be paid for the Services already performed and also for the Services remaining to be done and not reduced or eliminated, upon submission of invoices as set forth in this Agreement.

5.4 The COUNTY may, at any time and for any reason, direct the Consultant to suspend Services, in whole or in part under this Agreement. Such direction shall be in writing, and shall specify the period during which Services shall be stopped. The Consultant shall resume its Services upon the date specified, or upon such other date as the COUNTY may thereafter specify in writing. Where the COUNTY has suspended the services under this Agreement for a period in excess of six (6) months, the compensation of Consultant for such suspended Services may be subject to modification. The period during which the Services are stopped by the COUNTY shall be added to the time of performance of this Agreement.

6. **ADDITIONAL WORK.**

6.1 If services in addition to the Services provided hereunder are required or desired by the County in connection with the Project, the COUNTY may, at the sole option of the COUNTY: separately obtain same outside of this Agreement; or request the Consultant to provide, either directly by the Consultant or by a sub-consultant, such additional services by a written amendment this Agreement.

7. **INSURANCE AND INDEMNIFICATION.**

7.1 The Consultant shall not commence work on this Agreement until it has obtained all insurance required under this Agreement and such insurance has been approved by the County's Risk Manager.

7.2 Consultant's insurance coverage shall be primary.

7.3 All required insurance policies shall be placed with insurers licensed to do business in Florida and with a Best's rating of A VII or better.

7.4 The insurance policies procured shall be occurrence forms, not claims made policies with the exception of professional liability.

7.5 A certificate of insurance shall be provided to the County's Risk Manager for review and approval, ten (10) days prior to commencement of any work under this Agreement. The COUNTY shall be named as an additional insured on all policies except workers' compensation and professional liability.

7.6 The insurance companies selected shall send written verification to the County Risk Manager that they will provide 30 days prior written notice to the County Risk Manager of its intent to cancel or modify any required policies of insurance.

7.7 Consultant shall include all sub-consultants as insured under its policies or shall furnish separate certificates and endorsements for each sub-consultant. All coverages for sub-consultants shall be subject to all of the requirements stated herein.

7.8 The COUNTY, by and through its Risk Manager, reserves the right periodically to review any and all policies of insurance and reasonably to adjust the limits of coverage required hereunder, from time to time throughout the term of this Agreement. In such event, the COUNTY shall provide the Consultant with separate written notice of such adjusted limits and Consultant shall comply within thirty (30) days of receipt thereof. The failure by Consultant to provide such additional coverage shall constitute a default by Consultant and shall be grounds for termination of this Agreement by the COUNTY.

7.9 The Consultant shall indemnify and hold harmless the COUNTY, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance of this Agreement.

8. **TERMINATION.**

8.1 This Agreement may be terminated: (a) by the COUNTY, for any reason, upon thirty (30) days' prior written notice to the Consultant; or (b) by the Consultant, for

any reason, upon thirty (30) days' prior written notice to the COUNTY; or (c) by the mutual Agreement of the parties; or d) as may otherwise be provided below. In the event of the termination of this Agreement, any liability of one party to the other arising out of any Services rendered, or for any act or event occurring prior to the termination, shall not be terminated or released.

8.2 In the event of termination by the COUNTY, the COUNTY's sole obligation to the Consultant shall be payment for those portions of satisfactorily completed work previously authorized by this Agreement. Such payment shall be determined on the basis of the hours of work performed by the Consultant, or the percentage of work complete as estimated 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.

8.3 The obligation to provide services under this Agreement may be terminated by either party upon seven (7) days prior written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party.

8.4 In the event that the Consultant merges with another company, becomes a subsidiary of, or makes any other substantial change in structure, the COUNTY reserves the right to terminate this Agreement in accordance with its terms.

8.5 In the event of termination of this Agreement, the Consultant agrees to surrender any and all documents prepared by the Consultant for the COUNTY in connection with this Agreement.

8.6 The COUNTY may terminate this Agreement for refusal by the Consultant to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119 Florida Statutes and made or received by the Consultant in conjunction with this Agreement.

8.7 The COUNTY may terminate this Agreement in whole or in part if the Consultant submits a false invoice to the COUNTY.

9. TRUTH-IN-NEGOTIATION CERTIFICATE; CONTINGENCY FEES.

9.1 Execution of this Agreement by the Consultant shall act as the execution of a truth-in-negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for in this Agreement are accurate, complete and current as of the date of the Agreement and no higher than those charged the Consultant's most favored customer for the same or substantially similar service. The wage rates and costs shall be adjusted to exclude any significant sums should the COUNTY determine that the wage rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid

to outside consultants. The COUNTY shall exercise its rights under this "Certificate" within one (1) year following final payment. COUNTY has the authority and right to audit Consultant's records under this provision. The COUNTY does not hereby waive any other right it may have pursuant to Section 287.055, Florida Statutes, as it may be from time-to-time amended.

9.2 Pursuant to the Consultants' Competitive Negotiations Act, F. S. section 287.055, the Consultant warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the Consultant to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person other than a bona fide employee working solely for the Consultant any fee, commission, percentage fee, gifts or any other considerations, contingent upon or resulting from the award or making of this contract. For breach of 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.

10. **MISCELLANEOUS PROVISIONS.**

10.1 Independent Contractor. It is specifically understood and acknowledged by the parties hereto that the Consultant or employees or subconsultants of the Consultant are in no way to be considered employees of the COUNTY, but are independent contractors performing solely under the terms of the Agreement and not otherwise.

10.2 Merger; Modification. This Agreement incorporates and includes all prior and contemporaneous negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings of any nature whatsoever concerning the subject matter of the Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior or contemporaneous representations or agreements, whether oral or written. No alteration, change, or modification of the terms of this Agreement shall be valid unless made in writing and signed by the Consultant and the COUNTY.

10.3 Governing Law; Venue. This Agreement, including all attachments hereto, shall be construed according to the laws of the State of Florida. Venue for any lawsuit brought by either party against the other party or otherwise arising out of this Agreement shall be in Indian River County, Florida, or, in the event of federal jurisdiction, in the United States District Court for the Southern District of Florida.

10.4 Remedies; No Waiver. All remedies provided in this Agreement shall be deemed cumulative and additional, and not in lieu or exclusive of each other or of any other remedy available to either party, at law or in equity. Each right, power and remedy of the parties provided for in this Agreement shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this

Agreement or now or hereafter existing at law or in equity or by statute or otherwise. The failure of either party to insist upon compliance by the other party with any obligation, or exercise any remedy, does not waive the right to so in the event of a continuing or subsequent delinquency or default. A party's waiver of one or more defaults does not constitute a waiver of any other delinquency or default. If any legal action or other proceeding is brought for the enforcement of this Agreement or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, each party shall bear its own costs.

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

10.6 Availability of Funds. The obligations of the COUNTY under this Agreement are subject to the availability of funds lawfully appropriated for its purpose by the Board of County Commissioners of Indian River County.

10.7 No Pledge of Credit. The Consultant shall not pledge the COUNTY's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness.

10.8 Public Records. The Consultant shall comply with the provisions of Chapter 119, Florida Statutes (Public Records Law) in connection with this Agreement.

10.9 Notices: Any notice, request, demand, consent, approval, or other communication required or permitted by this Agreement shall be given or made in writing and shall be served, as elected by the party giving such notice, by any of the following methods: (a) Hand delivery to the other party; (b) Delivery by commercial overnight courier service; or (c) Mailed by registered or certified mail (postage prepaid), return receipt requested at the addresses of the parties shown below:

County: Indian River County
Attn: Richard B. Szyrka, P.E.
1801 27th Street
Vero Beach, FL 32960-3365
Facsimile: (772) 770-5143

Consultant: Masteller & Moler, Inc.
Attn: Stephen E. Moler, P.E.
1655 27th Street, Suite 2
Vero Beach, FL 32960
Fax: 772-794-1106
Email: mastmolr@bellsouth.net

Notices shall be effective when received at the address as specified above. Facsimile transmission is acceptable notice effective when received, provided, however, that facsimile transmissions received (i.e., printed) after 5:00 p.m. or on weekends or holidays, will be deemed received on the next day that is not a weekend day or a holiday. The original of the notice must additionally be mailed. Either party may change its address, for the purposes of this section, by written notice to the other party given in accordance with the provisions of this section.

10.10 Survival. Except as otherwise expressly provided herein, each obligation in this Agreement to be performed by Consultant shall survive the termination or expiration of this Agreement.

10.11 Construction. The headings of the sections of this Agreement are for the purpose of convenience only, and shall not be deemed to expand, limit, or modify the provisions contained in such Sections. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the party or parties may require. The parties hereby acknowledge and agree that each was properly represented by counsel and this Agreement was negotiated and drafted at arm's-length so that the judicial rule of construction to the effect that a legal document shall be construed against the draftsman shall be inapplicable to this Agreement

10.12 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original copy and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first written above.

MASTELLER & MOLER, INC.

INDIAN RIVER COUNTY
By its Board of County Commissioners

By _____
Stephen E. Moler, P.E., Vice President

By _____
Peter D. O'Bryan, Chairman

Witness:
Date: _____

Date Approved by
BCC: _____

Attest: Jeffrey R. Smith, Clerk of Court
And Comptroller

By _____
Printed Name _____

By _____
Deputy Clerk

Approved:

Jason E. Brown
County Administrator

Approved as to form and legal
sufficiency:

William K. DeBaal
Deputy County Attorney