

## **CONTINUING CONTRACT AGREEMENT FOR CONSULTING ENGINEERING SERVICES**

THIS AGREEMENT, entered into this 2<sup>nd</sup> day of May, 2023, by and between INDIAN RIVER COUNTY, a political subdivision of the State of Florida, hereinafter referred to as the “**COUNTY**”, and \_\_\_\_\_ hereinafter referred to as the “**CONSULTANT**”.

### **BACKGROUND RECITALS:**

In accordance with the Consultants’ Competitive Negotiations Act, Section 287.055, Florida Statutes, the COUNTY selected CONSULTANT to provide professional consulting engineering services (“Services”), based on statement of qualifications received in response to Request for Qualifications 2023015.

That the COUNTY and the CONSULTANT, in consideration of their mutual covenants, herein agree with respect to the performance of professional consulting engineering services by the CONSULTANT, and the payment for those services by the COUNTY, as set forth below and in individual Work Orders. This agreement shall be referred to as the “**MASTER AGREEMENT**” under which future Work Orders will apply.

The CONSULTANT shall provide the COUNTY with consulting engineering services and such other related services as defined in specific Work Orders, in the approved disciplines indicated in Exhibit 1.

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 Professional services shall be identified in individual Work Orders prepared by the COUNTY. Work Orders will be executed by the Board of County Commissioners, County Administrator, or the Purchasing Manager, as authorized. Work Orders shall include a description of services to be performed; a statement of fees; a schedule of deliverables; proposed schedule for compensation and whether compensation is lump sum, maximum amount not-to-exceed, task based, or any combination of the foregoing; 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 pursuant to each Work Order that does not conflict with the terms of this Agreement.

1.2 Whenever the term "Work Order" is used herein, it is intended to mean that formal document that is dated; serially numbered; and executed by both the COUNTY and the CONSULTANT by which the COUNTY accepts CONSULTANT's proposal for specific services and CONSULTANT indicates a willingness to perform such specific services for the terms and under the conditions specified in this Agreement. Each Work Order must be fully executed by the COUNTY prior to issuance of the related Notice-to-Proceed.

1.3 Services related to any individual Work Order which would increase or decrease cost, or which are otherwise outside the scope of Services or level of effort contemplated by the Work Order 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 a Work Order; and when properly authorized and executed by both the CONSULTANT and the COUNTY, shall become an amendment to the Work Order or a new Work Order, at the sole option of the COUNTY. A

separate Notice-to-Proceed may, at the sole option of the COUNTY, be given for each phase of the services contained in any Work Order hereunder.

1.4 A Work Order shall not give rise to any contractual rights until it meets the foregoing requirements. Each written Notice-to-Proceed and specific Work Order, as approved by the COUNTY, shall be an addendum to this Agreement. Nothing contained in any Work Order shall conflict with the terms of this Agreement, and the terms of this Agreement shall be deemed to be incorporated into each individual Work Order as if fully set forth therein.

1.5 A schedule of current hourly billing rates is set forth in Exhibit 2, attached to this Agreement and made a part hereof by this reference. These hourly billing rates will remain effective for the term of the Agreement.

1.6 No representation or guarantee is made by Indian River County as to the minimum or maximum dollar value, volume of work, or type of work, if any, that CONSULTANT will receive during the term of this Agreement.

1.7 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 a 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 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 any Work Order. 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, the Work Order shall be modified in writing as set forth in this Agreement, 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 Services in connection with the assigned Project(s) as set forth in the Work Orders and in this Agreement.

3.2 The CONSULTANT will endeavor not to duplicate any previous work done on any Project. Before execution of a Work Order, 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 the Work Order.

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. The CONSULTANT will reply, in writing, to all regulatory agencies' requests for additional information related to a permit application. The CONSULTANT will document all meetings, conversations, and

communication. with permitting agencies. The CONSULTANT will provide the COUNTY with copies of all permit applications, including attachments, and all related correspondence. The CONSULTANT acknowledges that preparation of all applicable permits for the COUNTY's submittal to regulatory agencies, and the CONSULTANT's written responses to all regulatory agencies' questions until the permit is issued or denied, are included within the scope of basic compensation in each particular Work Order. No additional service work related to permitting will be approved for any reason, except in the case where new permitting requirements become effective after the effective date of a Work Order.

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 or Work Order 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, and upon final payment 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.

3.17 CONSULTANT is registered with and will use the Department of Homeland Security's E-Verify system ([www.e-verify.gov](http://www.e-verify.gov)) to confirm the employment eligibility of all newly hired employees for the duration of this agreement, as required by Section 448.095, F.S. CONSULTANT is also responsible for obtaining proof of E-Verify registration and utilization for all subconsultants.

3.18 The CONSULTANT shall not be held liable for any modifications made to the documents by others.

3.19 Where services hereunder include preparation of drawings and other contract documents by CONSULTANT and where, notwithstanding acceptance and approval by the COUNTY thereof, in the opinion of the COUNTY, drawings and other contract documents so prepared are found during the course of construction to require modification due to the oversight, inadvertence or negligent omissions of, errors by, or lack of detail provided by CONSULTANT, such modifications must be made by CONSULTANT without additional compensation. Where such contract documents are used in letting a contract for construction, CONSULTANT will assume responsibility for any direct or actual damages suffered or incurred by the COUNTY, including, but not limited to, any increase in compensation due to a construction contractor, which increase is directly attributable to the required changes in the Drawings or other contract documents to the extent caused by CONSULTANT's negligent acts, omissions, or errors.

#### **4. TERM; DURATION OF AGREEMENT**

This Agreement shall remain in full force and effect for a period of three (3) years after the date of execution thereof, or until completion of all project phases as defined by the COUNTY, whichever occurs later, or unless otherwise terminated by mutual consent of the parties hereto, or terminated pursuant to Section 9 "Termination", This Agreement may be extended for one additional two (2) year term, at the discretion of the County.

#### **5. COMPENSATION**

5.1 The COUNTY shall pay to the CONSULTANT a mutually agreed upon lump sum or maximum amount not-to-exceed professional fee for each task in the Work Order, to be paid in monthly installments or on a deliverable basis, all as set forth in a Work Order. Duly certified invoices, in triplicate, phased as per the Work Order, 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 Florida Prompt Payment Act, as may be amended from time to time (Section 218.70, Florida Statutes, et seq.).

5.1.1 The CONSULTANT shall include on the invoices any identifiable per diem, meals and lodgings, taxi fares and miscellaneous travel-connected expenses for CONSULTANT's personnel subject to the limitations of F. S. section 112.061, as may be amended from time to time. Travel expenses, if any, shall not be on a direct pay basis by the COUNTY. Notwithstanding the foregoing, the CONSULTANT acknowledges and agrees that it will not be reimbursed for any travel within Indian River County, both after a CONSULTANT arrives from outside of Indian River County, and where a CONSULTANT maintains an office in Indian River County.

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 an existing Work Order, and thereupon the COUNTY and the CONSULTANT shall execute a mutually agreeable amended Work Order or a new Work Order.

5.3 The COUNTY shall have the sole right to reduce or eliminate, in whole or in part, any portion of the Services under any Work Order 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 new Work Order or by a written amendment to a specific Work Order.

## **7. OWNERSHIP AND REUSE OF DOCUMENTS**

7.1 Ownership and Copyright: Ownership and copyright of all reports, tracings, plans, electronic files, specifications, field books, survey information, maps, contract documents, and other data first developed by the CONSULTANT pursuant to this Agreement, shall be vested in the COUNTY. Said materials shall be made available to the COUNTY by the CONSULTANT at any time during normal business hours upon reasonable request of the COUNTY. On or before the tenth day after all work contemplated under this Agreement or individual Work Order is complete, all of the above materials shall be delivered to the County Project Manager.

7.2 Reuse of Documents: All documents, including but not limited to reports, drawings and specifications, prepared or performed by the CONSULTANT pursuant to this Agreement, are related exclusively to the services described herein. They are not intended or represented to be suitable for reuse by the COUNTY or others on extensions of this project or on any other project. The COUNTY's reuse of any document or drawing shall be at the COUNTY's own risk. The COUNTY shall not hold the CONSULTANT liable for any misuse by others.

## **8. INSURANCE AND INDEMNIFICATION**

8.1 During the performance of the work covered by this Agreement, the CONSULTANT shall provide the COUNTY with evidence that the CONSULTANT has obtained and maintains the insurance listed in the Agreement.

8.2 CONSULTANT shall maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the CONSULTANT, its agents, representatives, or employees. The cost of such insurance shall be included in the CONSULTANT's fees.

### 8.3 Minimum Scope of Insurance

A. Worker's Compensation as required by the State of Florida. Employers Liability of \$100,000 each accident, \$500,000 disease policy limit, and \$100,000 disease each employee.

B. General Liability \$1,000,000 combined single limit per accident for bodily injury and property damage. Coverage shall include premises/operations, products/completed operations, contractual liability, and independent contractors. COUNTY shall be named an "Additional Insured" on the certificate of insurance.

C. Auto Liability \$500,000 combined single limit per accident for bodily injury and property damage. Coverage shall include owned vehicles, hired vehicles, and non-owned vehicles.

D. Professional Liability Insurance providing coverage for negligent acts, errors, or omissions committed by CONSULTANT with a \$500,000 per claim/annual aggregate. This insurance shall extend coverage to loss of interest, earning, profit, use and business interruption, cost of replacement power, and other special, indirect, and consequential damages.

8.4 CONSULTANT's insurance coverage shall be primary.

8.5 All above insurance policies shall be placed with insurers with a Best's rating of no less than A-VII. The insurer chosen shall also be licensed to do business in Florida.

8.6 The insurance policies procured, other than professional liability, shall be occurrence forms, not claims made policies. Professional liability shall be on a claims-made basis.

8.7 The insurance companies chosen shall provide certificates of insurance prior to signing of contracts, to the Indian River County Risk Management Department.

8.8 CONSULTANT shall provide the Indian River County Risk Management Department with a certificate of insurance that states that the insurance company will provide 30 days notice to the Risk Management Department, of cancellation and/or nonrenewal.

8.9 The CONSULTANT shall ensure all subconsultants to maintain the insurance as detailed herein.

8.10 Any deductibles or self-insured retentions greater than \$100,000 must be approved by the Risk Manager for Indian River County, with the ultimate responsibility for same going to the CONSULTANT.

8.11 The Consultant shall indemnify and hold harmless the County and its commissioners, officers, employees and agents, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's 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 the contract.

## **9. TERMINATION**

9.1 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.

9.2 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 approved Work Order. 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.

9.3 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.

9.4 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.

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

9.6 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.

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

9.8 CONSULTANT certifies that it and those related entities of CONSULTANT as defined by Florida law are not on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725 of the Florida Statutes, and are not engaged in a boycott of Israel. OWNER may terminate this Contract if CONSULTANT, including all wholly owned subsidiaries, majority-owned subsidiaries, and parent companies that exist for the purpose of making profit, is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel as set forth in section 215.4725, Florida Statutes.

9.9 CONSULTANT certifies that it and those related entities of CONSULTANT as defined by Florida law are not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, create pursuant to Section 215.473 of the Florida Statutes and are not engaged in business operations in Cuba or Syria. COUNTY may terminate this agreement if CONSULTANT is found to have submitted a false certification as provided under section 287.135(5), Florida Statutes, been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, as defined by section 287.135, Florida Statutes.

## **10. TRUTH-IN-NEGOTIATION CERTIFICATE: CONTINGENCY FEES**

10.1 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 other customers, 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.



10.2 Pursuant to the CONSULTANTS' Competitive Negotiation Act, Section 287.055, Florida Statutes, 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.

## **11. MISCELLANEOUS PROVISIONS**

11.1 Independent Contractor. It is specifically understood and acknowledged by the parties hereto that the CONSULTANT or employees or sub-consultants 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.

11.2 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.

11.3 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.

11.4 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.

11.5 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.

11.6 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.

11.7 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.

11.8 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.

11.9 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 parties 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.

11.10 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.

11.11 Public Records Compliance

Indian River County is a public agency subject to Chapter 119, Florida Statutes. The Consultant shall comply with Florida's Public Records Law. Specifically, the Consultant shall:

- (1) Keep and maintain public records required by the County to perform the service.
- (2) Upon request from the County's Custodian of Public Records, 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 in Chapter 119 or as otherwise provided by law.
- (3) Ensure that 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 contract term and following completion of the contract if the contractor does not transfer the records to the County.
- (4) Upon completion of the contract, 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 contract, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, 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 Custodian of Public Records, in a format that is compatible with the information technology systems of the County.

**B. IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**(772) 226-1424**

**[publicrecords@ircgov.com](mailto:publicrecords@ircgov.com)**

**Indian River County Office of the County Attorney**

**1801 27<sup>th</sup> Street  
Vero Beach, FL 32960**

C. Failure of the Consultant to comply with these requirements shall be a material breach of this Agreement.

11.12 FLORIDA STATUTE 558

**PURSUANT TO FLORIDA STATUTE § 558.035, AN INDIVIDUAL EMPLOYEE OR AGENT OF CONSULTANT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE.**

**12. FEDERAL CLAUSES**

For any work requested that will be paid for in part or whole by federal funds, the following terms will apply:

A. Contract Work Hours and Safety Standards: (1) The CONSULTANT or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. (2) Records to be maintained under this provision shall be made available by the CONSULTANT or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the CONSULTANT or subcontractor will permit such representatives to interview employees during working hours on the job.

B. Suspension and Debarment: (1) This contract 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 none of 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). (2) 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.

(3) This certification is a material representation of fact relied upon by OWNER. 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 OWNER, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. (4) The bidder or proposer 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 offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

C. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended): Contractors and Firms 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 of 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

who in turn will forward the certification(s) to the awarding agency.

D. Procurement of Recycled/Recovered Materials: (1) In the performance of this contract, the CONSULTANT shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—(i) Competitively within a timeframe providing for compliance with the contract performance schedule; (ii) Meeting contract performance requirements; or (iii) At a reasonable price.

(2) Information about this requirement is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

(3) The CONSULTANT also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

E. Prohibition on Contracting for Covered Telecommunications Equipment or Services:

(a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—

(b) Prohibitions: (1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug. 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons. (2) Unless an exception in paragraph (c) of this clause applies, the CONSULTANT and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to: (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system; (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system; (iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or (iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) Exceptions. (1) This clause does not prohibit CONSULTANTS from providing—

(i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or (ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles. (2) By necessary implication and regulation, the prohibitions also do not apply to: (i) Covered telecommunications equipment or services that: i. Are not used as a substantial or essential component of any system; and ii. Are not used as critical technology of any system. (ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) Reporting requirement. (1) In the event the CONSULTANT identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the CONSULTANT shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information. (2) The CONSULTANT shall report the following information pursuant to paragraph (d)(1) of this clause: (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known);

supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended. (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the CONSULTANT shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The CONSULTANT shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

F. Domestic Preference for Procurements: As appropriate, and to the extent consistent with law, the CONSULTANT should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products. For purposes of this clause: Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

G. Access to Records: The following access to records requirements apply to this contract: (1) The CONSULTANT agrees to provide OWNER, the State of Florida, 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 contract for the purposes of making audits, examinations, excerpts, and transcriptions. (2) 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. (3) The CONSULTANT agrees to provide the FEMA Administrator or his authorized representatives access to documents pertaining to the work being completed under the contract. (4) In compliance with section 1225 of the Disaster Recovery Act of 2018, the OWNER and the CONSULTANT acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

H. DHS Seal, Logo, and Flags: The CONSULTANT shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. The CONSULTANT shall include this provision in any subcontracts.

I. Compliance with Federal Law, Regulations, and Executive Orders: This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The CONSULTANT will comply with all applicable Federal law, regulations, executive orders, and FEMA policies, procedures, and directives.

J. No Obligation by Federal Government: The Federal Government is not a party to this contract 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 contract.

K. Program Fraud and False or Fraudulent Statements or Related Acts: The CONSULTANT acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.

L. Affirmative Steps: If subcontracts are to be let, the prime CONSULTANT is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

M. License and Delivery of Works Subject to Copyright and Data Rights: The CONSULTANT grants to the Owner a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this contract, the CONSULTANT will identify such data and grant to the Owner or acquires on its behalf a license of the same scope as for data first produced in the performance of this contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this contract, the CONSULTANT will deliver to the Owner data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the Owner.

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

Consultant:

INDIAN RIVER COUNTY  
By its Board of County Commissioners

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

By \_\_\_\_\_  
Joseph H. Earman, Chairman

Date \_\_\_\_\_

Date Approved by BCC: \_\_\_\_\_

Witness:

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

By \_\_\_\_\_

By \_\_\_\_\_  
Deputy Clerk

Printed Name \_\_\_\_\_

Approved:

\_\_\_\_\_  
John A. Titkanich, Jr., County Administrator

Approved as to form and legal sufficiency:

\_\_\_\_\_  
Dylan Reingold, County Attorney

Exhibit 1 – Approved Disciplines by Consultant

	Environmental	Infrastructure	Site/ Civil	Utilities
Aptim Environmental & Infrastructure, LLC	√			
Arcadis U.S., Inc.				√
Atkins North America, Inc.	√	√	√	√
Bowman Consulting Group, Ltd.		√	√	√
Carter Associates, Inc.			√	√
CDM Smith, Inc.	√			√
CHA Consulting, Inc.	√			√
Coastal Technology Corporation	√			
Coastal Waterways Design and Engineering LLC	√			
Conсор Engineers, LLC		√		
Dredging & Marine Consultants, LLC	√			
Environmental Science Associates	√			
EXP US Services, Inc.			√	
Geosyntec Consultants, Inc.	√			
Johnson, Mirmiran & Thompson, Inc.		√		
Jones, Edmunds, Associates, Inc.	√			
Kimley-Horn and Associates, Inc.	√	√	√	√
Masteller & Moler, Inc.		√	√	√
MBV Engineering, Inc.			√	√
Metric Engineering, Inc.		√		
OCI Associates, Inc.			√	
Rummel, Klepper & Kahl, LLP				√
Schulke, Bittle & Stoddard, LLC			√	
Tetra Tech, Inc.	√			√
TLC Engineering Solutions			√	
V&A Consulting Engineers, Inc.				√

Exhibit 2 – Standard Rates



**WORK ORDER \_\_\_\_**

This Work Order Number \_\_\_\_ is entered into as of this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, pursuant to that certain Continuing Contract Agreement, dated May 2, 2023 (referred to as the "Agreement"), by and between INDIAN RIVER COUNTY, a political subdivision of the State of Florida ("COUNTY") and \_\_\_\_\_ ("Consultant").

The COUNTY has selected the Consultant to perform the professional services set forth on Exhibit A (Scope of Work), attached to this Work Order and made part hereof by this reference. The professional services will be performed by the Consultant for the mutually agreed upon lump sum or maximum amount not-to-exceed professional fee. Any additional costs must be approved in writing, and at a rate not to exceed the prices set forth in Exhibit B (Rate Schedule) of the Agreement, made a part hereof by this reference. The Consultant will perform the professional services within the timeframe more particularly set forth in Exhibit A (Time Schedule), attached to this Work Order and made a part hereof by this reference all in accordance with the terms and provisions set forth in the Agreement. Pursuant to paragraph 1.4 of the Agreement, nothing contained in any Work Order shall conflict with the terms of the Agreement and the terms of the Agreement shall be deemed to be incorporated in each individual Work Order as if fully set forth herein.

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

**CONSULTANT:**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**BOARD OF COUNTY COMMISSIONERS  
OF INDIAN RIVER COUNTY**

By: \_\_\_\_\_

Joseph H. Earman, Chairman

BCC Approval Date: \_\_\_\_\_

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

By: \_\_\_\_\_

Deputy Clerk

By: \_\_\_\_\_

John A. Titkanich, Jr., County Administrator

Approved as to form and legal sufficiency:

\_\_\_\_\_  
Dylan T. Reingold, County Attorney

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**CONSULTANT:**

**BOARD OF COUNTY COMMISSIONERS  
OF INDIAN RIVER COUNTY**

By: \_\_\_\_\_

By: \_\_\_\_\_

John A. Titkanich, Jr., County Administrator

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form and legal sufficiency:

\_\_\_\_\_  
Dylan T. Reingold, County Attorney

Purchasing Approval:

\_\_\_\_\_

Department Head Approval:

\_\_\_\_\_