

ADVERTISEMENT
REQUEST FOR EXPRESSIONS OF INTEREST (EOI) FOR
PROFESSIONAL SERVICES

PS # 2011-2371

Martin County Board of County Commissioners
2401 S.E. Monterey Road
Stuart, Florida 34996
(772) 288-5509
(772) 288-5414 (fax)
pur_div@martin.fl.us
www.martin.fl.us

In accordance with Florida Statute Section 287.055 Consultant's Competitive Negotiations Act (CCNA), the Board of County Commissioners, Martin County, Florida, is soliciting Expressions of Interest (EOI) to provide Professional Services for a:

CONTINUING SERVICE CONTRACT FOR ENGINEERING SERVICES RELATED TO THE
MARTIN COUNTY AIRPORT

Sealed responses will be received at the 1st Floor Reception Desk at the above address until **2:00 PM** local time, on **January 5, 2011**. E-bidding will also be accepted by the same deadline.

Complete instructions may be downloaded from www.demandstar.com

Martin County is an equal opportunity/affirmative action employer.

By order of the Board of County Commissioners of Martin County, Florida.

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SCOPE OF SERVICES

In accordance with the Consultant Competitive Negotiation Act (CCNA), Martin County is soliciting Expressions of Interest (EOI) to provide professional engineering & related services for the Martin County Airport/Witham Field.

The engineering firm(s) selected shall provide all services related to construction projects for Martin County Airport/Witham including but not limited to design, bidding, testing, permit application, environmental compliance, construction management and inspection and project closeout. The following is a list of prospective projects.

1. Runway rehabilitation – Runway overlays, repair of base failures, grooving, striping, PDC applications, and pavement removal.
2. Taxiway rehabilitation – Taxiway overlays, repair of base failures, striping, and pavement removal. Design or new taxiways as required.
3. Runway lighting – Installation of new runway lighting systems including PAPIs and REILs and all associated conduit, cable, transformers, and cans.
4. Taxiway lighting design and upgrades - Installation of new taxiway lighting systems including associated conduit, cable, transformers, and cans.
5. Apron design and rehabilitation – Construction of new and rehabilitation of existing aircraft aprons.
6. Roadway design and rehabilitation – Design of new roads and rehabilitation on existing roadways.
7. Airfield signage – Installation or new airfield signage systems including all associated conduit, cable, transformers, and cans.
8. Electrical vault design and upgrades - Airfield electrical vault rehabilitation and upgrades including regulators, service panels, wiring, photo cells and Pilot Controlled lighting systems.
9. Airfield emergency generators - Upgrades and replacement of airfield emergency generators.
10. Pilot Controlled Lighting system - Included in electrical vault.
11. Work relating to RSA, RPZ and Part 77 compliance including survey work.

It is the intent of the County that the agreement will have a term of three (3) years. Each year on or around October 1, the list of projects may be revised. However, the total value of work to all consultants over a three (3) year period will not exceed \$1,000,000. No representation or guarantee is made by the County as to the minimum or maximum dollar value, volume of work, or type of work that any firm will receive during the term of any agreement.

After technical selection is completed, firms will be asked to submit labor classifications, fully burdened labor rates and rates for other expenses. Firms will be required to certify that the rates offered to Martin County are the same or lower than the rates offered to other clients in the State of Florida. Mark up shall not exceed 10% for subcontractors/ consultants and 5% for all other costs.

The County will issue individual Task Orders for projects on as needed basis. Most Task Orders awarded under this agreement will be under \$200,000 per project. Projects where consultant services may exceed \$200,000 per project and project construction costs may exceed \$1 million may also be conducted under this agreement and are listed in the adopted Capital Improvement Plan (CIP). There is no guarantee that any or all of these projects will be completed. Other projects not included in the CIP but of similar scope and nature may also be conducted under this agreement.

After contract award, the County shall issue a request for proposal with a qualified firm as per the Consultant's Competitive Negotiations Act (CCNA) guidelines and procedures. Task Order quotes and invoices shall, at a minimum, include labor classifications, hours, rates and any other direct costs (material, travel, etc.), indirect costs and profit/fee. Reimbursable expenses for unforeseen items and quantities shall be based upon prior approval of the project manager for actual and reasonable costs subsequently supported by invoices.

CRITERIA FOR SELECTION OF FIRMS *

Criteria	Point Value
Professional Qualifications, Experience	0- 40
Past Relevant Project Performance	0-37
Location of Primary Firm (Martin County = 10, Adjacent County = 8, In Florida = 3, Outside Florida = 0)	0-10
Certified Minority Business, Disadvantaged Business Enterprise or Small Business Enterprise, primary firm (Yes=4, No=0)	0 or 4
Recent, current & projected workloads	0-3
Willingness, ability, past performance record to meet time & budget requirements	0-3
Volume of work previously awarded by County with the object of effecting an equitable distribution of contracts among qualified firms provided such distribution does not violate the principle of selection of the most highly qualified firms (this item does not require a statement or submittal by the firm)	0-3
Total Points	0-100

*The selection committee will independently review the submittals and decide by consensus, based upon capabilities, adequacy of personnel, past record, and experience of the firm or individual, which firms will be shortlisted and interviewed for consideration of contract award. No fewer than three (3) shortlisted firms will be interviewed and/or allowed time for a brief presentation and the criteria above will be used to score and rank the shortlisted firms.

Selection Committee Members
Erik Ferguson, Project Engineer, Traffic Division
Kevin Kryzda, Chief Information Officer
George Stokus, Airport Manager
Terry Rauth, Deputy County Engineer
Ted Robbins, Utilities Technical Services Administrator

FORM OF SUBMITTAL

1. Submittal to be provided in the order below:
 - a. Cover letter / statement of interest ***including e-mail address of person to be notified of award***, manually and duly signed by an authorized corporate officer, principal, or partner. Include physical address of primary firm. *(2 page limit)*
 - b. Professional qualifications of firm *(3 page limit)*.
 - c. Professional qualifications of specific individuals assigned to the key components of the project *(1 page per person)*.
 - d. List and description of relevant projects performed in the last three years – complete form provided *(5 page limit)*.
 - e. Certified minority business enterprise or DBE/SBE status *(provide copy of certificate)*.
 - f. Statement of recent, current and projected workload relative to firm’s ability to complete tasks in a timely manner *(1 page limit)*.
 - g. Statement of firm’s willingness to meet the time and budget requirements of tasks *(1 page limit)*.
 - h. Disclosure of any potential conflict of interest due to any other clients, contracts or property interests for this project only. Include a notarized statement certifying that no member of your firm ownership, management or staff has a vested interest in any aspect of or Department of Martin County *(1 page limit)*.
3. Applicants that do not comply with all the above instructions or do not include all the requested data may not be considered.
4. One (1) paper original and one (1) electronic copy of submittal on CD in PDF format to be submitted. Paper submittal shall be bound by staple or binder clip and shall consist of paper only. All binders, plastic separators, non-recyclable material, etc. are prohibited. Submittals will not be evaluated on the aesthetic of the package.

ADDITIONAL INFORMATION

1. Cone of Silence. The County prohibits any discussion by a consultant or sub consultant with Selection Committee members or any other employee regarding this Contract outside the Purchasing Division including but not limited to the County Administrator and County Commissioners about the project during the selection process from the time of advertisement until contract award except during public meetings. Violation of this policy shall result in disqualification of the vendor.
2. Contract. The successful Consultant shall be required to execute the Contract included with this EOI and be able to provide the required insurance. Consultants not able to do this should not submit an EOI.
3. All questions concerning this selection process or this document, and protests, or appeals of the decision of the Selection Committee must be addressed in writing to the Purchasing Division and e-mailed to pur_div@martin.fl.us or faxed to 772-288-5414. Questions shall be received no later than

ten (10) calendar dates prior to the response opening date. All questions will be answered via formal addenda in writing to all interested parties.

4. The County reserves the right to reject any and all submittals with or without cause, to waive technicalities, or to accept those submittals which best serve the interests of the County. Cost of the submittals is considered an operational cost of the Consultant and shall not be passed on to or borne by the County. All submittals shall become public records upon receipt by the County.
5. Submittals may be withdrawn prior to Submittal due date by written or faxed request dispatched by the Consultant and received by the Purchasing Division before the time for receiving Submittals has expired.
6. The County reserves the right to request clarification of information submitted and to request additional information of one or more Consultants after the deadline for receipt of Submittals.
7. Costs for preparation of a response to this request are solely those of the Consultant and the County assumes no responsibility for any such costs incurred by the Consultant. The County will not be liable for any costs incurred by the Consultant prior to execution of the contract by the parties.
8. Submittals shall be on letter sized paper and shall be printed with a minimum 12 point font.
9. Consultants are instructed NOT to fax their submittal. Faxed submittals shall be rejected as non-responsive.
10. Consultants must indicate on the outside of their envelope the following:
 - EOI Number & Name
 - Date and time of opening
 - Name and address of Consultant
11. No oral interpretation of this EOI shall be considered binding. The County shall be bound only when such statements are written and executed under the authority of the Purchasing Manager. Any and all interpretations and any supplemental instructions will be in the form of written addendum, which, if issued, will be sent by mail and/or faxed to all registered Consultants at the respective locations furnished for such purposes. A copy may be obtained from the Purchasing Manager where the documents are to be distributed. Failure of any Consultant to receive such addendum shall not relieve said Consultant from any obligation under the EOI submitted. All addenda issued shall become part of the Contract Documents.
12. All Submittals must be manually and duly signed by an authorized corporate officer, principal, or partner (as applicable) with a signature in full on the Cover Letter/Statement of Interest. When a firm is a Consultant, the EOI shall be signed in the name of the firm by one or more of the partners. When a corporation is the Consultant, the officer signing shall set out the corporate name in full beneath which he shall sign his name, give title of his office and affix the corporate seal. Anyone signing the EOI as agent must file with it legal evidence of the signature authority. Consultants who are nonresident corporations shall furnish to the County a certified copy of their permit to transact business in the State of Florida along with their EOI.
13. Submittals that contain any limiting terms and conditions that do not explicitly agree to provide the

scope in the contract documents may be disqualified.

14. The Consultant understands that this EOI does not constitute an agreement or contract with the Consultant. County contracts are awarded only when a fully executed written agreement has been returned to the Consultant by the County.
15. Any Consultant who presents in its EOI to the County, any information which is determined by the County, in its sole opinion, to be substantially inaccurate, misleading, exaggerated, or incorrect, may be disqualified from consideration.
16. The recommended shortlist of firms will be posted for review by any interested parties at the Purchasing Office and on the Martin County Web Site at www.martin.fl.us.
17. All Submittals must be in ink or typewritten. No erasure permitted. Mistakes may be crossed out and corrections typed adjacent and must be initialed and dated in ink by person signing the EOI documents. All Submittal documents and/or necessary forms must be signed with the firm name and by a responsible officer or employee. Obligations assumed by such signature must be fulfilled.
18. The consultant, sub-recipient or subconsultant shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S. Department of Transportation assisted contracts. Failure by the consultant to carry out these requirements is a material breach of the contract which may result in the termination of the contract or such other remedy as the recipient deems appropriate.
19. It is the policy of the United States, the State of Florida, or the County that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns (hereinafter "small business concerns") shall have the maximum practicable opportunity to participate in performing contracts, including contracts and subcontracts. It is further the policy that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns. The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the appropriate government agency as may be necessary to determine the extent of the Contractor's compliance with this clause.
20. It is the intent of this solicitation to secure services to be used by Martin County. However, by proposing, the Consultant may accept purchases by other Florida Governmental agencies from this proposal. The successful proposer(s) and the other requesting Governmental agency shall handle any such purchases separately. As such, purchases or contracts with other Governmental agencies shall not apply to Martin County's contract limits. Martin County assumes no liability for materials or services ordered by any other Governmental agency by virtue of this proposal.
21. The successful proposer(s) will be required to monitor the performance of his employees on a periodic basis while they are assigned to the County. The successful proposer(s) is required to comply with the Immigration Reform Act of 1986 (IRCA) which requires all individuals hired after November 6, 1986, to provide employers with proof of citizenship or authorization to work in the

United States.

22. As required by FS 287.133; "A person or affiliate who has been placed on the convicted vendor list following a conviction for Public Entity crime may not submit a bid on a contract to provide goods or services to a public entity, may not submit a bid or contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of the threshold amount in Section 287.017, for category two for a period of thirty-six months from the date of being placed on the convicted vendor list". Questions regarding this statement should be directed to Bureau of State Procurement (904) 488-8131.
23. It is the policy of Martin County that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26, shall have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with funds derived from the U.S. Department of Transportation, Federal Transit Administration (FTA). Martin County utilizes the Florida Department of Transportation (FDOT) Certified Business Directory (BizNet) database to identify all firms eligible to participate as DBE's.

<https://www3.dot.state.fl.us/EqualOpportunityOffice/biznet/mainmenu.asp>

Martin County is not a certifying member of the Unified Certification Program. The COUNTY recognizes the DBE certification from FDOT and other certifying members that are FTA grant recipients in the State of Florida. The COUNTY will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. DBEs responding to this EOI shall provide DBE certification information as part of their response.

24. Payment will be made by the County in accordance with the requirements of the Local Government Prompt Payment Act, F.S. § 218. Martin County in its sole discretion, will determine the method of payment for goods and/or services as part of this agreement. Payment Methods include:
- a. Traditional – payment by check, wire transfer or other cash equivalent.
 - b. Standard – payment by purchasing card, Martin County's Purchasing Card Program is supported by standard bank credit suppliers (i.e. VISA and MasterCard), and as such, is cognizant of the Rules for VISA Merchants and MasterCard Merchant Rules.

Martin County cautions vendors to consider both methods of payment when determining pricing as no additional surcharges or fees will be considered (per Rules for VISA Merchants and MasterCard Merchant Rules). The County will entertain bids clearly stating pricing for standard payment methods. An additional separate discounted price for traditional payments may be provided at the initial bid submittal if it is clearly marked as an "Additional Cash Discount."



**AGREEMENT BETWEEN COUNTY AND CONSULTANT FOR
CONTINUING SERVICES**

THIS AGREEMENT, effective this day of in the year, , between:

MARTIN COUNTY BOARD OF COUNTY COMMISSIONERS, a political subdivision of the State of Florida, (hereinafter COUNTY), located at 2401 S.E. Monterey Road, Stuart, FL 34996

AND the CONSULTANT:
(hereinafter CONSULTANT)

Contract Name:

Contract Number: PS#2011-2371

Term: Three (3) years

Not to Exceed Amount: \$1,000,000.00

Section 1	Scope of Services
Section 2	Term
Section 3	County's Responsibilities
Section 4	Payments to Consultant
Section 5	Consultant's Project Team
Section 6	Independent Contractor Relationship
Section 7	Conflict of Interest
Section 8	No Contingency Fees
Section 9	Notices
Section 10	Waiver of Claim
Section 11	Indemnification
Section 12	Insurance
Section 13	Dispute
Section 14	Licenses
Section 15	Termination
Section 16	Suspension
Section 17	Materials
Section 18	Miscellaneous
Exhibit A	Sample Task Order

SECTION 1 SCOPE OF SERVICES

1.1 Basic Scope of Services

The Basic Scope of Services and Rates will be agreed to by the parties within each individual Task Order. The CONSULTANT shall provide Services for the COUNTY in all phases of the Project to which this AGREEMENT applies as hereinafter provided, and shall do so within the construction budget as established by the COUNTY and within the schedule set forth in each Task Order. The CONSULTANT shall perform any and all Services in a timely, efficient and cost effective manner and in accordance with the generally accepted standards of the applicable profession.

The COUNTY is selecting CONSULTANT as of this day, to provide services in accordance with the provisions of this Agreement, Contract Documents, the Consultant's Competitive Negotiations Act, Section 287.055, *Florida Statutes*, §553.70 *et seq.*, Fla. Stat., applicable state codes and municipal ordinances, and in accordance with the bid documents, and any and all addenda, modifications and revisions thereto.

Whenever the term "Task 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 COUNTY accepts CONSULTANT's proposal for specific Services and CONSULTANT indicates a willingness to perform such specific Services under the terms and conditions specified in this AGREEMENT. Nothing contained in any Task Order shall conflict with the terms of this AGREEMENT, and the terms of this AGREEMENT shall be deemed to be incorporated in each individual Task Order as if fully set forth therein. If the COUNTY issues a Task Order (see Exhibit A), it shall contain the following:

1.1.1. A description of the specific Services to be performed; a schedule of deliverables; and whether compensation is Lump Sum; Maximum Amount Not To Exceed; task or reimbursement based; or any combination of the foregoing, each with reference to the appropriate sections of this AGREEMENT;

1.1.2 A budget establishing the amount of compensation to be paid with sufficient detail so as to identify all of the various elements of costs: labor rates by classification, hours for each classification, extended price, subcontracted labor (also broken out), material, other direct costs, overhead rate, indirect rate, and profit/fee. The sufficiency of such budget detail is subject to the approval of the COUNTY; and

1.1.3 Any other additional instructions or provisions relating to the specific Services authorized pursuant to each Task Order that do not conflict with the terms of this Agreement.

1.3 GIS Standards for Electronic File Submittal

The CONSULTANT shall comply with the COUNTY'S most current "GIS Standards for Electronic File Submittal" as approved by Martin County's Information Technology Services which provides a guideline of minimum standards and technical specifications for GIS and CAD data that are delivered to the COUNTY. A copy of such Standards is available from Martin County's Information Technology Services Department.

1.4 Notice to Proceed

The CONSULTANT shall not commence work upon any phase of the Project until it receives a written Notice to Proceed from the COUNTY. The CONSULTANT shall commence work within ten (10) days after receiving the Notice to Proceed unless the notice indicates otherwise.

SECTION 2 TERM

The term of this AGREEMENT shall commence on the date of execution of this AGREEMENT by the COUNTY and continue as indicated on page 1 of this AGREEMENT or through approval of the final reports by COUNTY.

SECTION 3 COUNTY'S RESPONSIBILITIES

3.1 Information Pertinent to the Project

The COUNTY shall assist the CONSULTANT by placing at the CONSULTANT's disposal all available information pertinent to the Project (including previous reports and any other relevant documents and data relative to the Project). The CONSULTANT is ultimately responsible for satisfying itself as to accuracy of any data provided, and, furthermore, the CONSULTANT is responsible for bringing to the COUNTY's attention, for the COUNTY's resolution, any material inconsistencies or errors in such data which come to the CONSULTANT's attention.

3.2 Access to Property

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.

3.3 Examination

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.

3.4 No Warranty by COUNTY

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 or any Specialty Consultants of any of the Services furnished under this AGREEMENT. CONSULTANT shall

warrant that all designs, drawings, plans and specifications, written works, or any work product are compliant with all applicable codes, laws, ordinances, standards, etc. in effect at the time the design is submitted for permit. Owner has the right to rely upon all such architectural and engineering representations and services provided under this Agreement.

3.5 Extension of Time

3.5.1 Notice of Extension of Time

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 Specialty Consultant, and, as a result, will be unable complete timely performance fully and satisfactorily under the provisions of this AGREEMENT, then the CONSULTANT shall promptly notify the COUNTY. At the COUNTY's sole discretion, and only upon the previous submittal to the COUNTY of evidence of the causes of the delay, the COUNTY may grant the CONSULTANT an extension of its Project schedule equal to the period the CONSULTANT was actually and necessarily delayed, 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.

3.5.2 Force Majeure

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 (as defined by comparison to 10 year historical average), 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.

3.6 County Project Manager

The COUNTY reserves the right to appoint a Project Manager for this Project. The Project Manager shall issue all written authorizations to the CONSULTANT that the Project may require, or that may otherwise be defined or referred to in this AGREEMENT. The Project Manager shall also:

- 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;
- D. determine, initially, whether the CONSULTANT is fulfilling its duties, responsibilities, and obligations hereunder; and
- E. determine, initially, the merits of any allegation by the CONSULTANT respecting the COUNTY's non-performance of any Project obligation.

All determinations made by the Project Manager, as outlined above, shall be final and binding upon the CONSULTANT, but shall not be binding upon the CONSULTANT in regard to general appearances before or appeals to the COUNTY, or appearances before or appeals to a court of competent jurisdiction.

SECTION 4 PAYMENTS TO CONSULTANT

4.1 General

4.1.1 The COUNTY will pay the CONSULTANT for the Services as detailed in each of the CONSULTANT's invoices ("Invoices"), in accordance with the schedule of fees and reimbursable expenses (if any).

4.1.2 The CONSULTANT fully acknowledges and agrees that if at any time it performs Services which have not been fully negotiated, reduced to writing and formally executed by both the COUNTY and CONSULTANT, then the CONSULTANT shall perform such Services without liability to the COUNTY, and at the CONSULTANT's own risk.

4.2 Method of Payments by COUNTY

4.2.1 For Basic Scope of Services, CONSULTANT shall submit invoices in a form approved in writing by the COUNTY.

4.2.2 The County reserves the right to make Pcard (credit card) payment, versus sending a check through mail. Payment should then occur within two to four business days of invoice approval. Consequently, CONSULTANT may have to make arrangements for receiving Pcard payments if COUNTY selects this payment method.

4.3 Time of Payment

The COUNTY shall pay CONSULTANT for Services and expenses pursuant to Florida Statute after receipt of the CONSULTANT's invoice. In the event the CONSULTANT falls behind schedule outlined in Exhibit A of this Agreement, no further progress payments will be made until the CONSULTANT brings the Project back on schedule or a revised schedule is submitted and approved by the COUNTY, or until all work has been completed and accepted by the COUNTY. Any portion of an invoice that is objected to or questioned by the COUNTY shall not be considered due for the purposes of this Section. To the extent the COUNTY does not pay CONSULTANT the total amount invoiced, the COUNTY shall provide the CONSULTANT a written explanation of the objection along with any amount paid on that invoice or in lieu of payment if the objection is to the entire amount invoiced.

4.4 Scope, Cost and Fee Adjustment

4.4.1 General

The COUNTY may at any time notify the CONSULTANT of requested changes to the Scope of Basic Services as set forth in Exhibit A to this AGREEMENT. The notification shall state the Scope modification and an adjustment of the cost estimate and fee specified in Exhibit A to reflect such modification. The CONSULTANT and the COUNTY understand that, unless the cost and fee adjustment is within a previously approved budget, any change to the Scope of Basic Services must be approved or authorized by the COUNTY. Duties, responsibilities and limitations of authority of the CONSULTANT shall not be restricted, modified or extended without written agreement of the

COUNTY and the CONSULTANT.

4.4.2 Scope Reduction

The COUNTY shall have the sole right to reduce (or eliminate, in whole or in part) any portion of the Scope of Services for the overall Project at any time and for any reason, upon written notice to the CONSULTANT specifying the nature and extent of the reduction.

4.5 Final Payment

The acceptance by the CONSULTANT, its successors, or assigns, of any Final Payment due upon the termination of this AGREEMENT, shall constitute a full and complete release of the COUNTY from any and all claims or demands regarding further compensation for authorized Services rendered prior to such Final Payment that the CONSULTANT, its successors, or assigns have or may have against the COUNTY under the provisions of this AGREEMENT. This Section does not affect any other portion of this AGREEMENT that extends obligations of the parties beyond Final Payment.

SECTION 5 CONSULTANT'S PROJECT TEAM

The CONSULTANT shall assign members of its staff (Principal-in-Charge, Project Manager and Key Personnel) as the CONSULTANT's Project Team, who shall collectively devote such working time and attention as may be reasonably required to ensure that the Services are properly, economically, and efficiently performed. The CONSULTANT shall indicate to the COUNTY the authority and powers that the CONSULTANT's Project Team shall possess during the life of the Project. The CONSULTANT agrees that the COUNTY shall have the right to approve the CONSULTANT's Project Team, and that the CONSULTANT shall not change any member of its Project Team without written notice to the COUNTY. Furthermore, if any member of the CONSULTANT's Project Team is removed from Project duties, or employment is otherwise terminated or curtailed by the CONSULTANT, or if the CONSULTANT's Project Team member terminates his employment with the CONSULTANT, then the CONSULTANT shall promptly replace its Project Team member with a person of comparable experience and expertise, who shall also be subject to the COUNTY's approval. The COUNTY covenants that its approval shall not be unreasonably withheld.

SECTION 6 INDEPENDENT CONTRACTOR RELATIONSHIP

The CONSULTANT is and shall be an independent contractor in the performance of all work, services, and activities under this AGREEMENT and is not an employee, agent or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this AGREEMENT shall at all times and in all places be subject to the CONSULTANT's sole direction, supervision, and control. The CONSULTANT shall exercise control over the means and manner in which it and its employees perform the work and in all respects the CONSULTANT's relationship and the relationship of its employees to the COUNTY shall be that of an independent contractor and not as employees or agents of the COUNTY.

The CONSULTANT does not have the power or authority to bind the COUNTY in any promise, agreement or representation other than such power or authority that is specifically provided for in this

AGREEMENT.

**SECTION 7
CONFLICTS OF INTEREST**

7.1 The CONSULTANT represents and warrants to the COUNTY that no officer, employee, or agent of the COUNTY has any interest, either directly or indirectly, in the business of the CONSULTANT to be conducted hereunder. The CONSULTANT further represents and warrants to the COUNTY 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 person, company, corporation, individual, or firm, other than bona fide Personnel working solely for the CONSULTANT any fee, commission, percentage, gift or other consideration, contingent upon, or resulting from the award or making of this AGREEMENT. Further, the CONSULTANT also acknowledges that it has not agreed as an expressed or implied condition for obtaining this AGREEMENT, to employ or retain the services of any person, company, individual or firm in connection with carrying out this AGREEMENT. It is understood and agreed by the CONSULTANT that, upon the breach or violation of this Section, the COUNTY shall have the right to terminate the AGREEMENT without liability and at its sole discretion, and to deduct from the AGREEMENT price, or to otherwise recover, the full amount of such fee, commission, percentage, gift or consideration paid by the CONSULTANT.

7.2 The CONSULTANT represents that it presently has no interest, either direct or indirect, while performing the services required by this AGREEMENT, which would conflict in any manner with Florida Statutes. The CONSULTANT represents that no person having any such interest shall be employed during the term of this AGREEMENT, including any officer, employee or agent of the COUNTY.

7.3 The CONSULTANT represents and warrants that it has no current contracts with any entity that would create any conflict of interest in the CONSULTANT's ability to perform the services required by this AGREEMENT. Further, the CONSULTANT represents and warrants that throughout the term of this AGREEMENT, it will not undertake any work that would create such a conflict in interest.

7.4 The CONSULTANT shall promptly notify the COUNTY in writing by certified mail of all potential conflicts of interest for any prospective business association, interest or other circumstance that may influence or appear to influence the CONSULTANT's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the CONSULTANT may undertake and request an opinion of the COUNTY as to whether the association, interest or circumstance would, in the opinion of the COUNTY, constitute a conflict of interest if entered into by the CONSULTANT. If, in the opinion of the COUNTY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONSULTANT, the COUNTY shall so state in the notification and the CONSULTANT shall, at its option, enter into such association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the COUNTY by the CONSULTANT under the terms of this Contract.

SECTION 8

NO CONTINGENCY FEES

CONSULTANT warrants that it will not employ or retain any company or persons, other than a bona fide employee working solely for the CONSULTANT, to solicit or secure this Agreement and that CONSULTANT has not paid or agreed to pay any persons, company, corporation, individual or firm, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement in compliance with §287.055, Fla. Stat. For the breach or violation of this provision, COUNTY shall have the right to terminate the Agreement at its discretion, without liability and to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

SECTION 9 NOTICES

All notices under this Agreement shall be in writing and shall be (as elected by the person giving such notice) mailed solely by Certified Mail, Return Receipt Requested, Hand Delivery with Proof of Service, or by Overnight Courier to the COUNTY and CONSULTANT at the addresses listed on page one of this Agreement. Either party may change its address, for the purposes of this Section, by 30 day prior written notice to the other party given in accordance with the provisions of this Section.

SECTION 10 WAIVER OF CLAIM

The CONSULTANT and the COUNTY hereby mutually waive any claim against each other, their elected or appointed officials, agents, and employees, for any loss of anticipated profits caused by any suit or proceedings brought by any third party directly or indirectly attacking the validity of this AGREEMENT or any part thereof, or by any judgment or award in any suit or proceeding declaring this AGREEMENT null, void, or voidable, or delaying the same, or any part thereof, from being carried out.

SECTION 11 INDEMNIFICATION

11.1 Indemnification

CONSULTANT and any of its agents or Specialty Consultants, or anyone for whose act or acts any of them may be liable in the performance of the Services under this AGREEMENT shall indemnify and hold harmless COUNTY, its agents, employees, elected officers and representatives from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the indemnifying party and persons employed or utilized by the indemnifying party in the performance of this AGREEMENT.

CONSULTANT further shall indemnify and hold the COUNTY, successors and assigns harmless from and against any and all claims, actions, causes of action, and judgments made or filed against the COUNTY for all losses, penalties, damages, or professional fees arising out of CONSULTANT'S negligent performance of the Work (including obtainment of all license fees and royalties) or the negligent performance of Work by the Professionals, Subconsultants, Subcontractors, agents or employees, or by any of the respective officers, agents or employees of CONSULTANT Professionals, Subconsultants, Subcontractors, or anyone directly employed by any of them. CONSULTANT'S obligation under this provision shall not be limited in any way by the Firm Fixed Price, or

CONSULTANT'S, or its Professionals', Subconsultants', or Subcontractors' limit of, or lack of, sufficient insurance. This Article shall survive the termination of this AGREEMENT and shall continue in full force and effect so long as the possibility of any liability, claim or loss exists, unless otherwise prohibited by law. The parties acknowledge that the duties and limits of indemnity coverage provided by the CONSULTANT herein are as set forth in §725.08, Fla. Stat. This Article shall survive the termination of this AGREEMENT and shall continue in full force and effect so long as the possibility of any liability claim or loss exists.

11.2 Repair of Damage

The CONSULTANT agrees to promptly repair, at its sole cost and expense and in a manner acceptable to the COUNTY, any damage caused by the CONSULTANT or any Specialty Consultant, or by any of their respective employees or agents, to COUNTY property, or to any improvements or property located thereon.

SECTION 12 INSURANCE

12.1 General.

The CONSULTANT shall purchase, maintain, and keep in full force, effect, and good standing, such insurance that is further described below, including tail coverage, and any other insurance necessary to fully protect CONSULTANT from claims of the nature that are detailed below, that may arise out of, or result from, the CONSULTANT's operations, performance, or Services, or all of these things, or any of these things in combination (CONSULTANT's Operations), whether the CONSULTANT's Operations are by the CONSULTANT, any of its agents or Specialty Consultants, or anyone for whose act or acts it may be liable:

- A. claims under Worker's Compensation, disability benefit, or other (similar) employee benefit acts;
- B. claims for damages because of bodily injury, sickness or disease, or death of any person other than its employees;
- C. claims for damages for personal injury; and
- D. claims for damages because of injury to or destruction of tangible property, including the loss of property use resulting there from; and
- E. claims for professional liability/errors and omissions.

CONSULTANT shall furnish the COUNTY with Certificate(s) of Insurance signed by an authorized representative of the insurer evidencing the insurance so required. The Certificate(s) of Insurance shall provide that the COUNTY shall be given not less than thirty (30) days written notice prior to the cancellation, nonrenewal, or restriction of coverage.

12.2 Limits of Liability

The insurance required by this Section shall be written for not less than the limits of liability specified below, or required by law, whichever is greater, and shall include contractual liability insurance as applicable to the CONSULTANT's obligation:

- Worker's Compensation including Employer's Liability Insurance. (present Florida statutory limit)
- Employer's liability of \$500,000 each accident, \$500,000 disease policy limit, and \$500,000 per occurrence.
- Business Automobile Insurance. This coverage should include all owned, hired, and non-owned vehicles at a minimum combined single limit of \$1,000,000. Liability Limits should be shown as "Primary".

12.3 CONSULTANT's Errors and Omissions Policy

The CONSULTANT shall also purchase, maintain, and keep in full force, effect, and good standing, a professional liability/errors and omissions insurance policy that provides the COUNTY with policy coverage having minimum limits of \$1,000,000 per occurrence wherein the insurer agrees to pay claims (up to the limits of coverage) including defense costs. Any applicable deductible shall not exceed \$50,000.00. CONSULTANT agrees that it shall be solely responsible for payment of such deductible. The Professional Liability Insurance shall include prior acts coverage sufficient to cover all services rendered by the CONSULTANT and by its subconsultants. This coverage shall be continued in effect for four year(s) after the Date of Substantial Completion.

12.4 Insurance Administration

Insurance Certificates, evidencing all insurance coverage referred to in this Section, shall be filed (or be on file) with the COUNTY at least ten (10) calendar days before the final execution of this AGREEMENT. The Insurance Certificates shall be fully acceptable to COUNTY in both form and content, and shall provide and specify that the related insurance coverage shall not be cancelled (Coverage Change) without at least thirty (30) calendar days prior written notice having been given to the COUNTY. It is also understood and agreed that it is the CONSULTANT's sole burden and responsibility to coordinate activities between itself, the COUNTY, and the CONSULTANT's insurer(s) so that the Insurance Certificates are acceptable to and accepted by COUNTY within the time limits described in this Section.

12.5 COUNTY as Additional Insured

The COUNTY shall be listed as an additional insured on all insurance coverage required by this AGREEMENT, except Worker's Compensation and Professional Liability errors and omissions insurance. Furthermore, all other insurance policies pertaining to the Services to be performed under this AGREEMENT shall memorialize that the CONSULTANT's, or the CONSULTANT's Specialty Consultant's, or all of these entities' (Primary Insured's) insurance, shall apply on a primary basis, and that any other insurance maintained by the COUNTY shall be in excess of and shall not contribute to or be commingled with the Primary Insured's insurance. Where the COUNTY has been named as an additional insured, the CONSULTANT shall include the provisions of this Section in its Specialty Consultant's contracts, and the Primary Insured's insurance shall contain a severability of interest provision stating that, except with respect to total limits of liability, all insurance shall apply separately to each Primary Insured or additional insured in the same manner as if separate policies had been issued to each. This Section does not increase the dollar amount of insurance for either per occurrence or aggregate coverage.

12.6 COUNTY's Right to Inspect Policies

The CONSULTANT shall, upon ten (10) days' written request from the COUNTY, deliver copies to the COUNTY, or make copies available for the COUNTY's inspection at Martin County, Florida, of any or all insurance policies that are required in this AGREEMENT. If the CONSULTANT fails to deliver or make such copies available to the COUNTY; or if the CONSULTANT fails to obtain new insurance or have a previous insurance policy reinstated or renewed; or if the CONSULTANT fails in any other regard to obtain coverage sufficient to meet the terms and conditions of this AGREEMENT, then the COUNTY may, at its sole option, terminate this AGREEMENT pursuant to the terms and conditions of Section 15.

12.7 Notifications

The CONSULTANT acknowledges, understands, and agrees that it shall give prompt and prior written notice to the COUNTY that any insurance policy defined or contemplated in this Section has been invalidated because of the violation of any term or provision of any other insurance policy issued to the CONSULTANT.

12.8 Waiver of Subrogation

CONSULTANT hereby waives any and all rights of Subrogation against the COUNTY, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONSULTANT shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which a condition to the policy specifically prohibits such an endorsement, or voids coverage should CONSULTANT enter into such an agreement on a pre-loss basis.

SECTION 13 DISPUTE RESOLUTION

13.1 Prior to the initiation of any litigation by the parties concerning this Agreement, and as a condition precedent to initiating any litigation, the parties agree to first seek resolution of the dispute through non-binding mediation. Mediation shall be initiated by any party by serving a written request for same on the other party. The party shall, by mutual agreement, select a mediator within 15 days of the date of the request for mediation. If the parties cannot agree on the selection of a mediator then the COUNTY shall select the mediator who, if selected solely by the COUNTY, shall be a mediator certified by the Supreme Court of Florida. Each party to the mediation shall pay the mediator's fee in equal shares.

13.2 Non-jury trial. The parties expressly and specifically hereby waive the right to a jury trial as to any issue in any way connected with this Agreement.

SECTION 14 LICENSES

The CONSULTANT shall, during the life of this AGREEMENT, procure and keep in full force, effect,

and good standing 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 herein. The CONSULTANT shall also require all Specialty Consultants to comply by contract with the provisions of this Section.

SECTION 15 TERMINATION

15.1 Termination

15.1.1 Generally

This AGREEMENT may be terminated as follows:

- A. by the COUNTY, at its convenience pursuant to paragraph 15.2;
- B. by the COUNTY for CONSULTANT's failure to adequately perform the Agreement, pursuant to paragraph 15.3;
- 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.

15.2 Termination for COUNTY's Convenience

The COUNTY, by written notice, shall have the right to terminate and cancel this Agreement, without the CONSULTANT being at fault, for any cause or for its own convenience, and require the CONSULTANT to immediately stop work. In such event, the COUNTY shall pay the CONSULTANT for the work actually performed. The COUNTY shall not be liable to the CONSULTANT for any other costs, charges, or expenses, including but not limited to, prospective profits and overhead on work not performed.

15.3 Termination for CONSULTANT's Failure to Perform

In addition to any other termination provisions that may be provided in this AGREEMENT, the COUNTY may terminate this AGREEMENT in whole or in part if the CONSULTANT makes a false Invoice or fails to perform any obligation under this AGREEMENT and does not remedy the failure within fifteen (15) calendar days after receipt by the CONSULTANT of written demand from the COUNTY to do so, unless, however, the nature of the failure is such that it cannot, in the exercise of reasonable diligence, be remedied within fifteen (15) calendar days, in which case the CONSULTANT shall have such time as is reasonably necessary to remedy the failure, provided the CONSULTANT promptly takes and diligently pursues such actions as are necessary therefore.

15.4 Payment upon Termination

Upon termination of this AGREEMENT, the COUNTY shall pay the CONSULTANT for those Services actually rendered and contracted for under this AGREEMENT, and those reasonable and

provable expenses required and actually incurred by the CONSULTANT for Services prior to the effective date of termination. Where the AGREEMENT is terminated for cause by the COUNTY, such payment shall be reduced by an amount equal to any additional costs incurred by the COUNTY as a result of the termination.

15.5 Delivery of Materials Upon Termination

In the event of termination of this AGREEMENT by the COUNTY, prior to the CONSULTANT's satisfactory completion of all the Services described or alluded to herein, the CONSULTANT shall promptly furnish the COUNTY, at no additional cost or expense, with one (1) copy of the following items (collectively "Documents"), any or all of which may have been produced prior to and including the date of termination: data (including electronic data), specifications, calculations, estimates, plans, drawings, photographs, summaries, reports, memoranda; and any and all other documents, instruments, information, and materials (whether or not completed) generated or prepared by the CONSULTANT, or by any Specialty Consultant, in rendering the Services described herein, and not previously furnished to the COUNTY by the CONSULTANT pursuant to this AGREEMENT. The Documents shall be the sole property of the COUNTY, and the COUNTY shall be vested with all rights provided therein of whatever kind and however created. The CONSULTANT shall also require that all such Specialty Consultants agree in writing to be bound by the provisions of this Section.

SECTION 16 SUSPENSION

The COUNTY may, at any time and for any reason, direct the CONSULTANT to suspend work (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. The period during which the Services are stopped by the COUNTY shall be added to the time of performance of this AGREEMENT; provided, however, that any work stoppage not approved or caused by the actions or inactions of the COUNTY shall not give rise to any claim against the COUNTY by the CONSULTANT.

SECTION 17 MATERIALS, REUSE OF DOCUMENTS, AND CONFIDENTIALITY

For each phase, CONSULTANT agrees to furnish and provide to COUNTY five (5) full-size copies of all plans, specifications, drawings, and other documents (except correspondence) prepared by CONSULTANT hereunder, same to be furnished as the same are prepared and completed by CONSULTANT, and if COUNTY requires additional copies of any of same, CONSULTANT will promptly furnish same to COUNTY upon request for the reasonable cost of the reproduction of same. COUNTY may, at COUNTY'S expense, obtain a set or sets of reproducible prints of any or all drawings and other documents prepare hereunder by CONSULTANT for the project.

The final work product of all such materials along with all formal CONSULTANT/COUNTY correspondence concerning the Project shall be the sole property of the COUNTY. All materials described above shall be retained by the CONSULTANT for the statutory period (§95.11 Fla. Stat., as it may be from time to time amended). Furthermore, the COUNTY may reuse them at no additional cost, and the COUNTY shall be vested with all rights of whatever kind and however created that may be in

existence thereto; provided, however, that the CONSULTANT shall not be liable or legally responsible to anyone for the COUNTY's reuse of any such materials on any other COUNTY Project and that the CONSULTANT timely notified the COUNTY of such potential liability.

SECTION 18 MISCELLANEOUS PROVISIONS

18.1 Local, State and Federal Obligations

18.1.1 No Discrimination

The CONSULTANT, for itself, its delegates, successors interest, and its assigns, and 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 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, and as such rules, regulations, or guidelines may be from time to time amended. In the event of a breach of any of the nondiscrimination covenants described in this Section, the COUNTY shall have the right to terminate this AGREEMENT, without liability, as set forth in Section 15 of this AGREEMENT, and such right shall not be exercised unreasonably.

18.1.2 Compliance with Law

The CONSULTANT and its employees shall promptly observe, comply with, and execute the provisions of any and all present and future federal, state, and local laws, rules, regulations, requirements, ordinances, orders, codes, mandatory guidelines, and mandatory directions, including §287.055, Fla. Stat., and §553.70 et. seq., Fla. Stat., which may pertain or apply to the Services that may be rendered pursuant to this AGREEMENT, or to the wages paid by the CONSULTANT to its employees. The CONSULTANT shall also require, by contract, that all Specialty Consultants shall comply with the provisions of this Section.

18.1.3 Compliance with New Regulations

The CONSULTANT agrees that at such time as the local, state, or federal agencies modify their grant procedures in order for the COUNTY or the CONSULTANT to qualify for local, state, or federal funding for the Services rendered by the CONSULTANT, then the CONSULTANT shall consent to and make such modifications or amendments in a timely manner. If the CONSULTANT is unable to comply with applicable local, state, or federal laws and regulations governing the grant of such funds for Services to be rendered herein, then the COUNTY shall have the right, by written notice to the CONSULTANT, to terminate this AGREEMENT without liability, as outlined in Section 15, above. Furthermore, if the CONSULTANT's compliance with such laws, regulations, rules, or procedures causes a material change to a term or condition of this AGREEMENT, then the COUNTY agrees, upon sufficient proof of material changes as may be presented to it by the CONSULTANT, to amend this AGREEMENT.

18.2 CONSULTANT Not Agent of County

The CONSULTANT is not authorized to act as the COUNTY's agent hereunder and shall have no authority, expressed or implied, to act for or bind the COUNTY hereunder, either in CONSULTANT's relations with Specialty Consultants, or in any other manner whatsoever except as elsewhere provided for in this AGREEMENT.

18.3 Specialty Consultants

18.3.1 General

The CONSULTANT shall have the right, conditioned upon the COUNTY's prior consent (which shall not be unreasonably withheld), to employ or use (whether or not for compensation or consideration of any nature whatsoever) other firms, consultants, contractors, subcontractors, and so forth (Specialty Consultants); provided, however, that the CONSULTANT shall: 1) inform the COUNTY as to the nature of particular Services for which the Specialty Consultants shall be employed; 2) inform the COUNTY as to the extent (what percentage) of the total Project Services each Specialty Consultant shall be employed to do; 3) be solely responsible for the performance of all of the CONSULTANT's Specialty Consultants, including but not limited to maintenance of schedules, correlation of Services, and the resolution of all differences between or among them; 4) promptly terminate the use and services of any Specialty Consultants upon written request from the COUNTY (which may be made for the COUNTY's convenience); and 5) promptly replace each such terminated Specialty Consultant with a Specialty Consultant of comparable experience and expertise and who are otherwise acceptable to the COUNTY. After the Specialty Consultant has received notice of the termination, or two (2) business days after the COUNTY has notified the CONSULTANT in writing of the required termination of the Specialty Consultant whichever shall occur first, the COUNTY shall have no obligation to reimburse the CONSULTANT for the Services subsequent to the notice of termination of any Specialty Consultant who may be terminated pursuant to the provision of this Section. It is also understood that the COUNTY does not, by accepting a Specialty Consultant, warrant or guarantee the reliability or effectiveness of that entity's Services.

18.3.2 Work Outside Scope and Time of Payment

The COUNTY shall have no obligation to reimburse the CONSULTANT for the services of any Specialty Consultant that may be in addition to the Services, or for those Specialty Consultant Services not previously made known to the COUNTY, or that are otherwise outside of the Scope of the Project unless and until the COUNTY has given written approval of such reimbursement. CONSULTANT agrees to pay all such Specialty Consultants for their Project related Services within thirty (30) calendar days after the CONSULTANT's receipt of payment, from the COUNTY for work performed by the Specialty Consultants, unless such payment is disputed by the CONSULTANT, and the COUNTY receives written notice thereof.

18.3.3 Specialty Consultant Contracts

The CONSULTANT shall provide a copy of all relevant provisions of this AGREEMENT to all Specialty Consultants hired by it, or for which it may have management responsibilities and shall inform all Specialty Consultants that all Services performed hereunder shall strictly comply with the AGREEMENT terms and provisions. The CONSULTANT shall also furnish the COUNTY, upon demand, with a copy of all CONSULTANT Specialty Consultant contracts. The COUNTY agrees that

it shall not demand that the CONSULTANT hire a particular Specialty Consultant for the Project.

18.4 Assignment and Delegation

The COUNTY and the CONSULTANT bind themselves and their respective partners, successors, executors, administrators, and assigns, to the other party of this AGREEMENT in respect to all duties, rights, responsibilities, obligations, provisions, conditions, and covenants of this AGREEMENT; except that the CONSULTANT shall not assign, transfer, or delegate its rights or duties, or either or both of these things, under this AGREEMENT without the prior written consent of the COUNTY. The COUNTY has the absolute right to withhold such consent at its convenience, and, furthermore, if the CONSULTANT attempts to assign, transfer, or delegate its rights or duties in violation of these provisions without the COUNTY's consent, then the COUNTY may terminate this AGREEMENT as a breach of contract by the CONSULTANT and a failure by the CONSULTANT to substantially perform its obligations hereunder, and any such assignment shall be null, void, and of no legal effect whatsoever. The COUNTY shall have the right to assign its rights (or any part of them) or to delegate its duties and obligations (or any part of them) to another entity that shall be bound by all applicable terms and conditions as provided in this AGREEMENT. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the COUNTY, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the COUNTY or the CONSULTANT.

18.5 Audits

18.5.1 Periodic Auditing of CONSULTANT's Books

The Consultant's financial and accounting records ("Books") specific to this AGREEMENT may (but need not) be kept separate and apart from the CONSULTANT's other Books; but 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 or Completion Report and to ensure payment to subconsultants or vendors of the CONSULTANT. In addition, upon request of the COUNTY, the CONSULTANT shall prepare an audit (for the most recent fiscal year) for the COUNTY, which shall include the CONSULTANT's paid salary, fringe benefits, general and administrative overhead costs, and the total amount of money paid by the COUNTY to the CONSULTANT. The audit shall be certified as true and correct by, and shall bear the signature of, the CONSULTANT's chief financial officer or its certified public accountant.

18.5.2 Retention of Books

The CONSULTANT shall retain the Books, and make them available to the COUNTY as specified above, until the later of five (5) years after the date of termination of this AGREEMENT, or such longer time if required by any federal, state, or other governmental law, regulation, policy, or contractual or grant requirement or provision.

18.5.3 Overpayment

In the event any audit or inspection conducted after final payment, but within the period provided in Section 15 above, reveals any overpayment to the CONSULTANT by COUNTY under the terms of the Agreement, CONSULTANT shall refund such overpayment to COUNTY within thirty (30) days of notice by the COUNTY.

18.6 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 Martin County.

18.7 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. The CONSULTANT further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this AGREEMENT.

18.8 Public Records

The CONSULTANT shall comply with the provisions of Chapter 119, Fla. Stat. (Public Records Law) in connection with this AGREEMENT.

18.9 Truth Negotiation Certificate

Execution of this Agreement by the CONSULTANT shall act as the execution of a truth 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 Florida Statutes §287.055, as it may be from time to time amended.

18.10 Federal and State Taxes

The COUNTY is exempt from payment of Florida State Sales and Use Taxes. The CONSULTANT shall not be exempt from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the COUNTY, nor is the CONSULTANT authorized to use the COUNTY's Tax Exemption Number in securing such materials. The CONSULTANT shall be responsible for payment of all federal, state, and local taxes and fees incurred in connection with this AGREEMENT.

18.11 Governing Law; Venue

Prior to the initiation of any litigation by the parties concerning this Agreement, and as a condition precedent to initiating any litigation, the parties agree to first seek resolution of the dispute through non-binding mediation pursuant to Article 13 above.

The validity, interpretation, construction, and effect of this AGREEMENT shall be in accordance with and governed by the laws of the State of Florida, only. Venue for any lawsuit to enforce the terms and obligations of this Agreement shall lie exclusively in Martin County, Florida.

18.12 Remedies, Attorneys' Fees and Costs

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. 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 and attorney's fees.

18.13 Entire Agreement

This AGREEMENT, including the Exhibits hereto and bid package, constitutes the entire AGREEMENT between the parties, and shall supersede and replace all prior or contemporaneous negotiations, correspondence, conversations, agreements or understandings, written or oral, relating to the matters set forth therein, and that specifically related to the execution of this particular document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

18.14 Amendment

This AGREEMENT may be amended or modified only by a writing of import equal to this AGREEMENT, and as duly authorized and executed by the parties.

18.15 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. In the event any provision hereof or be determined to be unenforceable or invalid, such unenforceability or invalidity shall not affect the remaining provisions of this AGREEMENT, which shall remain in full force and effect. To that extent, this AGREEMENT is deemed severable.

18.16 Headings

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.

18.17 Construction

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.

IN WITNESS WHEREOF, this AGREEMENT has been fully executed on behalf of the parties hereto by its duly authorized representatives, as of the date first written above.

REVIEWED BY:

BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA

County Administrator

CONSULTANT NAME

Name

Title

**EXHIBIT A
SAMPLE TASK ORDER**

PS-
NAME OF CONTRACT
TASK ORDER NO. _____

Pursuant to that certain Consultant Contract (“Contract”) between Martin County (“County”) and
 (“Consultant”) dated _____, Consultant hereby agrees to provide the professional services
specified on Exhibit “A”, (1) under the terms and conditions, (2) at a cost of \$ _____, and (3) according
to the schedule, all as more specifically described in Exhibit “A”, attached hereto and incorporated by
this reference. In accordance with the Contract, the terms of the Contract shall be deemed to be
incorporated in each individual Task Order as if fully set forth herein.

IN WITNESS WHEREOF, the County and the Consultant have executed this Task Order effective this
_____ day of _____ 200__.

Reviewed by:

BOARD OF COUNTY COMMISSIONERS
MARTIN COUNTY, FLORIDA

Enter Department Director Name Here
Title

County Administrator

WITNESS:

ENTER CONSULTANT FIRM NAME

Enter Name & Title