

CONSULTING ENGINEER AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of _____, 2020, by and between LEVY COUNTY, FLORIDA, hereinafter referred to as "County," and MILLS ENGINEERING COMPANY, Engineer, hereinafter referred to as "Consultant";

WITNESSETH:

For and in consideration on the mutual covenants contained herein and for other good and valuable consideration County and Consultant agree as follows:

1. **TERM:** For projects requested by County pursuant to section 3.a. hereof, and accepted by Consultant pursuant to section 3.b. hereof, the term of this Agreement begins November 17, 2020, and will continue through June 17, 2021. For the specific projects set out in section 3.d. hereof, the term of this Agreement begins on November 17, 2020 and will continue as set forth in the description for each project as set out in section 3.d. hereof.

2. **SERVICES TO BE RENDERED:** Consultant, having been selected by the County according to "Consultants' Competitive Negotiation Act", Chapter 287.055, Florida Statutes, shall act as County Engineer and, subject to any limitations contained herein, shall provide or direct all consulting engineering services as requested by the County and shall perform, prepare or direct all engineering inspections, drawings and reports requested by County or County's designated agents, advisory boards, and committees established by County.

3. PROCESS FOR REQUESTING/PERFORMING SERVICES:

a. In the event that County requires or desires to acquire consulting engineering services for any project, the County shall provide such request in writing to Consultant. The County shall include in any such request for consulting engineering services the name and contact information of the County employee who will serve as the Consultant's contact for the applicable project and who will have the authority to make administrative decisions on behalf of County regarding the project (herein "County Representative").

b. Upon receipt of any request for consulting engineering services for any project, Consultant shall have the option to accept the request and agree to perform the requested services, or to refuse to perform the requested engineering services. Consultant shall provide notice of refusal of any project within five (5) days of receiving written request for consulting engineering services from the County. Consultant will not have the option to refuse to perform any consulting engineering services required to be performed by the County Engineer pursuant to the Levy County Code.

c. Upon receipt of any request for consulting engineering services for any project, in the event that Consultant accepts such request and agrees to perform the requested services, Consultant shall also have the option to hire a subconsultant to perform any part of the requested services that Consultant cannot provide using Consultant's own staff and resources.

d. The parties agree that there are existing projects for which Consultant is providing consulting engineering services, and for which a County Representative needs to be identified. Consultant agrees to provide the engineering services related to the existing projects for the time period set out for each project. The existing projects and each project's applicable time period and County Representative are as follows:

i. State of Florida permitting for limerock mine on property currently owned or leased by County and being operated by County as a limerock mine, with County Coordinator, Wilbur Dean, or his successor, as County Representative. Contact information for Wilbur Dean is contained in Section 8 of this Agreement. Consultant will continue to provide engineering services related to such permitting until a State of Florida permit is issued allowing County to operate the subject property as a limerock mine; and

ii. Engineering design and construction bid services for the resurfacing of CR 337 North from State Road 24 to the Alachua County/Levy County boundary line, which project is funded by State of Florida Department of Transportation ("FDOT"), FDOT FIN #436444-1-54-01 (herein "CR 337"), with County Road Department Administrative Superintendent, Alice LaLonde, or her successor, as County Representative. Contact information for Alice LaLonde is as follows: Road Department, P.O. Box 336, Bronson, FL 32621, levyrd@levycounty.org. Consultant will continue to provide engineering design and construction bid services (not including construction engineering and inspection services) related to CR 337 until completion of the project; and

iii. Providing engineer cost estimates for grant applications to FDOT for State of Florida fiscal year 2021, with Road Department Administrative Supervisor, Alice LaLonde, or her successor, as County Representative. Contact information for Alice LaLonde is contained in Section 3.d.ii. of this Agreement. Consultant will provide the engineer cost estimates for the FDOT grant applications prior to February 15, 2021; and

iv. Providing engineering services and preparing any reports due for well monitoring for wells for the County solid waste facilities, as required by permits issued by Florida Department of Environmental Protection for such facilities, with County Solid Waste Department Operations Supervisor, Benny Jerrels, or his successor, as County Representative. Contact information for Benny Jerrels is P.O. Box 1734, Bronson, FL 32621, solidwaste@levycounty.org. Consultant will continue to provide engineering services and prepare any such reports until September 30, 2021; and

v. Providing engineering services and preparing any reports due for elevation monitoring for the County's Class III solid waste facilities, as required by permits issued by Florida Department of Environmental Protection for such facilities, with County Solid Waste Department Operations Supervisor, Benny Jerrels, or his successor, as County Representative. Contact information for Benny Jerrels is contained in Section 3.d.iv. of this Agreement. Consultant will continue to provide

engineering services and prepare any such reports until September 30, 2021; and

vi. Ongoing services as County Engineer for a variety of projects that require the services of the County Engineer pursuant to the Levy County Code, including but not limited to pending proposed zoning, land use or subdivision applications, with County Development Department Director, David Meyer, as County Representative. Contact information for David Meyer is P.O. Box 672, Bronson, FL 32621, meyer-david@levycounty.org. Consultant will continue to provide such ongoing engineering services until June 17, 2021.

4. CR 337 SERVICES: Consultant's services related to CR 337 shall be subject to the following requirements and provisions:

a. Consultant shall comply with any and all provisions contained in the grant agreements between County and FDOT, FDOT FIN #436444-1-54-01 ("CR 337 Grant Agreement"), that require compliance by a County consultant, contractor, or subcontractor, or that require the County to impose on a County consultant, contractor, or subcontractor. Consultant shall comply with and require any contractor, subcontractor, or subconsultant to comply with all federal, state and local laws and regulations applicable to CR 337.

b. Consultant shall include any provisions or obligations from the CR 337 Grant Agreement into agreements with contractors, subcontractors, or subconsultants for CR 337 that are required by the CR 337 Grant Agreement to be included or imposed on such contractors, subcontractors, or subconsultants.

c. Consultant shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by Consultant during the term of the services provided for CR 337. Consultant shall expressly require the contractors and any subconsultants for CR 337 to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the contractors or subconsultants during the terms of the applicable construction contracts for CR 337.

d. Consultant shall comply with the provisions of section 20.055(5), Florida Statutes.

e. Consultant agrees the following indemnification provisions shall be applicable to Consultant's services for CR 337 and agrees to include the following indemnification in all contracts with contractors/subcontractors, or consultants/ subconsultants who perform work in connection with CR 337:

To the fullest extent permitted by law Consultant shall indemnify and hold harmless the County, the State of Florida, Department of Transportation, and its officers and employees, 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 Consultant and persons employed or utilized by Consultant in the performance of services for CR 337.

This indemnification shall survive the termination of this Agreement. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida or the County's sovereign immunity.

f The following provisions shall be applicable to Consultant's services for CR 337, and shall be included in any agreement with a subconsultant and applicable to such subconsultant's services if such services are required for CR 337:

i. Consultant affirms that it is aware of the provisions of Section 287.134, Florida Statutes, and that it shall not violate such Section 287.134, Florida Statutes. Consultant also acknowledges and agrees that placement on the discriminatory vendor list during the term of this Agreement may result in termination of this Agreement.

ii. Consultant shall carry Commercial General Liability insurance providing continuous coverage for all work or operations performed under this Agreement and the CR 337 Grant Agreements for CR 337 and meeting all coverages and requirements set forth in this section. In the alternative to carrying such Commercial General Liability insurance itself, at its option, Consultant shall cause the contractor for CR 337 to carry such Commercial General Liability insurance providing continuous coverage for all work or operations performed under this Agreement and the CR 337 Grant Agreement, and meeting all coverages and requirements set forth in this section. In the event Consultant elects to cause the contractor to carry such Commercial General Liability insurance, then, notwithstanding any other provisions in this Agreement to the contrary, Consultant's responsibility under this section shall be limited to contractually requiring the contractor to carry such Commercial General Liability insurance, monitoring such contractor's compliance with the contractual obligations, and pursuing enforcement of such contractual obligations in the event of the contractor's failure to meet the obligations. Such insurance shall be no more restrictive than that provided by the latest occurrence form edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) as filed for use in the State of Florida. In the event Consultant provides the insurance required in this section, Consultant shall cause FDOT to be made an Additional Insured to such insurance. In the event Consultant elects to require the contractor to provide the insurance required in this section, Consultant shall specifically include a provision in the contract with the contractor requiring the same, as the case may be, to cause FDOT to be made an Additional Insured as to such insurance. Such coverage shall be on an "occurrence" basis and shall include Products/Completed Operations coverage. The coverage afforded to FDOT as an Additional Insured shall be primary as to any other available insurance and shall not be more restrictive than the coverage afforded to the Named Insured. The limits of coverage shall not be less than \$1,000,000 for each occurrence and not less than \$5,000,000 annual general aggregate, inclusive of amounts provided by an umbrella or excess policy.

The limits of coverage described herein shall apply fully to the work or operations performed under the CR 337 Grant Agreement, and may not be shared with or diminished by claims unrelated to this Agreement or the CR 337 Grant Agreement. The policy/ies and coverage described herein may be subject to a deductible, at the sole cost of Consultant or the contractor, as the case may be. No policy/ies or coverage described herein may contain or be subject to a Retention or a Self-Insured Retention. Prior to the execution of this Agreement or the applicable construction contract with the contractor, as the case may be, and at all renewal periods which occur prior to final acceptance of the work, FDOT shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein as well as the appropriate endorsement naming FDOT as an additional insured. FDOT shall be notified in writing within ten days of any cancellation, notice of cancellation, lapse, renewal, or proposed change to any policy or coverage described herein. FDOT's approval or failure to disapprove any policy/ies coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, or to require the contractor to procure and maintain the insurance required herein, nor serve as a waiver of any rights or defenses FDOT may have.

iii. Consultant shall provide, and shall require the contractor and any subconsultant to provide, Workers' Compensation Insurance in accordance with Florida's Workers' Compensation law.

5. COMPENSATION:

a. County shall pay Consultant on an hourly basis for all services rendered upon receipt of a proper invoice. Compensation shall be at the following hourly rates:

Professional Engineer Or Surveyor & Mapper	\$110.00 per hour
Professional Engineer & Surveyor (dual)	\$125.00 per hour
Supporting Personnel	Employee's salary rate Times a 3.0 multiplier

Or at a rate(s) established by mutual agreement between the County and Consultant for services on any specific project.

b. In addition to compensation provided pursuant to section 5.a., in the event Consultant hires a subconsultant to perform any part of consulting engineering services requested by County or rendered pursuant to this Agreement, County shall pay Consultant's costs for such subconsultant services, plus any indirect costs related thereto.

6. **EXPENSES:** In addition to any other compensation provided herein, County shall reimburse Consultant for all travel, materials, supplies and other direct expenses incurred by Consultant while performing consulting services requested by County. Said reimbursement of expenses will be at the same rates as for County personnel.

7. **TERMINATION:** This agreement may be terminated by either party after delivery to the other party of a written notice to that effect, provided however, such termination shall not be effective for 30 days from the date of said notice.

8. **NOTICES:** For purposes of providing any communication or notice pursuant to this Agreement, any such communication or notice will be considered delivered upon hand-delivery to the applicable party, upon the date indicated on a return receipt when sent by United States certified or registered mail, or upon the date indicated on a return receipt for email. The addresses for providing communication or notice for the parties are as follows:

For County: County Coordinator
P.O. Box 310
310 School Street
Bronson, Florida 32621
levybocc@levycounty.org

With a copy to: The applicable County Representative for the project, provided that the County Representative has provided written notice of his/her physical, mailing and/or email address to Consultant.

For Consultant: Mills Engineering
P.O. Box 778
604 East Hathaway Avenue
Bronson, Florida 32621
millseng@bellsouth.net

9. **COMPLIANCE WITH LAWS/PUBLIC RECORDS:**

(a) Consultant shall comply with all applicable laws, rules and regulations in the provision of its services under this agreement.

(b) Consultant shall comply with the public records laws of the State of Florida contained in Chapter 119, Fla. Stat., as the same may be amended. Failure to comply with the provisions of this subsection shall constitute a substantial failure to perform on the part of Consultant in accordance with the terms of this agreement. Specifically, but not by way of limitation, Consultant shall:

(i) Keep and maintain public records required by County to perform its services;

(ii) Upon request by County's custodian of public records, provide County with a copy of the requested records or allow the records to be inspected or copied

within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Fla. Stat., or as otherwise provided by law;

(iii) 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 term of this agreement and following completion of the services to be provided by Consultant hereunder if Consultant does not transfer the records to County; and

(iv) Upon completion of the services to be provided under this agreement, transfer, at no cost, to County all public records in possession Consultant or keep and maintain public records required by County to perform the services. If Consultant transfers all public records to County upon completion of the services, Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Consultant keeps and maintains public records upon completion of the services, Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to County, upon request from County's custodian of public records, in a format that is compatible with the information technology systems of County.

The definitions contained in Chapter 119, Fla. Stat., apply to terms used in this section, unless alternate or more specific definitions for any such terms are provided in this agreement.

For purposes of this agreement, the term "custodian of public records" shall mean the County Coordinator of County, or his/her designee.

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

TELEPHONE: (352) 486-5218

E-MAIL: levybocc@levycounty.org

MAILING ADDRESS: P.O. BOX 310, BRONSON, FL 32621

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SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, we have hereunto set our hands and seal the day and year first above written.

**BOARD OF COUNTY COMMISSIONERS
LEVY COUNTY, FLORIDA**

By: _____
Matthew Brooks, Chair

ATTEST:

Danny J. Shipp, Clerk

Approved as to form and legal sufficiency:

Anne Bast Brown

Anne Bast Brown, County Attorney

MILLS ENGINEERING COMPANY

By: _____
H. Lee Mills, President

ATTEST:

Secretary

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