

CONTINUING SERVICES

A G R E E M E N T

Between

HILLSBORO INLET DISTRICT

And

For

PROFESSIONAL COASTAL ENGINEERING AND CONSULTING SERVICES

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PROFESSIONAL COASTAL ENGINEERING AND CONSULTING SERVICES

THIS AGREEMENT is made between the HILLSBORO INLET DISTRICT, an independent special taxing district of the State of Florida, (hereinafter referred to as "DISTRICT"),

AND

_____, a Florida _____, authorized to do business in the State of Florida, (hereinafter referred to as "CONSULTANT"), whose principal place of business is _____.

WHEREAS, the DISTRICT has advertised for professional coastal engineering services; and

WHEREAS, pursuant to Section 287.055, Florida Statutes, the DISTRICT solicited proposals from qualified engineers and selected the CONSULTANT to provide said continuing professional engineering services for various Projects (hereinafter referred to as "Specific Projects"); and

WHEREAS, the CONSULTANT is willing and able to perform such professional services for the DISTRICT within the basic terms and conditions set forth in this agreement subject to the statutory limits of Section 287.055 (hereinafter referred to as "Continuing Services Agreement or Agreement"); and

WHEREAS, the purpose of this Continuing Services Agreement is not to authorize a Specific

Project, but to set forth certain terms and conditions which shall be incorporated into subsequent supplemental agreements for Specific Projects or services when required;

NOW THEREFORE, in consideration of the mutual terms, conditions, promises and covenants set forth below, the DISTRICT and CONSULTANT agree as follows:

SECTION 1. DEFINITIONS

The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning:

1.1 Compensation: Compensation means the total amount paid by the DISTRICT for the CONSULTANT's professional services pursuant to an executed Specific Project Agreement.

1.2 Continuing Services Agreement Documents: This Agreement includes the following documents: this Agreement, the Request for Qualifications No. 2020-01 ("RFQ"), attached hereto and incorporated herein as Exhibit "A," CONSULTANT's response to the RFQ, opened and attached hereto and incorporated herein as Exhibit "B," all specifications, Certificate(s) of Insurance, Specific Project Agreements and all written amendments issued on or after the effective date of this Agreement. In the event of conflict among the various components of the Agreement, the following shall govern in the following order: this Agreement, any written amendments thereto, the RFQ (Exhibit "A"), CONSULTANT's Proposal (Exhibit "B"), CONSULTANT'S fee schedule (Exhibit "C") and Specific Project Agreements.

1.3 Lump Sum: a method of payment to the CONSULTANT for a fixed sum amount which constitutes total compensation to the CONSULTANT for the performance by the CONSULTANT of the Project. Said fixed sum includes but is not limited to, compensation for all fees, expenses and out-of-pocket costs of the CONSULTANT. The fixed sum shall be based on the hourly rates provided by CONSULTANT for the services rendered and attached hereto as Exhibit "D" and shall be provided by CONSULTANT in the form of an invoice.

1.4 Reimbursable Direct Expenses or Reimbursables: the direct nonsalary expenses directly attributable to the Project. Reimbursable expenses include, application and permit fees paid for securing approval of authorities having jurisdiction over the Specific Project; actual cost of reproduction, printing, binding and photocopying of drawings, specifications, renderings, and other documents, travel expenses, and postage.

1.5 Specific Project or Project: a specific scope of services, the Compensation to be paid,

the time frame to complete the work and other project specific details.

1.6 Specific Project Agreement or Project Agreement: an agreement to provide services for a particular Project.

1.8 Travel Expenses: actual mileage, meals and lodging expenses incurred directly for the Specific Project for travel outside of Palm Beach, Miami-Dade, and Broward Counties. No overnight travel or out-of-town travel outside of Palm Beach, Miami-Dade, or Broward County shall be reimbursed unless the CONSULTANT has secured advance written authorization for such travel from the DISTRICT's representative. Reimbursement for such authorized travel expenses shall be at the rates provided for in Chapter 112, Florida Statutes, as may be amended from time to time, which rates shall by reference be made a part of this Agreement as though set forth in full.

SECTION 2. SPECIFIC PROJECTS/SCOPE OF SERVICES

2.1 In accordance with the Consultants' Competitive Negotiation Act, the CONSULTANT may provide professional services to the DISTRICT for Specific Projects as authorized from time to time by the DISTRICT. The DISTRICT reserves the right to select one or more firms to do the Projects. CONSULTANT shall not provide professional services for a project that has an estimated construction budget of \$2,000,000, and shall not provide professional services for individual studies that are estimated cost more than \$200,000.

2.2 When the need for services for a Specific Project occurs, the DISTRICT may at its sole discretion, enter into negotiations with the CONSULTANT for that Specific Project under the terms and conditions of this Agreement. The DISTRICT shall initiate said negotiations by providing the CONSULTANT with a "Scope of Services Request," requesting from the CONSULTANT a proposal to provide professional services for the Specific Project. The CONSULTANT shall prepare a proposal which includes a lump sum fee based on the hourly fee schedule provided in CONSULTANT's proposal, and a manpower-task breakdown. The DISTRICT and CONSULTANT shall negotiate the terms of the Specific Project in accordance with the provisions of Subsection 2.3.

2.3 Project Agreement. The DISTRICT and CONSULTANT shall enter into an amendment to this Agreement for each Specific Project a Standard Project Agreement. Each amendment to this Agreement for a Specific Project will, by mutual agreement, set forth, among other things, the following:

1. The Scope of Services;
2. The deliverables;

3. The time and schedule of performance and term;
4. The amount of compensation;
5. The personnel assigned to the Specific Project; and
6. Any modifications to this Agreement, if mutually agreed upon by the parties.

2.4 Project Agreement Execution. The professional services to be rendered by the CONSULTANT shall commence subsequent to the execution of each amendment to this Agreement. The DISTRICT's authorized representative is authorized to negotiate the Project Agreements for Projects. The Project Agreement shall be presented to the Board of Commissioners for consideration and approval. The CONSULTANT's services shall be performed, completed and submitted to the DISTRICT as specified in the Project Agreement.

2.5 Project Documents. The Project Documents for each Specific Project shall incorporate this Continuing Services Agreement. Unless otherwise agreed to in writing, in the event that any of the terms or conditions of this Agreement conflict with the Project Agreement, the provisions of the Project Agreement shall apply.

2.6 Project Negotiations. In the event the DISTRICT and the CONSULTANT are unable to reach a satisfactory supplemental agreement for a Specific Project as provided for in Sections 2.2 and 2.3, or the DISTRICT determines that the best interests of the DISTRICT would be served by procuring services for a specific Project from another engineer, then the DISTRICT shall, at its sole discretion, terminate negotiations with the CONSULTANT for the particular Project.

SECTION 3. TERM/TERMINATION

3.1 **TERM OF AGREEMENT** - This Continuing Services Agreement shall commence on the date this instrument is fully executed by all parties and shall continue in full force and effect for four (4) years, unless and until terminated pursuant to Section 3.2 or 3.3, or other applicable sections of this Agreement. There shall be one (1) subsequent optional two (2) year renewal period as approved by the DISTRICT Board of Commissioners. Each Project Agreement shall specify the period of service agreed to by the DISTRICT and CONSULTANT for services to be rendered under said Project Agreement.

3.2 **TERMINATION - For Convenience** - This Continuing Services Agreement may be terminated by the DISTRICT for convenience upon thirty (30) calendar days' written notice to the CONSULTANT. In the event of such termination, any services performed by the CONSULTANT under this Continuing Services Agreement shall, at the option of the DISTRICT, become the DISTRICT'S property, and the CONSULTANT shall be entitled to receive compensation for any work completed pursuant to this Agreement to the satisfaction of the DISTRICT up through the date

of termination. Under no circumstances shall DISTRICT make payment of profit for services which have not been performed.

3.3 TERMINATION - For Cause - This Agreement may be terminated by either party upon thirty (30) calendar days' written notice to the other should such other party fail substantially to perform in accordance with its material terms through no fault of the party initiating the termination. In the event the CONSULTANT abandons this Agreement or causes it to be terminated by the DISTRICT, the CONSULTANT shall indemnify the DISTRICT against loss pertaining to this termination. In the event that the CONSULTANT is terminated by the DISTRICT for cause and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a termination for convenience under Section 3.2 and the provisions of Section 3.2 shall apply.

3.4 EFFECT ON PROJECT AGREEMENT – Individual Project Agreements shall be subject to the same termination provisions contained in Sections 3.2 and 3.3 of this Agreement.

3.5 RETAINAGE - The DISTRICT reserves the right to withhold retainage in the amount of ten percent (10%) of any payment due to the CONSULTANT until the Project is completed. For projects that are divided into several phases, any retainage shall be withheld and may be released individually for each phase of the Project at DISTRICT's discretion. Said retainage may be withheld at the sole discretion of the DISTRICT's authorized representative, and as security for the successful completion of the CONSULTANT'S duties and responsibilities under the Project Agreement.

3.6 VALUE ENGINEERING - In the event that a Project Agreement for design is based on budgeted funds available for a project, the following shall apply: Should the lowest responsible, responsive proposal or bid submitted by a third party for construction of a project designed by CONSULTANT exceed the CONSULTANT's final written estimate of construction costs ("Final Estimate") by 10% or more, CONTRACTOR, at no additional cost to the DISTRICT, shall provide value engineering and redesign as necessary to reduce construction costs to be within 10% of the Final Estimate.

3.7 RIGHT TO EXTEND At the sole discretion of the DISTRICT Board of Commissioners, this Agreement may be extended for a period of up to ninety (90) days beyond the specified expiration date in Section 4.1 if such extension is deemed by the DISTRICT Board of Commissioners to be in the best interest of the DISTRICT. Extensions beyond ninety (90) days must also be approved by the DISTRICT Board of Commissioners.

SECTION 4. ADDITIONAL SERVICES AND CHANGES IN SCOPE OF SERVICES

4.1 Changes Permitted. Changes in the Scope of Services of a Project Agreement consisting of additions, deletions, revisions, or any combination thereof, may be ordered by the DISTRICT by Change Order without invalidating the Project Agreement.

4.2 Change Order Defined. Change Order shall mean a written order to the CONSULTANT executed by the DISTRICT, issued after execution of a Project Agreement, authorizing and directing a change in the Scope of Services or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The Contract Price and/or the Contract Time may be changed only by Change Order.

4.3 Effect of Executed Change Order. The execution of a Change Order by the DISTRICT and the CONSULTANT shall constitute conclusive evidence of the CONSULTANT's agreement to the ordered changes in the Scope of Services, the Contract Price and/or the Contract Time. The CONSULTANT, by executing the Change Order, waives and forever releases any claim against the DISTRICT for additional time or compensation for matters relating to or arising out of or resulting from the Services included within or affected by the executed Change Order.

4.4 Change Orders shall be approved by the District Board of Commissioners.

4.5 Non-Exclusive Agreement. Notwithstanding the provisions of this Agreement, the DISTRICT Authorized representative may issue requests for proposals at any time and may utilize the services of any other CONSULTANT retained by the DISTRICT under continuing services agreements for the same or similar services. Nothing in this Agreement shall be construed to give the CONSULTANT a right to perform services for a specific project.

SECTION 5. SURVIVAL OF PROVISIONS

Any terms or conditions of either this Agreement or any subsequent Project Agreement that require acts beyond the date of the term of either agreement, shall survive termination of the agreements, shall remain in full force and effect unless and until the terms or conditions are completed, and shall be fully enforceable by either party.

SECTION 6. DISTRICT'S RESPONSIBILITIES

6.1 Assist CONSULTANT by placing at its disposal all available information as may be requested in writing by the CONSULTANT and allow reasonable access to all pertinent information

or DISTRICT property relating to the services to be performed by CONSULTANT.

6.2 Furnish to CONSULTANT, at the CONSULTANT's request, all existing studies, reports and other available data pertinent to the services to be provided by CONSULTANT.

6.3 Arrange for access to and make all provisions for CONSULTANT to enter upon public property as required for CONSULTANT to perform services.

SECTION 7. CODE OF ETHICS

7.1 The applicable code of ethics from the state professional organization of the CONSULTANT's professional discipline shall be incorporated in this Agreement by this reference. For example, for engineers, the code of ethics of the Florida Engineering Society shall be incorporated in this Agreement by this reference. If there is not a code of ethics from the state professional organization, then the code of ethics from the national professional organization shall be incorporated.

7.2 CONSULTANT warrants and represents that its employees shall abide by the applicable provisions of the Code of Ethics for Public Officers and Employees, Chapter 112, Florida Statutes, as they may be amended from time to time.

SECTION 8. POLICY OF NON-DISCRIMINATION AND ANTI-BDS; SCRUTINIZED COMPANIES.

8.1 The CONSULTANT shall comply with all federal, state and local laws and ordinances applicable to the work or payment for work. CONSULTANT certifies that it does not discriminate in its membership or policies based on race, color, national origin, religion, sex, sexual orientation, familial status or handicap. CONSULTANT further agrees that neither CONSULTANT, nor any parent company, subsidiaries or affiliates of CONSULTANT are currently engaged in, nor will engage in during the term of this Agreement, the boycott of a person or business based in or doing business with a member of the World Trade Organization or any country with which the United States has free trade.

8.2 If a specific project is subject to federal and grant funding that requires specific wage and non-discrimination provisions, CONSULTANT shall be required to comply with such provisions.

8.3 Contractor certifies that it and its subcontractors are not on the Scrutinized Companies

that Boycott Israel List. Pursuant to Section 287.135, F.S., the City may immediately terminate this Agreement at its sole option if the Contractor or its subcontractors are found to have submitted a false certification; or if the Contractor, or its subcontractors are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.

8.4 If this Agreement is for more than one million dollars, the Contractor certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S. Pursuant to Section 287.135, F.S., the City may immediately terminate this Agreement at its sole option if the Contractor, its affiliates, or its subcontractors are found to have submitted a false certification; or if the Contractor, its affiliates, or its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.

8.5 The Contractor agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

8.6 As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

SECTION 9. OWNERSHIP OF DOCUMENTS/DELIVERABLES

9.1 All finished or unfinished documents, including but not limited to, detailed reports, studies, plans, drawings, surveys, maps, models, photographs, specifications, and all other data prepared for the DISTRICT or furnished by CONSULTANT pursuant to this or any Project Agreement shall become the property of the DISTRICT, whether the Project for which they are made is completed or not, and shall be delivered by CONSULTANT to DISTRICT within ten (10) calendar days after receipt of written notice requesting delivery of said documents. The CONSULTANT shall have the right to keep one record set of the documents upon completion of the Project, however, in no event shall the CONSULTANT use, or permit to be used, any of the documents without the DISTRICT'S prior written authorization. Any reuse of such documents by the CONSULTANT without the written verification or adaptation by the DISTRICT for the specific purpose intended will be at the CONSULTANT's sole risk.

9.2 All subcontracts for the preparation of reports, studies, plans, drawings, specifications, or other data, entered into by the CONSULTANT for a Specific Project shall provide that all such documents and rights obtained by virtue of such contracts shall become the property of

the DISTRICT.

9.3 All final plans and documents prepared by the CONSULTANT shall bear the endorsement and seal of a person duly registered as a Professional Engineer, Architect, Landscape Architect, Professional Geologist, or Land Surveyor, as appropriate, in the State of Florida.

9.4 All deliverables should be provided in hard copy format as well as electronic format to the DISTRICT. Drawings should be provided in CADD and PDF, spread sheets in Microsoft Excel, and written documentation in Microsoft Word. The date of submittal to the DISTRICT shall be deemed to be the later of delivery of hard copies or delivery of electronic copies as applicable.

SECTION 10. RECORDS/AUDITS

10.1 CONSULTANT shall maintain and require subconsultants to maintain, complete and correct records, books, documents, papers and accounts pertaining to each Project Agreement and any worked performed in connection with this Agreement. Such records, books, documents, papers and accounts shall be available at all reasonable times for examination and audit by the DISTRICT's Authorized Representative with reasonable notice and shall be kept for a period of five (5) years after the completion of each Project Agreement or such longer time as may be required by applicable law. Incomplete or incorrect entries in such records, books, documents, papers or accounts will be grounds for disallowance by, or reimbursement to, the DISTRICT of any fees or expenses based upon such entries. Disallowed fees will be paid when incomplete or incorrect entries are remedied to the satisfaction of the DISTRICT.

10.2 The CONSULTANT shall comply with Chapter 119, Florida Statutes, as applicable, and shall comply with the following:

(a) CONSULTANT agrees to keep and maintain public records in CONSULTANT's possession or control in connection with CONSULTANT's performance under this Agreement. CONSULTANT additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. CONSULTANT shall 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 Agreement, and following completion of the Agreement until the records are transferred to the DISTRICT.

(b) Upon request from the DISTRICT's custodian of public records, CONSULTANT shall provide the DISTRICT 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 by Chapter 119,

Florida Statutes, or as otherwise provided by law.

(c) Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the DISTRICT.

(d) Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the CONSULTANT shall be delivered by the CONSULTANT to the DISTRICT's Authorized Representative, at no cost to the DISTRICT, within seven (7) days. All such records stored electronically by CONSULTANT shall be delivered to the DISTRICT in a format that is compatible with the DISTRICT's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the CONSULTANT shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

(e) Any Compensation due to CONSULTANT shall be withheld until all records are received as provided herein.

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 AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (954) 362-9514, or by e-mail: SECRETARY@HILLSBOROINLETDISTRICT.ORG,

Robert Andrews

Dynamic Accounting

6402 NW 5th Way

Fort Lauderdale, FL 33309

10.3 Refusal of the CONSULTANT to comply with the provisions of Sections 10.1 or 10.2 shall be grounds for immediate termination for cause by the DISTRICT of this Agreement or any Project Agreement.

SECTION 11. NO CONTINGENT FEE

CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for 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 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 the event the CONSULTANT violates this provision, DISTRICT shall have the right to terminate this Agreement or any Project Agreement, without liability, and at its sole discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

SECTION 12. INDEPENDENT CONSULTANT

The CONSULTANT is an independent CONSULTANT under this Agreement. Personal services provided by the CONSULTANT shall be by employees of the CONSULTANT and subject to supervision by the CONSULTANT, and not as officers, employees, or agents of the DISTRICT. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement shall be those of the CONSULTANT.

SECTION 13. ASSIGNMENT; AMENDMENTS

13.1 This Agreement, or any interest herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by CONSULTANT, without the prior written consent of DISTRICT, which may be withheld at the DISTRICT's sole discretion.

13.2 No modification, amendment or alteration in the terms or conditions of this Agreement shall be effective unless contained in a written document executed with the same formality as this Agreement.

SECTION 14. INDEMNIFICATION/HOLD HARMLESS

14.1 The CONSULTANT shall indemnify, defend and hold harmless the DISTRICT, its officials, agents, employees, and volunteers from and against any and all liability, suits, actions, damages, costs, losses and expenses, including attorneys' fees, demands and claims for personal injury, bodily injury, sickness, diseases or death or damage or destruction of tangible property or loss of use resulting therefrom, arising out of any errors, omissions, misconduct or negligent acts of the CONSULTANT, its officials, agents, employees or sub-consultants in the performance of the services of the CONSULTANT under this Agreement and any Project Agreement.

14.2 The CONSULTANT acknowledges that specific consideration has been paid or will

be paid under this and each Project Agreement for this hold harmless and indemnification provision, and further agrees with the foregoing provisions of indemnity and also agrees with the collateral obligation of insuring said indemnity as set forth in Section 15, Insurance.

SECTION 15. INSURANCE

The CONSULTANT shall secure and maintain throughout the duration of this and any Project Agreement, insurance of such type and in such amounts as may be necessary to protect its interests and the interests of the DISTRICT against hazards or risks of loss as specified below. The underwriter of such insurance shall be qualified to do business in Florida and have agents upon whom service of process may be made in the State of Florida. The insurance coverage shall be primary insurance with respect to the DISTRICT, its officials, employees and volunteers. Any insurance maintained by the DISTRICT shall be in excess of the CONSULTANT's insurance and shall not contribute to the CONSULTANT's insurance. The insurance coverages shall include a minimum of:

15.1 Workers' Compensation and Employer's Liability Insurance: Coverage to apply for all employees for Statutory Limits as required by applicable State and Federal laws. Employers Liability Limits shall be no lower than \$500,000 each accident, \$500,000 each employee (disease), \$500,000 disease (policy limit). Employer's Liability with a minimum limit per accident in accordance with statutory requirements. The policy must be endorsed to provide DISTRICT with 30 days' written notice of cancellation and/or restriction.

15.2 Comprehensive Automobile and Vehicle Liability Insurance. This insurance shall be written in comprehensive form and shall protect the CONSULTANT and the DISTRICT against claims for injuries to members of the public and/or damages to property of others arising from the CONSULTANT's use of motor vehicles or any other equipment and shall cover operation with respect to onsite and offsite operations and insurance coverage shall extend to any motor vehicles or other equipment irrespective of whether the same is owned, non-owned, or hired. The limit of liability shall not be less than \$1,000,000 per occurrence for Bodily Injury and Property Damage, Hired & Non Owned Auto Liability. Defense Costs must be 'outside the limits' of liability.

15.3 Commercial General Liability. This insurance shall be written in comprehensive form and shall protect the CONSULTANT and the DISTRICT against claims arising from injuries to members of the public or damage to property of others arising out of any act or omission to act of the CONSULTANT or any of its agents, employees, or subconsultants. The limit of liability shall not be less than \$1,000,000 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.

(a) Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include: 1) Premises and/or Operations, 2) Independent CONSULTANTs and 3) Products Liability 4) completed Operations, 5) Broad Form Property Damage, Personal Injury and a Contractual Liability Endorsement, including any 1) hold harmless 2) indemnification agreement or 3) both.

(b) The DISTRICT is to be specifically included as an Additional Insured for the liability of the DISTRICT resulting from operations performed by or on behalf of CONSULTANT in performance of this or any Project Agreement. CONSULTANT's insurance, including that applicable to the DISTRICT as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the DISTRICT shall be in excess of and shall not contribute to CONSULTANT's insurance. CONSULTANT's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured in the same manner as if separate policies had been issued to each.

15.4 Professional Liability. The CONSULTANT shall furnish professional liability insurance coverage in an amount not less than \$1,000,000 with a deductible of \$50,000, per claim. The CONSULTANT shall be responsible for maintaining this professional liability insurance for a minimum of five (5) years from the date of execution of each Project Agreement. Upon request of the DISTRICT, the CONSULTANT shall make available for inspection copies of any claims filed or made against the policy during the policy term. The Consultant shall additionally notify the DISTRICT, in writing, within thirty (30) calendar days of any claims filed or made against this policy in excess of \$250,000 during the policy term.

15.4.1 At the DISTRICT's sole discretion, the requirement for professional liability insurance may be waived in certain limited circumstances based on the nature of a specific project.

15.5 Concurrent with the execution of this Agreement and prior to the execution of a Project Agreement, the CONSULTANT shall provide the DISTRICT an original Certificate of Insurance documenting compliance with each required insurance policy. The DISTRICT is to be specifically included as an Additional Insured for General Liability and Auto Liability of the CONTRACTOR resulting from operations performed by or on behalf of DISTRICT in performance of this or any Project Agreement. The General Liability Additional Insured Endorsement MUST include 'Completed Operations' using the latest version of CG 20 37 04 13- Additional Insured-owners, lessees, or contractors- Completed Operations & CG 20 10 04 13 Additional Insured-owners, lessees

or contractors-scheduled person or organization. Each Certificates of Insurance shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the DISTRICT before any policy or coverage is cancelled or restricted. CONSULTANT's proposed insurance coverage is subject to approval of the DISTRICT Authorized representative, in the DISTRICT Authorized representative's sole discretion.

15.6 Deductibles. All deductibles or self-insured retentions must be declared to and be approved by the DISTRICT Authorized representative. The CONSULTANT shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim.

15.7 Insurance Severability. CONSULTANT'S insurance, including that applicable to the DISTRICT as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the DISTRICT shall be in excess of and shall not contribute to CONSULTANT'S insurance. CONSULTANT'S insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured in the same manner as if separate policies had been issued to each.

15.8 Deductible or Self Insured Retentions. All deductibles or self-insured retentions must be declared to and be approved by the DISTRICT Authorized representative. The CONSULTANT shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim. The DISTRICT Authorized representative may require the CONSULTANT, as a condition of execution of a particular Project Agreement, to provide a bond or other monetary consideration to cover the CONSULTANT' deductible for Professional Liability Insurance.

15.9 Insurance Rating. Authorization must be licensed in the State of Florida as evidenced by certificates of authority from the Department of Financial Services of the State of Florida, or have an eligible surplus lines insurer under Florida Statutes. In addition, the insurer must have and must maintain a rating of "A" or better according to the A.M. Best Company. If during the period when an insurer is providing insurance required by this Agreement an insurer shall fail to comply with the foregoing minimum requirements, the DISTRICT shall be notified in writing as soon as possible. The CONSULTANT shall have 20 days to replace such insurance with an insurer who meets the acceptable insurance provider requirements as stated herein.

15.10 Reservation of Rights. The DISTRICT reserves the right to change the insurance requirements depending upon the scope of work in a Project Agreement.

SECTION 16. REPRESENTATIVE OF DISTRICT AND CONSULTANT

16.1 **DISTRICT Representative.** It is recognized that questions in the day-to-day conduct of this Agreement will arise. The DISTRICT designates _____ or his designee, (“Authorized Representative”) as the person to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.

16.2 **CONSULTANT Representative.** CONSULTANT shall inform the DISTRICT Representative, in writing, of the representative of CONSULTANT to whom all communications pertaining to the day-to-day action of this Agreement shall be addressed.

SECTION 17. COSTS AND ATTORNEY'S FEES

17.1 If either the DISTRICT or CONSULTANT is required to enforce the terms of this Agreement or any Project Agreement by court proceedings or otherwise, whether or not formal legal action is required, the prevailing party shall be entitled to recover from the other party all such costs and expenses, including but not limited to, costs and reasonable attorney's fees.

17.2 In the event of any litigation arising out of this Agreement or any Project Agreement, **EACH PARTY HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY.**

SECTION 18. ALL PRIOR AGREEMENTS SUPERSEDED

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained in this Agreement and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly it is agreed that no deviation from the terms of the Agreement shall be predicated upon any prior representations or agreements whether oral or written.

SECTION 19. CONSULTANT'S RESPONSIBILITIES

19.1 The CONSULTANT shall comply with all laws, ordinances and governmental rules, regulations and orders now or at any time during the term of this Agreement which as a matter of law are applicable to or which affect the procedures of the CONSULTANT.

19.2 The obligation of the CONSULTANT to comply with governmental requirements is

provided for the purpose of assuring proper safeguards for the protection of person and property.

19.3 The CONSULTANT shall exercise the same degree of care, skill and diligence in the performance of the services as is ordinarily provided by a professional engineer or consultant under similar circumstances. If at any time during the term of any Project Agreement or the construction of the Project for which the CONSULTANT has provided engineering or any service outlined in CONSULTANT'S proposal under a prior Project Agreement, it is determined that the CONSULTANT's documents are incorrect, defective or fail to conform to the Scope of Services, upon written notification from the DISTRICT, the CONSULTANT shall immediately proceed to correct the work, re-perform services which fail to satisfy the foregoing standard of care as determined by the DISTRICT, and shall pay all costs and expenses associated with correcting said incorrect or defective work, including any additional testing, inspections, and construction and reimbursement to the DISTRICT for any other services and expenses made necessary thereby, save and except any costs and expenses which the DISTRICT would have otherwise paid absent the CONSULTANT's error or omission. The DISTRICT's rights and remedies under this section are in addition to, and are cumulative of, any and all other rights and remedies provided by this Agreement, the Project Agreement, by law, equity or otherwise.

19.4 The CONSULTANT's obligations under Section 19.3 shall survive termination of this or any Project Agreement.

19.5 Any and all drawings, plans, specifications, or other construction or contract documents prepared by the CONSULTANT shall be accurate, coordinated and adequate for construction and shall be in conformity and comply with all applicable law, codes and regulations.

SECTION 20. SUBCONSULTANTS

20.1 In the event the CONSULTANT requires the services of any subconsultants or other professional associates in connection with services covered by this Agreement or any Project Agreement, the CONSULTANT must secure the prior written approval of the DISTRICT.

20.2 Any subcontract with a subconsultant or subconsultant shall afford to the CONSULTANT rights against the subconsultant or subconsultant which correspond to those rights afforded to the DISTRICT against the CONSULTANT herein, including but not limited to those rights of termination as set forth herein.

20.3 No reimbursement shall be made to the CONSULTANT for any subconsultants that have not been previously approved by the DISTRICT for use by the CONSULTANT.

20.4 CONSULTANT shall provide the DISTRICT's Authorized Representative with evidence of insurability consistent with the minimum insurance coverage requirements in Section 15 of this Agreement for all subconsultants proposed by CONSULTANT to perform services under this Agreement or any Project Agreement. The subconsultants insurance shall list the DISTRICT as an Additional Insured for General Liability and Auto Liability of the subconsultant resulting from operations performed by or on behalf of DISTRICT in performance of this Agreement or any Project Agreement.

SECTION 21. NOTICES

Whenever either party desires to give notice to the other, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice, to-wit:

FOR CONSULTANT

FOR DISTRICT

With Copy to:

Weiss Serota Helfman Cole & Bierman, P.L.
Attn: David N. Tolces, General Counsel
1200 N. Federal Highway, Suite 1200
Boca Raton, FL 33432
Telephone: (561) 835-2111

SECTION 22. TRUTH-IN-NEGOTIATION CERTIFICATE

Signature of this Agreement by CONSULTANT shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting. Each Project Agreement's contract price and any additions shall be adjusted to exclude any significant sums by which the DISTRICT determines the Project's contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such adjustments shall be made within one year following the end of each Project Agreement.

SECTION 23. CONSENT TO JURISDICTION

The parties submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of relating to the Agreement. Venue of any action to enforce this Agreement shall be in Broward County, Florida.

SECTION 24. GOVERNING LAW

This Agreement shall be construed in accordance with the governed by the laws of the State of Florida.

SECTION 26. HEADINGS

Headings are for convenience of reference only and shall not be considered in any interpretation of this Agreement.

SECTION 27. EXHIBITS

Each Exhibit referred to in this Agreement forms an essential part of this Agreement. The Exhibits if not physically attached, should be treated as part of this Agreement, and are incorporated by reference.

SECTION 28. SEVERABILITY

If any provision of this Agreement or the application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be

enforced to the fullest extent permitted by law.

SECTION 29. COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: The DISTRICT, signing by and through its Chair, attested to by the District Secretary, duly authorized to execute same and by CONSULTANT, by and through its _____, duly authorized officer to execute same.

DISTRICT

HILLSBORO INLET DISTRICT, a Florida
independent special district

By: _____
Chair Jack Holland

The ____ day of _____, 2020.

ATTEST:

District Secretary

(SEAL) Seal

CONSULTANT

By: _____

Print Name: _____

Title: _____

The _____ day of _____, 2020.

ATTEST:

Secretary

Please type name of Secretary

(CORPORATE SEAL)