

**THE CITY OF RIVIERA BEACH UTILITY SPECIAL DISTRICT  
CONTINUING PROFESSIONAL CONSULTING ENGINEERING SERVICES**

This Continuing Contract is made as of this 16<sup>TH</sup> day of JULY, 2018, by and between the City of Riviera Beach Utility Special District, Florida, hereinafter referred to as the DISTRICT, and HOLTZ CONSULTING ENGINEERS, a corporation authorized to do business in the State of Florida, hereinafter referred to as the CONSULTANT, whose Federal I.D. number is 01-0860983.

**WHEREAS**, the DISTRICT, in accordance with the Consultant's Competitive Negotiation Act, has selected the CONSULTANT to be the most qualified firm; and

**WHEREAS**, the DISTRICT is now desirous of contracting with CONSULTANT to provide continuing professional engineering services as set forth herein.

In consideration of the mutual promises contained herein, the DISTRICT and the CONSULTANT agree as follows.

**WITNESSETH:**

**NOW, THEREFORE**, in consideration of the mutual covenants, Contracts, and benefits herein contained, the parties hereto mutually understand and agree as follows:

**ARTICLE 1 - SERVICES**

The CONSULTANT's responsibility under this Contract is to provide professional Engineering services as set forth more fully in the Scope of Work detailed in Exhibit "A", attached hereto and made part hereof. RFQ 947-18 Utility Special District Continuing Engineering Services.

The DISTRICT's representative/liaison during the performance of this Contract shall be Assistant Executive Director Leighton Walker, who may be contacted by phone or email at 561-845-4185 or [lcwalker@rivierabch.com](mailto:lcwalker@rivierabch.com).

**ARTICLE 2 - SCHEDULE**

The CONSULTANT shall commence services on July 16, 2018, and complete all services by July 15, 2021.

At the option of the DISTRICT, the Contract may be renewed for one (1) additional twenty-four (24) month period.

The option for renewal will be exercised only upon written agreement and with original terms, conditions and unit prices adhered to with no deviation. Any renewal will be subject to appropriation of funds by the UTILITY SPECIAL DISTRICT BOARD. The City Manager is authorized to enter into renewal agreements on behalf of the DISTRICT.

### ARTICLE 3 - PAYMENTS TO CONSULTANT

- A. Generally - The DISTRICT agrees to compensate the CONSULTANT HOLTZ CONSULTING ENGINEERS as agreed upon in Exhibit "B". The total and cumulative amount of this Contract shall not exceed the amount of funds annually budgeted for these services. Payment shall be made based on deliverables. The DISTRICT shall not reimburse the CONSULTANT for any travel costs incurred as a direct result of the CONSULTANT providing deliverables to the DISTRICT in accordance with the scope of work contained in **Exhibit "A,"** without specific, prior approval of the DISTRICT's representative.
- B. Invoices received from the CONSULTANT pursuant to this Contract will be reviewed and approved by the DISTRICT's representative, indicating that services have been rendered in conformity with the Contract. Invoices will then be sent to the Finance Department for payment and will normally be paid within thirty (30) days following the DISTRICT representative's approval.
- C. All requests for payment of expenses eligible for reimbursement under the terms of this Contract shall include copies of receipts, invoices, or other documentation acceptable to the Finance Department. Such documentation shall be sufficient to establish that the expense was actually incurred and necessary in the performance of the Scope of Work described in this Contract as Exhibit "A". If eligible for reimbursement, the Finance Department requires that long distance telephone calls shall identify the person(s) called, purpose of call, time, and costs. Mileage charges shall identify the destination, number of miles, rate, and purpose of travel. Duplication charges shall describe the documents, purpose of duplicating, and rate charged. Any travel, per diem, mileage, meals or lodging expenses, which may be reimbursable under the terms of this Contract, will be paid in accordance with the rates and conditions set forth in Section 112.061, Florida Statutes.
- D. Final Invoice: In order for both parties herein to close their books and records, the CONSULTANT will clearly state "Final Invoice" on the CONSULTANT's final/last billing to the DISTRICT. This certifies that all services have been properly performed and all charges and costs have been invoiced to the DISTRICT. Since this account will thereupon be closed, any and other further charges, if not properly included in this final invoice, are waived by the CONSULTANT and the DISTRICT shall have no obligations for any other costs or expenses thereafter.
- E. Payments to the CONSULTANT shall be sent to:
- HOLTZ CONSULTING ENGINEERS  
270 SOUTH CENTRAL BLVD., SUITE 207  
JUPITER, FL 33458

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270 SOUTH CENTRAL BLVD., SUITE 207  
JUPITER, FL 33458

**ARTICLE 4 - TRUTH-IN NEGOTIATION CERTIFICATE**

Signature of this Contract by the CONSULTANT shall also act as the execution of a truth-in-negotiation certificate certifying that the wage rates, over-head charges, and other costs used to determine the compensation provided for in this Contract are accurate, complete and current as of the date of the Contract and no higher than those charged to the CONSULTANT's most favored customer for the same or substantially similar service.

The said rates and costs shall be adjusted to exclude any significant sums should the DISTRICT determine that the 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 DISTRICT shall exercise its right under this Article 4 within three (3) years following final payment.

**ARTICLE 5 - TERMINATION**

This Contract may be cancelled by the CONSULTANT upon thirty (30) days prior written notice to the DISTRICT's representative in the event of substantial failure by the DISTRICT to perform in accordance with the terms of this Contract through no fault of the CONSULTANT; provided the DISTRICT fails to cure same within that thirty (30) day period. It may also be terminated, in whole or in part, by the DISTRICT, with or without cause, immediately upon written notice to the CONSULTANT. Unless the CONSULTANT is in breach of this Contract, the CONSULTANT shall be paid for services rendered to the DISTRICT's satisfaction through the date of termination. After receipt of a Termination Notice and except as otherwise directed by the DISTRICT the CONSULTANT shall:

- A. Stop work on the date and to the extent specified.
- B. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
- C. Transfer all work in progress, completed work, and other materials related to the terminated work to the DISTRICT.
- D. Continue and complete all parts of the work that have not been terminated.

**ARTICLE 6 - PERSONNEL**

The CONSULTANT represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the DISTRICT.

All of the services required hereunder shall be performed by the CONSULTANT or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

The CONSULTANT warrants that all services shall be performed by skilled and competent personnel in accordance with the applicable standard of care in the field for which CONSULTANT is consulting with the DISTRICT.

The CONSULTANT agrees that it is fully responsible to the DISTRICT for the negligent acts and omissions of subcontractors, subconsultants, and of persons either directly or indirectly employed by the CONSULTANT (hereinafter "subcontractor" or "subcontractors"). Nothing contained herein shall create any contractual relationship between any subcontractor and the DISTRICT.

All of the CONSULTANT's personnel and all of the CONSULTANT's subcontractors will comply with all DISTRICT requirements governing conduct, safety, and security while on or utilizing DISTRICT premises/property.

#### **ARTICLE 7 - SUBCONTRACTING**

The DISTRICT reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor and to inspect all facilities of any subcontractor in order to make a determination as to the capability of the subcontractor to perform properly under this Contract. The CONSULTANT is encouraged to seek minority and women business enterprises for participation in subcontracting opportunities.

If a subcontractor fails to perform or make progress, as required by this Contract, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the CONSULTANT shall promptly do so, subject to acceptance of the new subcontractor by the DISTRICT.

If subcontractor(s) are used, the CONSULTANT shall use only licensed and insured subcontractor(s), and shall require any subcontractor, as may be applicable, to provide a payment bond. All subcontractors shall be required to promptly make payments to any person who, directly or indirectly, provides services or supplies under this Contract.

The CONSULTANT shall be responsible for the performance of all subcontractors.

#### **ARTICLE 8 – SBE PARTICIPATION**

The City's Procurement Ordinance has a Small Business Enterprises (SBE) participation component which may apply to this Contract. If it is determined by DISTRICT staff that it applies, the CONSULTANT agrees to abide by the provisions of the SBE section of the procurement code. The CONSULTANT further agrees to maintain all relevant records and information necessary to document compliance with the Ordinance, and agrees to allow the DISTRICT to inspect such records and provide such records to the DISTRICT upon request.

## **ARTICLE 9 - FEDERAL AND STATE TAX**

The DISTRICT is exempt from payment of Florida State Sales and Use Tax. The DISTRICT will sign an exemption certificate submitted by the CONSULTANT. The CONSULTANT shall not be exempted from paying sales tax to its suppliers for materials used to fill contractual obligations with the DISTRICT, nor is the CONSULTANT authorized to use the DISTRICT's Tax Exemption Number in securing such materials.

The CONSULTANT shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this Contract.

## **ARTICLE 10 - AVAILABILITY OF FUNDS**

The DISTRICT's performance and obligation to pay under this Contract is contingent upon annual appropriations being made by the City of Riviera Beach Utility Special District.

## **ARTICLE 11 - INSURANCE**

- A. Prior to execution of this Contract by the DISTRICT, the CONSULTANT shall provide certificates evidencing insurance coverage as required hereunder. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The Certificates shall clearly indicate that the CONSULTANT has obtained insurance of the type, amount, and classification as required for strict compliance with this article and that no material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the DISTRICT's representative. Compliance with the foregoing requirements shall not relieve the CONSULTANT of its liability and obligations under this Contract.
- B. The CONSULTANT shall maintain during the term of this Contract, standard Professional Liability Insurance in the minimum amount of \$1,000,000.00 per occurrence.
- C. The CONSULTANT shall maintain, during the life of this Contract, commercial general liability, including contractual liability insurance in the amount of \$500,000.00 per occurrence to protect the CONSULTANT from claims for damages for bodily and personal injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this Contract, whether such operations be by the CONSULTANT or by anyone directly or indirectly employed by or contracting with the CONSULTANT.
- D. The CONSULTANT shall maintain, during the life of this Contract, comprehensive automobile liability insurance in the minimum amount of \$500,000.00 combined single limit for bodily injury and property damages liability to protect the CONSULTANT from claims for damages for bodily and personal injury, including death, as well as from claims for property damage, which may arise from the ownership, use, or maintenance of owned and non-owned automobiles,

including, but not limited to, leased and rented automobiles whether such operations be by the CONSULTANT or by anyone, directly or indirectly, employed by the CONSULTANT.

E. The parties to this Contract shall carry Workers' Compensation Insurance and Employer's Liability Insurance for all employees as required by Florida Statutes. In the event that a party does not carry Workers' Compensation Insurance and chooses not to obtain same, such party shall then, in accordance with Section 440.05, Florida Statutes, apply for and obtain an exemption authorized by the Department of Insurance and shall provide a copy of such exemption to the DISTRICT.

F. All insurance, other than Professional Liability and Workers' Compensation, to be maintained by the CONSULTANT shall specifically include the DISTRICT as an "Additional Insured."

#### **ARTICLE 12 - INDEMNIFICATION**

To the extent allowed by Florida law, the CONSULTANT shall indemnify and hold harmless the DISTRICT, its agents, officers, and employees from and against any and all claims, liabilities, losses, costs, and/or causes of action which may arise from any negligent act, recklessness, or intentional wrongful conduct of the CONSULTANT, its agents, officers, or employees in the performance of services under this Contract.

The CONSULTANT further agrees to indemnify and hold harmless the DISTRICT, its agents, officers, and employees from and against any claim, demand or cause of action of whatsoever kind or nature arising out of any conduct or misconduct of the CONSULTANT not included in the paragraph above and for which the DISTRICT, its agents, officers or employees are alleged to be liable.

The CONSULTANT shall pay all claims, losses, liens, fines, settlements or judgments of any nature whatsoever in connection with the foregoing indemnifications including, but not limited to, all costs, expert witness fees, reasonable attorney's fees, and court and/or arbitration costs. These indemnifications shall survive the term of this Contract or any renewal thereof.

Nothing contained in this Article shall be construed or interpreted as consent by the DISTRICT to be sued, nor as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes.

#### **ARTICLE 13 - SUCCESSORS AND ASSIGNS**

The DISTRICT and the CONSULTANT each binds itself and its partners, successors, executors, administrators, and assigns to the other party of this Contract and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Except as above, neither the DISTRICT nor the CONSULTANT shall assign, sublet, convey or transfer its interest in this Contract without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the DISTRICT which may be a party hereto,



nor shall it be construed as giving any rights or benefits hereunder to anyone other than the DISTRICT and the CONSULTANT.

#### **ARTICLE 14 - VENUE**

This Contract and any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to its execution, its validity, the obligations provided therein, performance or breach shall be governed and interpreted according to laws of the State of Florida. Venue for any and all legal action necessary to enforce the Contract will be held within Palm Beach County.

#### **ARTICLE 15 - REMEDIES**

No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

#### **ARTICLE 16 - CONFLICT OF INTEREST**

The CONSULTANT represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance or services required hereunder, as provided for in Florida Statutes, Section 112.311. The CONSULTANT further represents that no person having any such conflicting interest shall be employed for said performance.

The CONSULTANT shall promptly notify the DISTRICT's representative, in writing, by certified mail, of all potential conflicts of interest for any prospective business association, interest or other circumstance which 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 DISTRICT as to whether the association, interest or circumstance would, in the opinion of the DISTRICT, constitute a conflict of interest if entered into by the CONSULTANT. The DISTRICT agrees to notify the CONSULTANT of its opinion by certified mail within thirty (30) days of receipt of notification by the CONSULTANT. If, in the opinion of the DISTRICT, the prospective business association, interest or circumstance would not constitute a conflict of interest by the CONSULTANT, the DISTRICT shall so state in the notification and the CONSULTANT shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the DISTRICT by the CONSULTANT under the terms of this Contract.

Further, please be advised, in accordance with section 112.313, Florida Statutes, and pertinent Opinions of the Florida Commission on Ethics, that if you or certain representatives of your company are a member of a DISTRICT board, including an advisory board, you may be ineligible to enter into a

contract/agreement with the DISTRICT. If you are a member of a city board, including an advisory board, prior to executing this contract, please contact the Florida Commission on Ethics at (850) 488-7864 to secure an informal advisory opinion regarding your eligibility to enter into this contract.

**ARTICLE 17 – DELAYS AND EXTENSION OF TIME**

The CONSULTANT shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of the CONSULTANT or its subcontractors and without their fault or negligence. Such causes include, but are not limited to: acts of God; natural or public health emergencies; labor disputes; freight embargoes; and abnormally severe and unusual weather conditions.

Upon the CONSULTANT's request, the DISTRICT shall consider the facts and extent of any failure to perform the work and, if the CONSULTANT's failure to perform was without it or its subcontractors' fault or negligence the Contract Schedule and/or any other affected provision of this Contract shall be revised accordingly; subject to the DISTRICT's rights to change, terminate, or stop any or all of the work at any time.

If the CONSULTANT is delayed at any time in the process of the work by any act or neglect of the DISTRICT or its employees, or by any other consultant employed by the DISTRICT, or by changes ordered by the DISTRICT or in an unusual delay in transportation, unavoidable casualties, or any causes beyond the CONSULTANT's control, or by delay authorized by the DISTRICT pending negotiation or by any cause which the DISTRICT shall decide justifies the delay, then the time of completion shall be extended for any reasonable time the DISTRICT may decide. No extension shall be made for delay occurring more than seven (7) days before claim therefore is made in writing to the DISTRICT. In the case of continuing cause of delay, only one (1) claim is necessary.

This Article does not exclude the recovery of damages for delay by either party under other provisions in the Contract.

**ARTICLE 18 - INDEBTEDNESS**

The CONSULTANT shall not pledge the DISTRICT'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 Contract.

**ARTICLE 19 - DISCLOSURE AND OWNERSHIP OF DOCUMENTS**

The CONSULTANT shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the DISTRICT as provided under section 119.011(2), Florida Statutes, specifically agrees to:

- (a) Keep and maintain public records required by the DISTRICT to perform the service.
- (b) Upon request from the DISTRICT's custodian of public records or designee, 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 in Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) 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 this Contract and following completion of this Contract if the CONSULTANT does not transfer the records to the DISTRICT.
- (d) Upon completion of this Contract, transfer, at no cost, to the DISTRICT all public records in possession of the CONSULTANT or keep and maintain public records required by the DISTRICT to perform the service. If the CONSULTANT transfers all public records to the DISTRICT upon completion of the Contract, the CONSULTANT shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONSULTANT keeps and maintains public records upon completion of the Contract, the CONSULTANT shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the DISTRICT, upon request from the DISTRICT's custodian of public records or designee, in a format that is compatible with the information technology systems of the DISTRICT.

**IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT 600 W. BLUE HERON BLVD, RIVIERA BEACH, FL 33404, 561-845-4185, LWALKER@RIVIERABCH.COM**

#### **ARTICLE 20 - INDEPENDENT CONTRACTOR RELATIONSHIP**

The CONSULTANT is, and shall be, in the performance of all work services and activities under this Contract, an Independent Contractor, and not an employee, agent, or servant of the DISTRICT. All persons engaged in any of the work or services performed pursuant to this Contract 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 DISTRICT shall be that of an Independent Contractor and not as employees or agents of the DISTRICT.

The CONSULTANT does not have the power or authority to bind the DISTRICT in any promise, agreement or representation other than as specifically provided for in this Contract.

#### **ARTICLE 21 - CONTINGENT FEES**

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Contract 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 the CONSULTANT, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Contract.

#### **ARTICLE 22 - ACCESS AND AUDITS**

The CONSULTANT shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion of this Contract. The DISTRICT shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the CONSULTANT's place of business.

#### **ARTICLE 23 - NONDISCRIMINATION**

The CONSULTANT warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, political affiliation, marital status, handicap, or sexual orientation. Further, CONSULTANT shall not discriminate or permit discrimination against any employee or an applicant for employment on the basis of race, color, sex, religion, political affiliation, natural origin, ancestry, marital status, sexual orientation or handicap.

#### **ARTICLE 24 - ENFORCEMENT COSTS**

All parties shall be responsible for their own attorneys fees, court costs and expenses if any legal action or other proceeding is brought for any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to the Contract's execution, validity, the obligations provided therein, or performance of this Contract, or because of an alleged breach, default or misrepresentation in connection with any provisions of this Contract.

#### **ARTICLE 25 - AUTHORITY TO PRACTICE**

The CONSULTANT hereby represents and warrants that it has and will continue to maintain all licenses and approvals which are legally required to conduct its business, and that it will at all times conduct its

business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the DISTRICT upon request.

The CONSULTANT shall be solely responsible for obtaining and complying with all necessary permits, licenses, approvals and authorizations required for any work done pursuant to this Contract from any federal, state, regional, county or DISTRICT agency.

#### **ARTICLE 26 - SEVERABILITY**

If any term or provision of this Contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Contract, or the application of such terms or provisions, 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 Contract shall be deemed valid and enforceable to the extent permitted by law.

#### **ARTICLE 27 - PUBLIC ENTITY CRIMES**

As provided in F.S. 287.132-133 by entering into this Contract or performing any work in furtherance hereof, the CONSULTANT certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the date hereof. This notice is required by F.S. 287.133(3)(a).

#### **ARTICLE 28 - MODIFICATIONS OF WORK**

The DISTRICT reserves the right to make changes in the Scope of Work, including alterations, reductions therein or additions thereto. Upon receipt by the CONSULTANT of the DISTRICT's notification of a contemplated change, the CONSULTANT shall, in writing: (1) provide a detailed estimate for the increase or decrease in cost due to the contemplated change, (2) notify the DISTRICT of any estimated change in the completion date, and (3) advise the DISTRICT if the contemplated change shall affect the CONSULTANT'S ability to meet the completion dates or schedules of this Contract.

If the DISTRICT so instructs in writing, the CONSULTANT shall suspend work on that portion of the Scope of Work affected by the contemplated change, pending the DISTRICT's decision to proceed with the change.

If the DISTRICT elects to make the change, the DISTRICT shall initiate a Contract Amendment and the CONSULTANT shall not commence work on any such change until such written amendment is signed by the CONSULTANT and approved by the UTILITY SPECIAL BOARD or its designated representative.

**ARTICLE 29 - NOTICE**

All notices required in this Contract shall be sent by certified mail, return receipt requested, and also via email. If sent to the DISTRICT shall be mailed to:

**RIVIERA BEACH UTILITY SPECIAL DISTRICT  
ATTN: LEIGHTON C WALKER, INTERIM EXECUTIVE DIRECTOR  
600 WEST BLUE HERON BLVD.  
RIVIERA BEACH, FL 33404**

If sent to the CONSULTANT shall be mailed to:

**HOLTZ CONSULTING ENGINEERS  
270 SOUTH CENTRAL BLVD., SUITE 207  
JUPITER, FL 33458**

**ARTICLE 30 - ENTIRETY OF CONTRACTUAL AGREEMENT**

The DISTRICT and the CONSULTANT agree that this Contract and any attachments hereto or other documents as referenced in the Contract sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto in accordance with Article 28- Modifications of Work.

**ARTICLE 31 – PROTECTION OF WORK AND PROPERTY**

If applicable, the CONSULTANT shall continuously maintain adequate protection of all work from damage, and shall protect the DISTRICT's property from injury or loss arising in connection with the Contract. Except for any such damage, injury, or loss, except that which may be directly due to errors caused by the DISTRICT or employees of the DISTRICT, the CONSULTANT shall provide any necessary materials to maintain such protection.

**ARTICLE 32 – TIME**

Time is of the essence in all respects under this Contract. The DISTRICT and CONSULTANT shall work in an expeditious manner to complete the objectives as set forth in the Scope of Work described in Exhibit "A."

### **ARTICLE 33 - TERMINOLOGY AND CAPTIONS**

All pronouns, singular, plural, masculine, feminine or neuter, shall mean and include the person, entity, firm or corporation to which they relate as the context may require. Wherever the context may require, the singular shall mean and include the plural and the plural shall mean and include the singular. The term "Contract" as used herein, as well as the terms "herein", "hereof", "hereunder", "hereinafter" and the like mean this Contract in its entirety and all exhibits, amendments and addenda attached hereto and made a part hereof. The captions and paragraph headings are for reference and convenience only and do not enter into or become a part of the context of this Contract, nor shall such headings affect the meaning or interpretation of this Contract.

### **ARTICLE 34 - WAIVER**

Failure of the DISTRICT to enforce or exercise any right(s) under this Contract shall not be deemed a waiver of DISTRICT's right to enforce or exercise said right(s) at any time thereafter.

### **ARTICLE 35 - PREPARATION**

This Contract shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

### **ARTICLE 36 - MATERIALITY**

All provisions of the Contract shall be deemed material, in the event CONSULTANT fails to comply with any of the provisions contained in this Contract or exhibits, amendments and addenda attached hereto, said failure shall be deemed a material breach of this Contract and DISTRICT may at its option and without notice terminate this Contract.

### **ARTICLE 37 - REPRESENTATIONS/BINDING AUTHORITY**

CONSULTANT has full power, authority and legal right to execute and deliver this Contract and perform all of its obligations under this Contract. By signing this Contract, Holtz Consulting Engineers, hereby represents to the DISTRICT that Andrea Holtz has the authority and full legal power to execute this Contract and any and all documents necessary to effectuate and implement the terms of this Contract on behalf of the party for whom he is signing and to bind and obligate such party with respect to all provisions contained in this Contract.

### **ARTICLE 38 - EXHIBITS**

Each exhibit referred to in this Contract forms an essential part of this Contract. The exhibits, if not physically attached, should be treated as part of this Contract and are incorporated herein by reference.

**ARTICLE 39 - CONTRACT DOCUMENTS AND CONTROLLING PROVISIONS**

This Contract consists of this Contract and all exhibits attached hereto. The CONSULTANT agrees to be bound by all the terms and conditions set forth in this Contract. To the extent that a conflict exists between this Contract and the exhibits, the terms, conditions, covenants, and/or provisions of this Contract shall prevail. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

**ARTICLE 40 - LEGAL EFFECT**

This Contract shall not become binding and effective until approved by the Utility Special District Board.

**ARTICLE 41 - NOTICE OF COMPLAINTS OR SUITS**

Each party will promptly notify the other of any complaint, claim, suit or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the performance of this Contract. Each party agrees to cooperate with the other in any investigation either may conduct, the defense of any claim or suit in which either party is named, and shall do nothing to impair or invalidate any applicable insurance coverage.

**ARTICLE 42 - SURVIVABILITY**

Any provision of this Contract which is of a continuing nature or imposes an obligation which extends beyond the term of this Contract shall survive its expiration or earlier termination.

**ARTICLE 43 - DEFAULT**

Notwithstanding anything contained in this Contract to the contrary, the parties agree that the occurrence of any of the following shall be deemed a material event of default and shall be grounds for termination:

- a. The filing of a lien by any subcontractor or third tier subcontractor including, but not limited to materialmen, suppliers, or laborers, upon any property, right of way, easement, other interest in land or right to use such land within the territorial boundaries of the DISTRICT which lien is not satisfied, discharged or contested in a court of law within thirty (30) days from the date of notice to the CONSULTANT;
- b. The filing of any judgment lien against the assets of the CONSULTANT related to the performance of this Contract which is not satisfied, discharged or contested in a court of law within thirty (30) days from the date of notice to the CONSULTANT; or
- c. The filing of a petition by or against the CONSULTANT for relief under the Bankruptcy Code, or for its reorganization or for the appointment of a receiver or trustee of the



CONSULTANT or the CONSULTANT's property; or an assignment by the CONSULTANT for the benefit of creditors; or the taking possession of the property of the CONSULTANT by any governmental officer or agency pursuant to statutory authority for the dissolution or liquidation of the CONSULTANT; or if a temporary or permanent receiver or trustee shall be appointed for the CONSULTANT or for the CONSULTANT's property and such temporary or permanent receiver or Trustee shall not be discharged within thirty (30) days from the date of appointment.

The CONSULTANT shall provide written notice to the DISTRICT of the occurrence of any event of default within ten (10) days of the CONSULTANT's receipt of notice of any such default.

#### **ARTICLE 44 - WAIVER OF SUBROGATION**

The CONSULTANT hereby waives any and all rights to Subrogation against the DISTRICT, 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 the 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 the CONSULTANT enter into such an agreement on a pre-loss basis.

#### **ARTICLE 45 - RIGHT TO REVIEW**

The DISTRICT, by and through its Risk Management Division, in cooperation with the contracting/monitoring department, reserves the right to review, reject or accept any required policies of insurance, including limits, coverages, or endorsements, therein from time to time throughout the term of this Contract. The DISTRICT reserves the right, but not the obligation, to review and reject any insurer providing coverage because of poor financial condition or failure to operate legally.

#### **ARTICLE 46 – WAIVER OF TRIAL BY JURY**

IN THE EVENT OF LITIGATION ARISING FROM THIS CONTRACT, DISTRICT AND CONSULTANT KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT TO A TRIAL BY JURY. DISTRICT AND CONSULTANT HEREBY ACKNOWLEDGE THAT THIS WAIVER PROVISION IS A MATERIAL INDUCEMENT FOR EACH PARTY AGREEING TO ENTER INTO THIS CONTRACT.

#### **ARTICLE 47 – PALM BEACH COUNTY INSPECTOR GENERAL**

In accordance with Palm Beach County ordinance number 2011-009 as codified in 2-421 through 2-440 of the County's Code, the CONSULTANT acknowledges that this Contract may be subject to investigation and/or audit by the Palm Beach County Inspector General. The CONSULTANT has reviewed the ordinance and is aware of its rights and/or obligations under such ordinance.