



MIAMI-DADE EXPRESSWAY AUTHORITY

3790 NW 21 St. // Miami, FL 33142

www.mdxway.com

MDX PROCUREMENT/CONTRACT NO.:
RFP-16-01(B)

MDX WORK PROGRAM NO.:
N/A

MDX PROJECT/SERVICE TITLE:
INSPECTION & REPORTING SERVICES FOR MDX
STRUCTURE

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THIS AGREEMENT ("Agreement" or "Contract"), is made and entered into as of the 21 day of July, 2016 (the "Effective Date"), by and between the **Miami-Dade County Expressway Authority d/b/a as Miami-Dade Expressway Authority** (the "Authority" or "MDX"), a body politic and corporate, a public instrumentality and an agency of the State of Florida, created under Chapter 348, Part I, Florida Statutes as amended, acting by and through its Governing Board, and **Marlin Engineering, Inc.** ("Consultant"), a corporation duly organized and existing under the laws of **Florida**, located at **15600 SW 288th Street, Suite 208 Miami, Florida 33033**, and duly authorized to conduct business in the State of Florida, Federal I.D. No. **65-0279601** (collectively, referred to herein as the "Parties" to this Agreement).

WITNESSETH:

WHEREAS, pursuant to MDX Procurement/Contract No.: **RFP-16-01**, MDX competitively procured for **Inspection & Reporting Services for MDX Structures** Services (the "Services"); and

WHEREAS, MDX now desires to enter into an Agreement with the aforementioned Consultant.

NOW, THEREFORE in consideration of the mutual understandings and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. RECITALS

The foregoing recitals are true and correct and are incorporated herein by reference.

2. SCOPE OF SERVICES

MDX hereby retains the Consultant to provide the Services as described in Exhibit A, Scope of Services, attached hereto and incorporated herein.

The Consultant agrees to provide the Services under this Agreement on a non-exclusive basis. At its option, MDX may elect to have any of the Services performed by other consultants or by MDX staff.

The Consultant and MDX mutually agree to furnish, each to the other, the respective service, information, and items as described in the Scope of Services.

3. TERMS AND CONDITIONS

With respect to the Services under this Agreement, the Consultant agrees it shall meet all terms and conditions included in the Agreement, inclusive of Exhibits and any amendments to the Agreement (the Contract Documents).

4. TERM OF THE AGREEMENT AND COMMENCEMENT OF SERVICES

Subject to the termination provisions set forth herein, this Agreement shall become effective upon its execution by the Parties on the Effective Date.

The Term of the Agreement is for four (4) years. At the discretion of MDX and subject to the Consultant receiving no less than "Excellent" rating in the annual Contract Performance Evaluation for the last four (4) years of the Term of the Agreement, MDX may renew the term of the Contract for an additional two (2) Two (2) year renewal (Renewal Terms).

MDX will issue the Consultant a Notice to Proceed followed by a Task Authorization authorizing commencement of the Services after the Effective Date of the Agreement.

No Services shall commence without a fully executed Task Authorization issued by MDX. MDX will issue Task Authorizations to the Consultant on an as-needed basis. Notwithstanding the precedent provision, the Consultant acknowledges and agrees that by entering this Agreement it is no way guaranteed that any Task Authorization will be issued to it under this Agreement. Furthermore, MDX may rescind any issued Task Authorization pursuant to the terms found in the "Termination" provision herein.

The Consultant shall not perform any Service(s) described in the Contract Documents not covered by a Task Authorization.

The Consultant agrees that time is of the essence in the completion of each and every provision or condition of this Agreement and the schedule established in each Task Authorization.

5. CONTRACT DOCUMENTS ORDER OF PRECEDENCE

The Parties agree that the Contract Documents shall control unless explicitly replaced or amended in writing and signed by both Parties.

The order of precedence for the Contract Documents shall be:

- Any Supplemental Agreements to the Agreement
- Executed Contract (excluding exhibits listed separately herein)
- Scope of Services
- Method of Compensation

- Solicitation Documents
- General Specifications
- Proposer's Proposal

If a conflict exists between a MDX originated document and a document originated by the Consultant, the MDX document shall control. Furthermore, any document created prior to Contract Award shall be superseded by documents created after Contract Award.

6. SMALL BUSINESS PARTICIPATION REQUIREMENT

The Consultant is required to meet **fifteen percent (15 %)** Small Business Participation Requirement (the "SB Participation Requirement") for this Agreement.

This requirement is met by utilizing firms certified pursuant to Miami-Dade County's Small Business Enterprise Certification programs: Small Business Enterprise – Goods and Services (SBE/GS) Small Business Enterprise – Architectural & Engineering (SBE/AE); and Small Business Enterprise – Construction (SBE/CONS), as may be required for the Services.

In order to count toward the SB Participation Requirement, the Services provided by the SB must be in the areas of expertise for which the Small Business ("SB") is certified for under the applicable program and be considered a Commercially Useful Function, as defined in the MDX Small Business Participation Policy, as may be amended, attached hereto and incorporated herein by reference. The latest version of the MDX Small Business Participation Policy may be found on the MDX website at www.mdxway.com.

The Consultant is required to meet the commitment made to each Small Business as documented in the Small Business and/or Local Business Participation Statement completed for each approved Small Business. Any deviation from these commitments shall be pre-approved in writing by MDX.

The Consultant, when certified as a SB, may only self-perform fifty percent (50%) of the required percentage of SB Participation Requirement. The remaining fifty percent (50%), if not the full SB Participation Requirement, shall be met by subcontracting work to certified SB's as detailed herein. Once the fifty percent (50%) SB Participation Requirement has been met by SB's in the manner required herein; the Consultant may self-perform more than fifty percent (50%) to exceed the SB Participation Requirement.

The Consultant shall not utilize the same firms to meet both the Small Business Participation Requirement and the Local Business Participation Requirement.

MDX shall review the Consultant's progress in securing the SB Participation Requirement on an

annual basis, commencing on the first anniversary of the Agreement and in the manner outlined in the Subcontractor/Subconsultant Utilization Report.

Failure to comply with the SB Participation Requirement shall be a default under this Agreement. The Consultant agrees to be bound by the provisions of the MDX Small Business Participation Policy, as may be amended and incorporated herein, including, but not limited to the Sections entitled *Sanctions for Contractual Violation*, and *Prompt Payment*.

It is the Consultant's responsibility to promptly notify the MDX Procurement Department with a copy to the Contract Manager if the Consultant and/or a Subconsultant graduate from the Small Business Program as defined by Miami-Dade County. It is at MDX's sole discretion to either: 1) allow the graduated firm to complete the services under authorized Task Authorizations; or 2) continue counting as a Small Business towards satisfaction of the Small Business Participation Requirement for the lesser of the term of the Agreement or a period of two (2) years after graduation from the SB Program. However, no new Services may be assigned to the non-certified firm for purposes of counting toward compliance of the SB Participation Requirement. MDX will notify the Consultant in writing of its decision.

Should MDX approve an extension of the Agreement, Services performed by the graduated firm shall no longer be counted toward the SB Participation Requirement.

6.1 Request to Replace/Substitute/Add Small Business

The Consultant shall obtain approval by MDX in the event they wish to request changes to the approved *Small Business and/or Local Business Participation Statement*, including but not limited to:

- (1) Graduation from the SB Program;
- (2) Substitution of a SB Subconsultant;
- (3) Removal/Addition of a SB Subconsultant;
- (4) Reduction of scope/committed amount to a SB Subconsultant; or
- (5) For other justifiable reasons.

The Consultant must:

- (1) Contact in writing the MDX Procurement Department, with a copy to the Contract Manager to address the issue as soon as possible after the Consultant becomes aware of any such issue. The written notification must include a justification for the

requested change and be accompanied, as may be applicable, by any required documentation;

- (2) Submit a Request for Authorization to Subcontract Work along with all required documentation therein, available on the MDX website at www.mdxway.com;
- (3) Submit documentation of the Consultant's efforts to locate a qualified Subconsultant certified under the SB Program, including, but not limited to, contacting possible SB's in writing or by phone, and assisting qualified Subconsultant(s) to become certified under the SB Program, if applicable.

All requests for changes shall be submitted directly to the MDX Procurement Department for processing. All requested changes require review and approval from both the MDX Procurement Department and the Contract Manager. Only one submittal to the MDX Procurement Department is required.

MDX shall review the submitted request with related documentation and determine, at its sole discretion, whether or not to approve the Consultant's request within five (5) Business Days from the submittal of a properly documented request by the Consultant. The Consultant shall be required to meet the SB Participation Requirement for this Agreement as outlined herein.

In the event that the Consultant is unable to secure a replacement SB Subconsultant certified under the SB Program to perform the required Services, and has properly documented the efforts as outlined above, MDX, at its sole discretion, may re-negotiate the SB Participation Requirement for the Services authorized by issued Task Authorization(s).

MDX will not authorize any removals or substitutions to any SB Subconsultant that has been submitted as part of the Agreement unless there has been a change in the Services pursuant to the requirements of the Contract Documents, or for circumstances beyond the control of the Consultant as determined by MDX.

6.2 Request for Recalculation of SB Participation Requirement

In the event the Consultant is assigned Services that are considered specialized and as such do not permit for utilization of SB's, and therefore potentially hinder the Consultant's ability to meet the SB Participation Requirement, the Consultant shall immediately notify MDX in writing. Such notification shall include sufficient information to support the inability to utilize SB's. MDX shall acknowledge in writing receipt and understanding of the notification.

If MDX determines that the Consultant cannot meet the SB Participation Requirement due

to the assigned specialized services, MDX shall exclude such portion of the Services from the SB Participation Requirement calculation without prejudice to the Consultant.

6.3 Tracking and Enforceability of the SB Participation Requirement

The SB Participation Requirement shall be based upon the total dollar amount paid out to the Consultant at the close out of the Fiscal Year/Agreement, excluding any amounts approved by MDX pursuant to the Section entitled *Request for Recalculation of SB Participation Requirement*.

Prompt submittals of all required documentation pursuant to the events described in above Sections entitled *Request to Replace/Substitute/Add Small Business*, and *Request for Recalculation of SB Participation Requirement* are required to ensure that MDX properly evaluates the Consultant's satisfaction of the SB Participation Requirement.

At the end of each fiscal year, MDX shall evaluate the Consultant's compliance with the SB Participation Requirement. In the event it is determined by MDX that the Consultant's failure to comply with the SB Participation Requirement for the year is unjustified, the Consultant acknowledges that is in breach of this Agreement. Any such failure will result in the unjust enrichment of the Consultant and will cause a detriment to MDX. As such, damages arising from such breach cannot be calculated with any degree of certainty, and accordingly, it is hereby agreed that the Consultant shall pay to MDX, as liquidated damages and not as a penalty, the percentage of the SB Participation Requirement not met multiplied by the total earned value of the Task Authorizations issued that year, but in no event shall exceed Three Hundred Thousand and No/100 (\$300,000.00) Dollars in a year. Should the Consultant make up the percentage deficit in subsequent years, MDX shall disburse any amounts retained pursuant to this Section. If at the end of the Contract, the SB Participation Requirement has not been met, MDX shall retain as liquidated damages and not as a penalty any amounts withheld or due to be withheld from the Consultant.

6.4 Contractual Violations:

Some of the contractual violations that may result in the imposition of the sanctions listed herein include, but are not limited to, the following:

- (1) A Small Business serving as a conduit for work designated to a Small Business, but which is being performed by a non-Small Business firm;
- (2) A Consultant not meeting the Small Business Requirement on its Agreement;
- (3) Not retaining certification under the SB Program while performing work designated for a Small Business;

- (4) Termination of the Small Business's subcontract, or work stoppage of the Small Business without prior approval from MDX, as detailed herein;
- (5) Reduction of the Services of a Small Business without prior approval from MDX;
- (6) Modifications to the terms and/or prices of payment to a Small Business without prior approval from MDX;
- (7) Unjustified failure to enter into a written subcontract with a Small Business after listing them on the Small Business and/or Local Business Participation Statement;
- (8) Failure of payment to the Small Business on a timely manner pursuant to the requirements of the MDX Small Business Participation Policy.

6.5 Sanctions for Contractual Violations:

Notwithstanding any other penalties or sanctions provided by law and/or described herein, the Consultant's violation of, or failure to comply with, the SB Participation Requirement may result in the imposition of one (1) or more of the following sanctions:

- (1) The suspension of any payment or part thereof until such time as the issues concerning compliance are resolved;
- (2) Stopping the Services;
- (3) Termination, suspension, or cancellation of the Agreement in whole or part;
- (4) In the event the Consultant or a SB attempts to comply with the SB Participation Requirements through fraud, misrepresentation, or material misstatement, MDX may terminate the Agreement.

In addition and as a further sanction, MDX may impose any of the above-stated sanctions on any other MDX contract the Consultant and/or Small Business may have with MDX. MDX may also remove the Consultant and/or Small Business from any other MDX contract they may be participating in as a Subcontractor/Subconsultant.

In each instance the Consultant or Small Business shall be responsible for all direct and indirect costs associated with such termination or cancellation of the Agreement including attorney's fees and costs.

In addition to any already applied sanction, the Consultant's eligibility to receive any future

contracts from MDX may be conditioned upon the Consultant making up the deficit in Small Business Participation Requirement of this Agreement by having the Small Business perform the percentage equivalent to the dollar value of the deficiency by the total amount of the future contract. The foregoing obligation shall be in addition to any SB Participation Requirement otherwise applicable to any future contract.

7. LOCAL BUSINESS PARTICIPATION REQUIREMENT

The Consultant is required to meet **fifteen percent (15%)** Local Business Participation Requirement (the "LB Participation Requirement") for this Agreement.

This requirement is met by utilization of Local Business ("LB") firms certified pursuant to MDX Local Business Participation Policy, as may be amended, attached hereto and incorporated herein by reference. The latest version of the MDX Local Business Participation Policy may be found on the MDX website at www.mdxway.com.

The Consultant is required to meet the commitment made to each Local Business as documented in the Small Business and/or Local Business Participation Statement completed for each approved Local Business. Any deviation from these commitments shall be pre-approved in writing by MDX.

The Consultant when qualified as a LB may only self-perform fifty percent (50%) of the required percentage of LB Participation Requirement. The remaining fifty percent (50%), if not the full LB Participation Requirement, shall be met by subcontracting work to certified LB's as detailed herein. Once the fifty percent (50%) LB Participation Requirement has been met by LB's in the manner required herein; the Consultant may self-perform more than fifty percent (50%) to exceed the LB Participation Requirement.

The Consultant shall not utilize the same firms to meet both the Small Business Participation Requirement and the Local Business Participation Requirement.

MDX shall review the Consultant's progress in securing the LB Participation Requirement on an annual basis, commencing on the first anniversary of the Agreement and in the manner outlined in the Subcontractor/Subconsultant Utilization Report.

Failure to comply with the LB Participation Requirement shall be a default under this Agreement. The Consultant agrees to be bound by the MDX Local Business Participation Policy, as may be amended, and the requirements of this Agreement in the compliance of the LB Participation Requirement.

It is the Consultant's responsibility to promptly notify the MDX Procurement Department with a copy to the Contract Manager in the event the LB Certification of the Consultant and/or Subconsultant expires and is not renewed by MDX. It is at MDX's sole discretion to allow Services

performed by any such non-certified firm(s) to continue to count toward the LB Participation Requirement for a period not to exceed twelve (12) months from the time the certification expires. However, no new Services may be assigned to the non-certified firm for purposes of counting toward compliance of the LB Participation Requirement. MDX will notify the Consultant in writing of its decision.

Should MDX approve an extension of the Agreement, Services performed by the non-certified firm shall no longer be counted toward the LB Participation Requirement.

7.1 Request to Replace/Substitute/Add Local Business

The Consultant shall obtain approval by MDX in the event they wish to request changes to the approved *Small Business and/or Local Business Participation Statement*, including but not limited to:

- (1) Expiration or non-renewal of the Subconsultant's LB certification;
- (2) Substitution of a LB Subconsultant;
- (3) Removal/ Addition of a LB Subconsultant;
- (4) Reduction of scope/committed amount to a LB Subconsultant; or
- (5) For other justifiable reasons.

The Consultant must:

- (1) Contact in writing the MDX Procurement Department, with a copy to the Contract Manager to address the issue as soon as possible after the Consultant becomes aware of any such issue. The written notification must include a justification for the requested change and be accompanied, as may be applicable, by any required documentation:
- (2) Submit a Request for Authorization to Subcontract Work along with all required documentation therein, available on the MDX website at www.mdxway.com.
- (3) Submit documentation of the Consultant's efforts to locate a qualified LB Subconsultant certified by MDX, including, but not limited to, contacting possible LB's in writing or by phone, and assisting qualified Subconsultant(s) to become certified by MDX, if applicable.

All requests for changes shall be submitted directly to the MDX Procurement Department for processing. All requested changes require review and approval from both the MDX Procurement Department and the Contract Manager. Only one submittal to the MDX Procurement Department is required.

MDX shall review the submitted request with related documentation and determine, at its sole discretion, whether or not to approve the Consultant's request within five (5) Business Days from the submittal of a properly documented request by the Consultant. The Consultant shall be required to meet the LB Participation Requirement for this Agreement as outlined herein.

In the event that the Consultant is unable to secure a replacement LB Subconsultant certified by MDX to perform the required Services, and has properly documented the efforts outlined above, MDX at its sole discretion, may re-negotiate the LB Participation Requirement for the outstanding Services authorized by issued Task Authorization(s).

MDX will not authorize any removals or substitutions to any LB Subconsultant that has been submitted as part of the Agreement unless there has been a change in the Services pursuant to the requirements of the Contract Documents, or for circumstances beyond the control of the Consultant as determined by MDX.

7.2 Request for Recalculation of LB Participation Requirement

In the event the Consultant is assigned Services that are considered specialized and as such do not permit for utilization of LB's, and therefore potentially hinder the Consultant's ability to meet the LB Participation Requirement, the Consultant shall immediately notify MDX in writing. Such notification shall include sufficient information to support the inability to utilize LB's. MDX shall acknowledge in writing receipt and understanding of the notification.

If MDX determines that the Consultant cannot meet the LB Participation Requirement due to the assigned specialized services, MDX shall exclude such portion of the Services from the LB Participation Requirement calculation without prejudice to the Consultant.

7.3 Tracking and Enforceability of the SB Participation Requirement

The LB Participation Requirement shall be based upon the total dollar amount paid out to the Consultant at the close out of the Fiscal Year/Agreement, excluding any amounts approved by MDX pursuant to the Section entitled *Request for Recalculation of LB Participation Requirement*.

Prompt submittals of all required documentation pursuant to the events described in

above Sections entitled *Request to Replace/Substitute/Add Local Business*, and *Request for Recalculation of LB Participation Requirement* are required to ensure that MDX properly evaluates the Consultant's satisfaction of the LB Participation Requirement.

At the end of each fiscal year, MDX shall evaluate the Consultant's compliance with the LB Participation Requirement. In the event it is determined by MDX that the Consultant's failure to comply with the LB Participation Requirement for the year is unjustified, the Consultant acknowledges that is in breach of this Agreement. Any such failure will result in the unjust enrichment of the Consultant and will cause a detriment to MDX. As such, damages arising from such breach cannot be calculated with any degree of certainty, and accordingly, it is hereby agreed that the Consultant shall pay to MDX, as liquidated damages and not as a penalty, the percentage of the LB Participation Requirement not met multiplied by the total earned value of the Task Authorizations issued that year, but in no event shall exceed Three Hundred Thousand and No/100 (\$300,000.00) Dollars in a year. Should the Consultant make up the percentage deficit in subsequent years, MDX shall disburse any amounts retained pursuant to this Section. If at the end of the Contract, the LB Participation Requirement has not been met, MDX shall retain as liquidated damages and not as a penalty any amounts withheld or due to be withheld from the Consultant.

7.4 Contractual Violations

Some of the contractual violations that may result in the imposition of the sanctions listed herein include, but are not limited to, the following:

- (1) A Local Business serving as a conduit for work designated to a Local Business, but which is being performed by a non-Local Business firm;
- (2) A Consultant not meeting the Local Business Requirement on its Agreement;
- (3) Not retaining certification with MDX as a Local Business while performing work designated for Local Business;
- (5) Termination of the Local Business's subcontract, or work stoppage of the Local Business without prior approval from MDX, as detailed herein;
- (6) Reduction of the Services of a Local Business without prior approval from MDX;
- (7) Modifications to the terms and/or prices of payment to a Local Business without prior approval from MDX;
- (8) Unjustified failure to enter into a written subcontract with a Local Business after listing them on the Small Business and/or Local Business Participation Statement;

- (9) Failure of payment to the Local Business on a timely manner.

7.5 Sanctions for Contractual Violations:

Notwithstanding any other penalties or sanctions provided by law and/or described herein, the Consultant's violation of, or failure to comply with, the Local Business Participation Requirement may result in the imposition of one (1) or more of the following sanctions:

- (1) The suspension of any payment or part thereof until such time as the issues concerning compliance are resolved;
- (2) Stopping the Services;
- (3) Termination, suspension, or cancellation of the Agreement in whole or part;
- (4) In the event the Consultant or a Local Business attempts to comply with the Local Business Participation Requirements through fraud, misrepresentation, or material misstatement, MDX may terminate the Agreement.

In addition and as a further sanction, MDX may impose any of the above-stated sanctions on any other MDX contract the Consultant and/or Local Business may have with MDX. MDX may also remove the Consultant and/or Local Business from any other MDX contract they may be participating in as a Subcontractor/Subconsultant.

In each instance the Consultant or Local Business shall be responsible for all direct and indirect costs associated with such termination or cancellation of the Agreement including attorney's fees and costs.

In addition to any already applied sanction, the Consultant's eligibility to receive any future contracts from MDX may be conditioned upon the Consultant making up the deficit in Local Business Participation Requirement of this Agreement by having the Local Business perform the percentage equivalent to the dollar value of the deficiency by the total amount of the future contract. The foregoing obligation shall be in addition to any LB Participation Requirement otherwise applicable to any future contract.

8. CHANGES IN THE SERVICES

- A. Before making any additions or deletions to the Services and before undertaking any changes or revisions to such Services, the Parties shall negotiate any necessary cost and schedule changes and shall enter into a Supplemental Agreement covering such

modifications and the compensation to be paid to the Consultant as may be applicable. Reference herein to this Agreement shall be deemed to include any supplement hereto. Unless otherwise agreed to by MDX in writing, the Method of Compensation shall apply to all Supplemental Agreements.

- B. When MDX requires services, which are not covered by the Scope of Services in this Agreement and MDX finds that such service is essential to the satisfactory completion of this Agreement within its intended scope, MDX will make an adjustment to this Agreement through a Supplemental Agreement. The basis of payment for such adjustment will be in the amount MDX determines to be fair and equitable, upon discussion and agreement with the Consultant in writing and in accordance with the relevant provisions of this Agreement, including but not limited to, the Method of Compensation.
- C. A Supplemental Agreement shall be executed by MDX and the Consultant for any additional service not contained in this Agreement.

9. CLAIMS FOR EXTRA SERVICES

In any case where the Consultant deems that extra compensation is due it for services not covered in this Agreement, the Consultant shall notify MDX in writing within twenty (20) Calendar Days of its intention to make a claim for extra compensation prior to providing such services on which the claim is based. If such notification is not given in writing within twenty (20) Calendar Days, then the Consultant hereby agrees to waive the claims for such extra compensation. Such notice by the Consultant shall in no way be construed as proving the validity of the claim.

10. INDEPENDENT CONSULTANT

10.1 Acting as an Independent Consultant

The Consultant hereby declares that it is engaged in an independent business and agrees that in the performance of this Agreement it shall act as an independent Consultant and not as an employee of MDX. The Consultant has and hereby retains full control of all the employment, compensation, and discharge of all employees of the Consultant assisting in its performance hereunder. The Consultant shall be fully responsible for Services performed under this Agreement, and all matters relating to payment of its employees including compliance with Social Security, withholding tax, workers' compensation, immigration law compliance and all other laws and regulations governing such matters. The Consultant shall be responsible for its own acts and those of its agents, independent contractors, and employees during the term of this Agreement. Except as otherwise specifically provided, as an independent consultant, the Consultant will be solely responsible for determining means and methods for performing the Services described in

the Scope of Services.

10.2 Full and Complete Payment

The payment made to the Consultant pursuant to the requirements of the Method of Compensation under this Agreement shall be the full and complete compensation to which the Consultant is entitled. MDX shall not make any federal or state tax withholdings on behalf of the Consultant. MDX shall not be required to pay any workers' compensation insurance on behalf of the Consultant. The Consultant agrees to indemnify MDX for any tax, retirement contribution, social security, overtime payment, or workers' compensation payment which MDX may be required to make on behalf of the Consultant or any employee, or independent contractor of the Consultant for Services performed under this Agreement.

10.3 No Authority to Act on MDX's Behalf

Except as MDX may specify in writing, the Consultant shall have no authority, express or implied, to act on behalf of MDX in any capacity whatsoever, as an agent or otherwise. The Consultant shall have no authority, express or implied, to bind MDX or its members, agents or employees, to any obligation whatsoever, unless expressly provided in this Agreement.

11. AVAILABILITY OF FUNDS

This Agreement is subject to the availability of funds in the MDX budget for each fiscal year of this Agreement. MDX will require written authorization from MDX's Chief Financial Officer ("CFO") that funds are available prior to entering into any agreement, task authorization or other binding commitment of funds.

MDX will not, during any fiscal year, expend money not approved by the CFO, incur any liability or enter into any agreement or task authorization that, by its terms, involves the expenditures of money in excess of the amounts budgeted as available for any expenditure during such fiscal year.

If MDX enters into such an agreement in writing, in violation of this Section, such contract or task authorization is null and void, and MDX will not make any payments thereunder. Nothing herein contained prevents MDX from executing agreements or task authorizations for a period exceeding one (1) year, but MDX will make such agreements or task authorizations executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years.

12. SCHEDULE AND DELAYS

- A. At the request of MDX, the Consultant agrees to provide a schedule for progress reports in a format acceptable to MDX and at intervals established by the MDX. MDX will be at all times advised, at its request, as to the status of Services being done by the Consultant and of the

details thereof.

Close collaboration and cooperation shall be maintained by the Consultant with representatives of MDX or other third parties approved by MDX. Either Party to the Agreement may request and be granted a conference.

- B. In the event there are delays, or projected delays due to MDX regarding the approval of any of the materials submitted by the Consultant, or if there are delays or projected delays occasioned by circumstances beyond the control of the Consultant which delay is anticipated to delay the completion date, as set forth in the Agreement and/or Task Authorization, MDX may grant to the Consultant an extension of time for performance equal to the aforementioned delays or projected delays, provided there are no changes in compensation or Scope of Services. The Consultant shall not claim any financial compensation due to delays caused by the Consultant.

The Consultant agrees that the sole remedy in this event will be an extension of time for performance. The granted extension may be done in writing by the Deputy Executive Director/Director of Engineering, or designee, provided that such time extension for completion of the Services does not impact the term of Agreement or trigger effectiveness of contract provisions, such as liquidated damages, as may be applicable. In such case, the time extension must be approved through a Supplemental Agreement.

- C. It shall be the responsibility of the Consultant to monitor and ensure that sufficient time remains in which to complete the requested Services. In the event any delays occur that would affect the completion date, as determined in the Contract Documents, the Consultant shall submit a written request to MDX which identifies the reason(s) for the delay and the amount of time related to each reason. MDX shall review the request and make a determination as to granting all or part of the requested extension.
- D. In the event that the time for performance expires and the Consultant has not requested, or if MDX has denied an extension of the completion date, partial progress payments will be stopped on the date time expires. No payment shall be made for Services performed subsequent to the date time expires until a time extension is granted or all Services has been completed and accepted by MDX.
- E. All financial records relating to the Agreement shall be reconciled no later than forty-five (45) Calendar Days prior to the end of every MDX fiscal year (June 30 of the current year).

13. FORCE MAJEURE

The failure of either MDX or the Consultant to comply with any provision of this Agreement due to an act of God, hurricane, war, fire, riot, earthquake, flood, strikes, act of public enemies, or actions of governmental authorities outside of the control of either MDX or the Consultant (excepting

compliance with applicable codes and regulations) will not be considered a breach of this Agreement.

In this event, the time for the performance of the obligations under this Agreement will be extended for a period commensurate with the delay but the Consultant will receive no additional compensation.

14. EMERGENCY PREPAREDNESS

As may be applicable to the Services, in the event of an emergency, the Consultant shall coordinate with the MDX to identify and prepare to assume the necessary responsibilities of the Emergency Preparedness and Response Plan developed for MDX.

15. OWNERSHIP OF DOCUMENTS

All tracings, documents, studies, data and/or reports prepared or obtained under the Contract Documents shall be considered works made for hire and shall become property of MDX without restriction or limitation on their use, and shall be made available upon request to MDX at any time. The Consultant shall therefore agree not to publish, copyright, or patent any of the data furnished in compliance with the Agreement. MDX shall have the right to visit the offices of the Consultant for review of the Services at any time. The Consultant shall not be liable for use by MDX of said documents, studies, or other data for any purpose other than that intended by the terms of the Contract Documents.

16. AUDIT AND EXAMINATION OF CONTRACT RECORDS

MDX reserves the right at any time and for any reason to review, audit, copy, examine and investigate in any manner, any Contract Records (as herein defined) of the Consultant or any Subconsultant. The Consultant shall include in its contract with any Subconsultant similar provisions as detailed herein and Subconsultants' agreements shall comply with the provisions of this sub-article.

Contract Records shall include, but are not limited to, all information, communications and data, whether in writing or stored on a computer, computer disks, microfilm, writings, working papers, drafts, computer printouts, charts or any other data compilations, books of account, photographs, videotapes and audio tapes, supporting documents, any other papers or preserved data related to the Agreement or the Consultant's performance of the Agreement determined necessary by MDX for any purpose. Such records shall also include, but not be limited to, time sheets, task authorizations, direct expense reimbursable records, the Consultant's general accounting records relating to its obligations and Services under this Agreement, together with supporting documents and records of the Consultant and all Subconsultants performing Services under this Agreement and all other records of the Consultant and Subconsultants considered necessary by MDX for a proper audit of all costs associated with this Agreement.

If MDX requests access to or review of any Contract Documents and the Consultant refuses such access or review, the Consultant shall be deemed in default of the Agreement. Such default shall, without any other or additional actions, constitute grounds for termination of the Agreement. This provision shall not be limited in any manner by the existence of any Consultant claims or pending litigation relating to the Agreement.

17. PUBLIC RECORDS

The Consultant shall enable reasonable and convenient access to all documents, papers, letters, or other material to any person making a request for such documents pursuant to the provisions of Chapter 119, Florida Statutes, for documents made or received by the Consultant in conjunction with the Agreement.

Failure to promptly afford such access may be grounds for immediate unilateral cancellation of the Agreement by MDX and the Consultant shall indemnify MDX against any costs or penalties MDX may incur as a result of the Consultant's failure to comply with, or impede MDX being able to comply with, the provisions of Chapter 119, Florida Statutes.

Upon receipt of any public records request, the Consultant shall immediately notify MDX and secure prior written consent and coordination of response to the request before releasing such records. All documents related to the Agreement as detailed herein must be provided in accordance with the Section herein entitled *Audit and Examination of Contract Records*.

18. INSPECTION OF SERVICES

MDX shall maintain the right to inspect the Services performed by the Consultant and request any documentation from the Consultant to ensure quality products and services are being provided. The Consultant shall make available to MDX, upon request, complete records of all costs incurred under the terms of this Agreement for purposes of auditing prior or current invoices. The Consultant acknowledges that all work products generated from the Services provided pursuant to this Agreement shall be subject to the provisions of Chapter 119, Florida Statutes.

19. TERMINATION

19.1 Termination by Mutual Agreement

This Agreement may be terminated by either Party by mutual agreement in writing.

19.2 Termination for Default

Should one Party fail to perform in accordance with the terms of this Agreement through no fault of the other, the non-breaching Party may terminate this Agreement upon a

minimum of seven (7) Calendar Days written notice. In the event of termination, due to no fault of the Consultant, the Consultant shall be paid for services performed to the termination date, including reimbursements, if any.

19.3 Termination for Non-Performance

If MDX determines that the performance of the Consultant is not satisfactory, MDX shall have the option, at its sole discretion, of (a) immediately terminating this Agreement or (b) notifying the Consultant of the deficiency with a requirement that the deficiency be corrected within a specified time, otherwise this Agreement shall be terminated at the end of such time. In such case, the Consultant shall be paid for Services satisfactorily performed, at the discretion of MDX, in accordance with the terms of this Agreement, except any amounts in dispute.

19.4 Termination for Convenience

The performance of Services under this Agreement may be terminated by MDX in accordance with this clause, in whole or in part, whenever MDX determines that such termination is in the best interest of MDX. MDX shall notify the Consultant of such termination with instructions as to the effective date of the termination, which effective date shall not be less than thirty (30) Calendar Days after the date of such notification, or shall specify the stage of Services at which this Agreement is to be terminated. Upon termination, the Consultant shall be entitled to payment for Services completed to the date of termination only. The percentage of completion shall be determined by MDX.

19.5 Termination for Insolvency

MDX reserves the right to terminate or cancel this Agreement in the event the Consultant shall be placed in either voluntary or involuntary bankruptcy or an assignment shall be made for the benefit of creditors.

19.6 Relieve of Liabilities

Notwithstanding the rights of MDX to terminate this Agreement as described elsewhere in this Agreement, the Consultant shall not be relieved of liability to MDX for damages sustained by MDX, by virtue of any breach of the obligations, covenants, agreements, stipulations, representations or warranties of this Agreement by the Consultant and MDX may withhold any payment due to the Consultant up to the amount of damages claimed by MDX for the purpose of set-off, until such time as the exact amount of damages due to MDX is agreed upon or otherwise determined.

19.7 Termination Transition.

At the discretion of MDX, but no longer than thirty (30) Calendar Days from the effective date of termination, the Consultant shall provide reasonable cooperation in the transition of its responsibilities.

20. CONTRACT PERFORMANCE EVALUTION

The Consultant's performance will be evaluated using the MDX Contract Performance Evaluation procedures described in the MDX Procurement Policy.

21. CONSULTANT, SUBCONSULTANTS, AND EMPLOYEES

The Consultant, Subconsultants, and their respective employees providing Services under this Agreement shall remain, at all times throughout the term of the Agreement, authorized to do business within the State of Florida.

Initial personnel, classifications of personnel, and Subconsultants have been approved by MDX at the time of Execution of the Agreement. Any subsequent changes in personnel and Subconsultants shall require prior written approval from MDX as further detailed herein.

The Consultant will use due care in performing the Services and will have due regard for acceptable standard and principles. The Consultant's standard of care shall not be altered by the application, interpretation, or construction of any other provision of this Agreement

21.1 Consultant's Personnel

The Consultant shall maintain adequate, dedicated, qualified, reliable and committed personnel for the performance of the Services. Such personnel must perform the Services, at a minimum, with a degree of care and skill common of the profession.

The Consultant warrants that it has not employed or retained any company or person other than a bona fide employee, working solely for the Consultant, to solicit or secure this Agreement and that it has not paid or agreed to pay any 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 monetary or non-monetary, contingent upon or resulting from the award or making of this Agreement. It is further understood and agreed that the term "fee" shall also include brokerage and finder's fees, however denoted.

If the Consultant breaches or violates the above mentioned provision, MDX shall have the right to deduct from this Agreement or Task Authorization price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration or may in its sole discretion pursue any other remedies available to MDX including termination of this Agreement.

21.2 Removal of Consultant's Personnel

If, in the opinion of MDX, any person employed by the Consultant is not qualified to perform the Services or is insubordinate, disorderly, disrupts, or is detrimental to the progress of the Services, such person shall be immediately removed from the Agreement by the Consultant upon written direction from MDX. Such person shall not be employed again to perform the Services without the written permission of MDX.

If the Consultant fails to immediately remove such person, MDX may, at its sole discretion, withhold payments due or which may become due, or may suspend the Services until the person is removed. The Consultant shall protect, indemnify, and hold harmless MDX, its agents, officers and employees from any and all claims, actions, or suits arising from such removal, discharge, or suspension of a Consultant employee based on the direction of MDX.

If at any time during the Services, MDX has a reasonable objection to any of the Consultant's proposed personnel, after due investigation, then MDX may request the Consultant to submit an acceptable substitute at no additional cost to MDX. If the Consultant declines to make any such substitution, then MDX may cancel this Agreement. If MDX does not make a written objection to the list of Consultant's proposed personnel prior to the giving of the Notice to Proceed, then such list will be deemed acceptable to MDX, subject to revocation hereunder. Any of the Consultant's proposed personnel failing to meet the above requirements shall be replaced by the Consultant at no additional cost to MDX, and are subject to MDX prior approval.

21.3 Changes to Consultant's Personnel

For changes to personnel, the Consultant shall submit the following documentation for MDX's review and approval:

- (1) Personnel Change Request Form
- (2) A current resume;
- (3) Documentation demonstrating the personnel possesses the required technical qualifications and experience to perform the work for which being contracted; and
- (4) Copy of certified payroll for the proposed personnel.

After the Consultant follows the steps described above, MDX shall review the submitted documentation and determine, at its sole discretion, whether or not to approve the personnel change. The Consultant shall maintain throughout the term of this Agreement, proposed personnel and a professional staff that meets the required training and experience to provide the Services.

21.4 Subconsultants

The Consultant shall ensure that all subcontracts entered into with its Subconsultants grant MDX all of the rights and privileges of such subcontract, including but not limited to (so long as MDX is not in default of its obligations under this Agreement) MDX's right to secure materials or services from the Subconsultant which might be a part of the Subconsultant's work production.

21.5 Changes to Subconsultants

The Consultant shall obtain approval by MDX in the event they wish to request changes to the approved list of Subconsultant(s), including but not limited to:

- (1) Substitution of a Subconsultant;
- (2) Removal/Addition of a Subconsultant;

The Consultant must submit a Request for Authorization to Subcontract Work along with all required documentation therein, available on the MDX website at www.mdxway.com;

All requests for changes shall be submitted directly to the MDX Procurement Department for processing. All requested changes require review and approval from both the MDX Procurement Department and the Contract Manager. Only one submittal to the MDX Procurement Department is required.

MDX shall review the submitted request with related documentation and determine, at its sole discretion, whether or not to approve the Consultant's request within five (5) Business Days from the submittal of a properly documented request by the Consultant.

21.6 E-Verify Requirements

U.S. law requires companies to employ only individuals who may legally work in the United States, either U.S. citizens, or foreign citizens who have the necessary authorization. Any Consultant providing services to MDX must verify the employment eligibility of employees through the U.S. Department of Homeland Security's E-Verify system. In addition, the Consultant shall verify that Subconsultants performing Services on the Agreement utilize the E-Verify system to verify the employment eligibility of employees hired by the Subconsultant during the Contract Term. MDX will consider the employment by any Consultant or Subconsultant of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. Such violation will be cause for unilateral cancellation of this Agreement by MDX, if it is determined that the Consultant or Subconsultant knowingly employs unauthorized aliens.

22. STANDARDS OF CONDUCT AND CONFLICT OF INTEREST

22.1 Standards of Conduct

- A. This Section shall apply to the Consultant, its Subconsultants and any other agent or employee engaged by the Consultant.

The Consultant agrees to incorporate the provisions of this Section and the Section of the Solicitation Documents entitled "Conflicts of Interest" in any subcontract into which it might enter with reference to the Services performed for this Agreement. MDX at its sole discretion may conduct an audit of the Consultant's compliance of its obligations under this Section.

- B. The Consultant covenants and agrees that it and its employees shall be bound by the standards of conduct provided in applicable Florida Statutes as they relate to the Services performed under this Agreement, which standards shall by reference be made a part of this Agreement as though set forth in full.

The Consultant shall also abide by the MDX Procurement Policy, MDX Code of Ethics, and provisions of the executed Vendor's Bill of Rights and Responsibilities.

- C. The Consultant shall not represent any other party before the State Legislature or any committee thereof, the office of the Governor or any member of the cabinet or any state agency, other than the Florida Department of Transportation (the "Department") or any district or office thereof (collectively, the "Department"), on any matter where such party's interest may be adverse to MDX without the prior written permission of MDX. In the event the Consultant desires to represent another party before any of the aforementioned public officials, bodies or agencies on any matter where such party's interest may be adverse to MDX, it shall promptly inform the MDX Executive Director or his or her delegate in writing of the party it wishes to represent and of the nature of the proposed representation. MDX, in its sole and absolute discretion may preclude the Consultant from simultaneously representing MDX and another party when MDX determines that representation of such other party may be adverse to MDX's interest. In making such determination, MDX shall have sole and absolute discretion to determine the role of the Consultant and the nature of its representation of MDX. Should the Consultant fail, after five (5) Business Days' notice, to resolve a conflict as determined by MDX, MDX shall have the right to terminate this Agreement.

- D. Notwithstanding anything in this Section to the contrary, in the event that the Consultant shall be engaged or shall otherwise be participating in any matter where the interests of MDX and the Department may conflict, the Consultant shall

promptly inform the MDX's Executive Director, or his or her delegate, and the Secretary of the applicable District of the Department in writing of the conflict or potential conflict between MDX and the Department.

MDX and the Department shall confer and determine as to whether the Consultant shall represent MDX or the Department in such matter. The Consultant agrees to abide by each such determination.

In the event that such determination shall cause MDX or the Department to incur any increased costs due to its inability to retain the Consultant for a particular matter, the Consultant shall promptly pay such costs upon being invoiced therefore by MDX or the Department, as the case may be. Absent manifest error, the determination of MDX or the Department, as the case may be, of such increased costs shall be final and binding on the Consultant.

As used in this Section, the term "increased costs" shall mean:

- (1) Administrative costs incurred by MDX or the Department, as the case may be, including but not limited to legal fees, associated with the retention of an engineer or another consultant to perform the services that would have been performed by the Consultant absent such conflict of interest, and
- (2) The difference between the amount paid by MDX or the Department, as the case may be, to such replacement engineer or consultant to perform such services and the amount that would have been paid by MDX or the Department, as the case may be, to the Consultant to perform such services. MDX and the Consultant shall use their best efforts to mitigate the conflict and any increase in costs.

In the event of a dispute between the Parties, the Parties agree to mediation prior to any litigation to resolve said dispute.

- E. MDX is governed in its contracts and transactions by provisions of Florida law relating to conflicts of interest, prohibited transactions, and ethics in government. All Parties to contracts with MDX relating to the Services shall familiarize themselves with the Chapter 112, and Chapter 348, Florida Statutes; the MDX Procurement Policy; the MDX Code of Ethics; and with general Florida law regulating MDX's ethical requirements, prohibitions and limitations with respect to procurement and contracts.
- F. The Consultant agrees that it shall make no statement, press releases, or other publicity of any kind concerning this Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the

period of this Agreement, without first notifying MDX and securing its consent in writing. The Consultant also agrees that it shall not publish, copyright, or patent any of the data furnished in compliance with this Agreement, it being understood that under the provisions of this Agreement such data or information is the property of MDX.

- G. MDX shall have the right to unilaterally cancel this Agreement for refusal by the Consultant to allow public access to all documents, papers, letters or other materials, subject to provisions of Chapter 119, Florida Statutes, made or received by the Consultant in conjunction with this Agreement.

22.2 Conflicts of Interest

- A. The Consultant warrants that, to the best of the Consultant's knowledge and belief, there are no relevant facts or circumstances which could give rise to a potential or actual conflict of interest, including but not limited to, an Organizational Conflict of Interest, as defined herein, or a Personal Conflict of Interest, as defined herein, (hereinafter collectively referred to as "Conflict of Interest", "Conflicts of Interest" or "COI"), or that the Consultant has disclosed in writing to MDX all such relevant information relating to the Consultant, its employees, its agents or any of its Subconsultants.
- B. The term ***Organizational Conflict of Interest*** as used herein means:
- (i) Because of other activities or relationships with other persons or consultants, the Consultant, its employees, agents or Subconsultants or their respective employees, is/are unable or potentially unable to render impartial assistance or advice to MDX;
 - (ii) The Consultant's, or any of its employees, agents, Subconsultants or their respective employees, objectivity in performing the Services is or might otherwise be impaired; and
 - (iii) The Consultant, its employees, agents, Subconsultants or their respective employees, has/have an unfair competitive advantage.
- C. The term ***Personal Conflict of Interest*** as used herein means a relationship of an employee, Subconsultant, or the employees of a Subconsultant with an entity that will or may impair the objectivity of the employee, Subconsultant employee, or Subconsultant in performing the Services.
- D. Prior to commencement of any Services, or immediately after becoming aware of a Conflict of Interest, whichever is sooner, the Consultant agrees to notify MDX's

Executive Director or his or her delegate either:

- (i) That, to the best of its knowledge and belief, no Conflict of Interest exists, or
 - (ii) To identify to MDX any Conflict of Interest the Consultant or its agents, employees, or Subconsultants may have. In emergency situations, however, Services may begin, but notification of Conflicts of Interest shall be made in writing to MDX's Executive Director or his or her delegate within five (5) Business Days.
- E. The Consultant agrees that if a Conflict of Interest is identified during performance, the Consultant will immediately make a full disclosure in writing to MDX's Executive Director or his or her delegate. This disclosure shall include a description of actions, which the Consultant has taken or proposes to take, after consultation with MDX, to avoid, mitigate, or neutralize the Conflict of Interest. The Consultant shall discontinue any relevant performance until notified by MDX's Executive Director or his or her delegate of any contrary action to be taken.
- F. MDX may, at its sole discretion, withhold payments due or which may become due, suspend the Services, terminate this Agreement for convenience, in whole or in part, if it deems such termination necessary to avoid a Conflict of Interest, or pursue such other remedies as may be permitted by law or this Agreement. If the Consultant was aware of a Conflict of Interest prior to award or discovered a Conflict of Interest after award and did not disclose it, or misrepresented relevant information to MDX, or MDX becomes aware of a Conflict of Interest that was not disclosed by the Consultant, MDX may at its sole discretion, withhold payments due or which may become due, suspend the Services, terminate the Agreement in whole or in part for default, or pursue such other remedies as may be permitted by law or this Agreement.
- G. The Consultant shall prepare and submit a Conflict of Interest (COI) Plan within twenty (20) Business Days after the execution of this Agreement or any other time requested by MDX, which outlines the procedures in place to avoid, neutralize or mitigate Conflicts of Interest, whether actual or potential, personal or organizational, throughout the period of performance of the Agreement. The Consultant's COI Plan is a document which describes the procedures the Consultant uses to identify and report COI's. Generally, a corporate COI plan will describe how a company, in its entirety, addresses conflicts, and will not be contract or program specific. The plan may also describe the options a company will consider proposing to avoid, neutralize, or mitigate a COI whenever a Conflict of Interest is identified.

The plan shall be evaluated and approved by MDX. The plan shall address step by step the checks and balances in place to detect any potential or actual Conflicts of Interest that could result from activities covered in the Scope of Services.

- H. The Consultant's obligations with regard to providing notice of Conflict of Interest situations shall apply until the expiration date of this Agreement. The Consultant agrees to:
- (i) Immediately notify MDX's Executive Director or his or her delegate when the Consultant becomes aware of any Conflicts of Interest.
 - (ii) Immediately notify MDX's Executive Director or his or her delegate prior to incurring costs for any Services when a Conflict of Interest situation may or does exist.

In the event that the Conflict of Interest does not become known until after performance of the Agreement begins, the Consultant shall immediately notify MDX's Executive Director or his or her delegate of the Conflict of Interest. The Consultant shall cease performance of this Agreement until notified by MDX's Executive Director or his or her delegate of the appropriate action to be taken.

- I. The Parties to this Agreement agree that the Consultant will be restricted in its future contracting in the manner described below.
- (i) The Consultant may be ineligible to participate in any MDX solicitations and ensuing MDX agreements, either as a prime Consultant or Subconsultant.
 - (ii) The Consultant, during the life of this Agreement, shall be ineligible to enter into any agreement with individuals or firms to perform services on projects related to the Services performed under this Agreement unless otherwise authorized in writing by MDX's Executive Director or his or her delegate.
 - (iii) The Consultant agrees in advance that if any bids/proposals are submitted for any services that would require written approval of MDX prior to entering into another agreement subject to the restrictions of this Section, then the bids/proposals are submitted at the Consultant's own risk. Therefore, no claim shall be made against MDX to recover bid/proposal costs as a direct cost whether the request for authorization to enter into the other agreement is denied or approved.
- J. A review process available to the Consultant when an adverse determination is received shall consist of a request for reconsideration to MDX's Executive Director

or his or her delegate and a request for review submitted to MDX's Operations Committee. An adverse determination resulting from a request for reconsideration by the MDX Executive Director or his or her delegate will not preclude the Consultant from requesting a review by MDX's Operations Committee. Either a request for review or a request for reconsideration must be submitted to the appropriate level within thirty (30) Calendar Days after receipt of the initial adverse determination.

- K. The Consultant agrees to insert in each Subconsultant agreement hereunder, provisions which shall conform substantially to the language of the subsection entitled "Conflicts of Interest", including this paragraph. The Consultant may request in writing that MDX's Executive Director or his or her delegate exempt from this Conflicts of Interest subsection a particular Subconsultant agreement for certain technical or consultant services. MDX will review and evaluate each request on a case-by-case basis before approving or disapproving the request.
- L. The Consultant agrees to insert in each Subconsultant agreement hereunder the requirement that any Subconsultant who performs Services as a Subconsultant pursuant to this Agreement and wishes to submit a proposal or bid, either as a prime consultant or as a Subconsultant on any MDX procurement, shall request in writing a determination from MDX that they may participate in the specific MDX procurement prior to the proposal or bid submittal date. Such written request shall include justification as to why there is no Conflict of Interest in this situation. Failure to do so may result in the Subconsultant's proposal being deemed non-responsive.
- M. In addition to all other requirements of the Contract Documents related to avoidance and disclosures of Conflict of Interest, the Consultant is also required to annually submit to the MDX Ethics Officer the MDX Annual Disclosure Form, incorporated herein by reference and found in the MDX website, and provide the following information:
 - (i) Any relationship that the Consultant has that will afford a current or future financial benefit to the Consultant, or to a relative or business associate of the Consultant, and which a reasonable person would conclude has the potential to create a prohibited Conflict of Interest.
 - (ii) Whether a relative of the Consultant is registered to lobby the Executive Branch of the State of Florida or the Florida Constitution Review Committee and, if so, the names of such lobbyist's clients must be provided in writing to the MDX Ethics Officer.
 - (iii) Any and all interest in real property held by the Consultant or the

immediate family member of the Consultant, if such real property is located in or within a ½ mile radius of any actual or prospective MDX project. Prior to the execution of the Agreement, the Consultant has been provided a corridor map and a related property ownership list for all real property within the disclosure area, and an alignment map with a list of associated owners.

The MDX Annual Disclosure Form must be submitted by the Consultant on the Effective Date of the Agreement and updated every year on the same date. It is the Consultant's responsibility to obtain from MDX an updated corridor map and a property ownership list for all real property within the disclosure area, and an alignment map with a list of associated owners in order to properly complete the MDX Annual Disclosure Form. Failure by the Consultant to timely submit the MDX Annual Disclosure Form is a default under the Agreement and MDX, at its sole discretion, may enforce all applicable provisions under the Agreement, including and up to termination of the Agreement.

23. CONFIDENTIALITY

To the extent that the Services under this Agreement requires access to proprietary or confidential business or financial data of MDX or other companies, and as long as such data remains proprietary or confidential, the Consultant shall protect such data from unauthorized use and disclosure.

24. CONVICTED VENDORS LIST

- A. The Consultant represents that it is not currently on the convicted vendor list, as described in the Section of the Solicitation Documents entitled, "*Sworn Statement on Public Entity Crimes and Debarment Requirement*" and that it shall notify MDX immediately if, during this Agreement, it is placed on said list. The Consultant agrees that placement on said list constitutes grounds for immediate termination of this Agreement by MDX
- B. By execution of this Agreement, the Consultant further certifies that the information provided in the executed *Sworn Statement on Public Entity Crimes and Debarment* form(s) for both the Consultant and the Subconsultants as submitted with the Proposal, remains true and correct. The Consultant agrees to indemnify MDX for any costs and expenses, including but not limited to reasonable audit costs, attorneys' fees and expert witness fees that MDX incurs due to any fraudulent statements made by the Consultant in regards to this certification. The Consultant agrees to indemnify MDX for any costs and expenses, including but not limited to reasonable audit costs, attorneys' fees and expert witness fees that MDX incurs due to any fraudulent statements made by the Consultant in regards to this certification.

25. COMPLIANCE WITH LAWS

The Consultant, its employees and representatives shall at all times comply with the federal, state, and local laws and ordinances, statutes, rules, regulations and orders of governmental authorities applicable to the Services or payment of Services thereof, and shall not discriminate on the grounds of race, color, religion, sex, sexual orientation, age or national origin in the performance of the Services under this Agreement.

26. PROOF OF VEHICLE REGISTRATION

The Consultant shall register all vehicles used in the course of performing the Services as required by Chapter 320, Florida Statutes. If the Consultant fails to register any motor vehicle that it operates in Florida, pursuant to Chapter 320, Florida Statutes, MDX may disqualify the Consultant from proposing on future MDX procurements, or MDX may suspend the Consultant from this and/or other MDX agreements.

27. INSURANCE

The Consultant shall furnish to MDX prior to the commencement of any Services under this Agreement, certificate(s) of insurance as required by the Solicitation Documents. Required insurance types and limits are contained in the Solicitation Documents and attached hereto and incorporated herein.

If insurance coverage is scheduled to expire during the Term of the Agreement, the Consultant shall be responsible for submitting insurance certificates to MDX before such expiration that evidence of renewal or replacement of the expiring coverage(s). In the event that expired coverage(s) are not replaced with new or renewed coverage(s) that cover the initial Term of the Agreement or any extension to the Term of the Agreement, MDX shall suspend this Agreement and all Services associated with this Agreement until certificates evidencing the replacement or renewed coverage(s) are received by MDX; provided however, that this suspension period shall not exceed ten (10) Calendar Days, as determined solely by MDX (the "Suspension Period"). At the end of the Suspension Period, MDX may, at its sole discretion, terminate the Agreement for cause, as described in the Section of this Agreement, entitled, *Termination*.

28. INDEMNIFICATION

Consultant's indemnification obligations to MDX, and others defined in this section as "MDX Indemnified Parties," are not limited, contained or capped by the limits provided to MDX and MDX Indemnified Parties pursuant to Section 768.28, Florida Statutes or any other sovereign immunity limitations afforded by Florida or any other applicable law.

MDX Indemnified Parties are hereby defined as MDX, all of MDX's officers, agents, employees, and successors. The MDX Indemnified Parties also include the Florida Department of Transportation (FDOT) in its capacity as titleholder of portions of the MDX System, and all of FDOT's officers,

agents, employees, and successors.

Pursuant to and within the limits of Section 725.08, Florida Statutes, the Consultant shall be required to indemnify and hold harmless the MDX Indemnified Parties from any direct or indirect claim, loss, damage, cost, charge, judgment, attorney fees, and expense, to the extent arising out of any negligence, recklessness, or intentionally wrongful conduct by the Consultant, its agents, employees, or Subconsultants during the performance of the Contract.

The Consultant's obligation to indemnify the MDX Indemnified Parties shall be triggered by MDX's notice of claim for indemnification to the Consultant. The Consultant's inability to evaluate liability or its evaluation of liability shall not excuse the Consultant's duty to indemnify within seven (7) Calendar Days after such notice by MDX is provided by registered mail.

Only an adjudication of judgment after the highest appeal is exhausted specifically finding MDX solely negligent shall excuse performance of this provision by the Consultant with respect to indemnification of the MDX Indemnified Parties.

The Consultant shall pay all costs and fees related to this obligation and its enforcement by MDX. MDX's failure to notify the Consultant of a claim shall not release the Consultant of the above duty to indemnify.

The Consultant shall provide written evidence that a complete copy of the Contract Documents has been delivered to the insurance company underwriting each insurance policy herein required of the Consultant.

It is specifically agreed between the Parties executing the Contract that it is not intended by any of the provisions of any part of the Contract to create in the public or any member thereof, a third-party beneficiary hereunder, or to authorize anyone not a party to the Contract to maintain a suit for personal injuries, bodily injury or property damage pursuant to the terms or provisions of the Contract.

The Consultant guarantees the payment of all just claims for the Services, and other just claims against it or any Subconsultant in connection with the Contract.

The Parties agree that the Contract Amount includes consideration for the Consultant's indemnity agreements.

29. SOVEREIGN IMMUNITY

No provision of the Contract Documents, including this Agreement, shall be construed as a waiver of sovereign immunity by MDX.

30. DISPUTES, DISPUTE RESOLUTION AND CLAIMS

Professional Services Agreement

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Initials (Consultant)



- A. If any dispute regarding the Consultant claims arising hereunder or relating to the Agreement, and the Consultant's Services hereunder results in litigation, the prevailing Party in such litigation shall be entitled to recover reasonable attorney's fees and costs, including costs and expenses of expert witnesses.
- B. The term "contested claim" or "claims" shall mean the initial written claim(s) submitted to MDX by the Consultant (disputed by MDX) which have not otherwise been resolved through ordinary close-out procedures of a Task Authorization and/or this Agreement prior to the initiation of litigation. The Consultant claims or portions thereof, which MDX agreed to pay or offered to pay prior to initiation of litigation, shall not be deemed contested claims for purposes of this provision.
- C. Attorney's fees and costs awarded to the prevailing Party shall mean reasonable fees and costs incurred in connection with and measured from the date a claim is initially submitted to MDX through and including trial, appeal and collection.
- D. In the circumstance where an original claim is subsequently modified, amended, or a substituted claim is filed therefore, fees and costs shall accrue from the date of the first written claim submitted.
- E. The term "litigation" shall include mediation proceedings.
- F. As a condition precedent to litigation, the Consultant shall have first submitted its claim (together with supporting documentation) to MDX, and MDX shall have had sixty (60) Business Days thereafter within which to respond thereto.
- G. The purpose of this provision is to discourage frivolous or overstated claims and, as a result thereof, MDX and the Consultant agree that neither Party shall avail itself of Section 768.79, Florida Statutes, or any other like statute or rule involving offers of settlement or offers of judgment, it being understood and agreed that the purpose of such statute or rule are being served by this provision.
- H. Should this provision be judged unenforceable or illegal, in whole or in substantial part, by a court of competent jurisdiction, this provision shall be void in its entirety and each Party shall bear its own attorney's fees and costs.
- I. No court proceedings on any claim may be filed until the Parties have first participated in mediation.
- J. All Services shall be performed by the Consultant in accordance with sound business and accounting practices to the satisfaction of MDX. MDX shall decide all questions, difficulties, and disputes of any nature whatsoever that may arise under or by reason of this

Agreement, the prosecution and fulfillment of the Services hereunder, the character, quality, amount and value thereof; and its determination upon all claims, questions and disputes shall be final and conclusive upon the Parties hereto.

Adjustment of compensation and Agreement time because of any major changes in the Services that may become necessary or desirable as the Services progress shall be left to the absolute discretion of MDX and any such adjustments shall be evidenced by Supplemental Agreements between the Parties in accordance herewith.

- K In the event that the Consultant and MDX are not able to reach an agreement as to the amount of compensation to be paid to the Consultant for supplemental Services desired by MDX, the Consultant will be obligated to proceed with the supplemental Services in a timely manner for the amount determined by MDX to be reasonable. In such event, the Consultant will have the right to file a claim with MDX for such additional amounts as the Consultant deems reasonable; however, in no event will the filing of the claim or the resolution or litigation thereof through the courts relieve the Consultant from the obligation to timely perform the supplemental Services.

31. PROHIBITION ON ASSIGNMENT

The Consultant shall not subcontract, sell, assign, transfer or otherwise dispose of the Agreement or any portion thereof, or the rights or responsibilities therein, of any Services under this Agreement, to any person or firm other than the approved personnel and Subconsultants under this Agreement, without the express prior written consent of MDX. The Consultant is hereby prohibited from assigning this Agreement without the express prior written consent of MDX, which consent may be withheld at MDX's sole and absolute discretion.

32. CONSTRUCTION OF LANGUAGE

All words used herein in the singular form will extend to and include the plural. All words used in the plural form will extend to and include the singular. All words used in any gender will extend to and include all genders.

33. EXECUTION OF THE AGREEMENT

If the Consultant is a firm or company owned by an individual, this Agreement shall be executed in the name of the firm or company by the manual signature of the individual or sole proprietor. If the firm is a Partnership, this Agreement shall be executed in the name of the partnership by the manual signature of the general partner. If a corporation, the Agreement shall be executed in the name of the Corporation and shall bear the corporate seal and be signed by the President the Vice-President, or a representative of the Consultant who is authorized either by position or by corporate resolution to contractually bind the Consultant in all aspects of the Agreement. If a joint

venture, the Agreement shall be executed in the name of the joint venture and be signed by a person authorized to sign on behalf of the joint venture.

34. CHOICE OF LAW

- A. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
- B. Venue of any litigation arising out of this Agreement shall be in Miami-Dade County, Florida.
- C. In the event of any litigation arising out of this Agreement, the Consultant agrees that service of process on the Consultant may be made on its registered agent as designated in the corporate records of the Florida Division of Corporations. The Consultant shall notify MDX in writing within thirty (30) Calendar Days of a change and the name of the successor registered agent. These provisions are in addition to any methods of service of process allowed by the Florida Statutes.

35. WAIVER OF TRIAL BY JURY

The Consultant and MDX hereby knowingly, voluntarily and intentionally waive the right either may have to a trial by jury in respect to any litigation based hereon, or arising out of, under or in connection with this Agreement, and any agreement contemplated to be executed in conjunction herewith, or any course of conduct, course of dealing, or actions of either Party.

36. SEVERABILITY

If any one or more of the covenants, agreements or provisions of this Agreement shall be held invalid, it is the intent of the Parties that such covenants, agreements or provisions shall be deemed severable and that the remaining provisions remain in full force and effect.

37. ADDITIONAL TERMS

All Exhibits attached hereto contain additional terms of this Agreement and are incorporated as if actually set forth herein.

38. ENTIRE AGREEMENT

This Agreement embodies the whole agreement between the Parties and there are no inducements, promises, terms, conditions, or obligations made or entered into by either MDX or the Consultant other than contained herein. This Agreement shall inure to the benefit of, and be binding on, the Parties or the successor(s).

39. THIRD-PARTY BENEFICIARY

It is specifically agreed between the Parties executing the Agreement that it is not intended by any of the provisions of any part of the Agreement to create in the public or any member thereof, a third-party beneficiary hereunder, or to authorize anyone not a party to the Agreement to maintain a suit for personal injuries, bodily injury or property damage pursuant to the terms or provisions of the Agreement.

40. NOTICES

All Notices required under this Agreement shall be in writing. Notices shall be mailed or delivered as follows, unless a Party directs in writing that notices shall be provided to it at another location:

To the Authority: Helen M. Cordero, CPPB
Manager of Procurement & Contracts Administration
Miami-Dade Expressway Authority (MDX)
3790 N.W. 21st Street
Miami, Florida 33142

With a copy to: Carlos M Zaldivar, Esq.
General Counsel
Miami-Dade County Expressway Authority (MDX)
3790 Northwest 21st Street
Miami, Florida 33142

To the Consultant: Ramon Soria
President
Marlin Engineering, Inc.
15600 SW 288 Street, Suite 208
Miami, Florida 33033

41. DEFINED TERMS

Capitalized terms used herein, unless otherwise specifically defined in the Contract Documents, shall have the meaning ascribed to them herein:

Task Authorization: A written authorization issued by MDX and concurred by the Consultant setting forth the task to be performed by the Consultant and the entitled compensation in accordance with the Agreement.

42. SECTION HEADINGS

Any headings preceding the texts of the Sections in this Agreement and any table of contents shall be solely for the convenience of reference and shall neither constitute a part of this Agreement nor affect its meaning, construction or effect.

43. COOPERATIVE PURCHASING (PIGGY-BACKING).

As may be applicable, pursuant to the MDX Procurement Policy, other governmental agencies may utilized MDX contracts if the Consultant agrees to enter into a separate contract with such governmental agency(ies) incorporating the MDX contract terms and conditions.

44. ERRORS OR OMISSIONS IN CONTRACT DOCUMENTS

The Consultant shall not take advantage of any apparent error or omissions which the Consultant discovers in the Contract Documents, but shall immediately notify MDX of such discovery. MDX will make such corrections and interpretations as necessary to reflect the intent of the Contract Documents.

45. ACKNOWLEDGEMENT & REPRESENTATION.

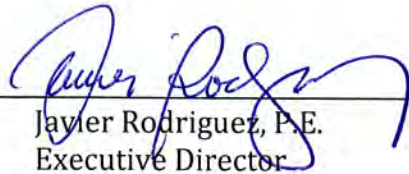
The Parties to this Agreement individually represent, warrant, and agree that:

- A. They have been represented by legal counsel of their choice in connection with the Agreement;
- B. They are fully aware and clearly understand all of the terms and provisions contained in this Agreement;
- C. They have voluntarily, with full knowledge and without coercion or duress of any kind, entered into this Agreement;
- D. They are not relying on any representation, either written or oral, express or implied, made to them by any other party other than as set forth in this Agreement; and
- E. The consideration received by them to enter into this Agreement and the settlement contemplated by this Agreement has been actual and adequate.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective and duly authorized officers as of the Effective Date defined herein.

MIAMI-DADE EXPRESSWAY AUTHORITY

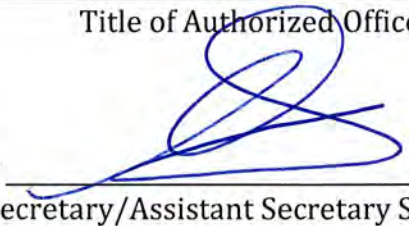
MARLIN ENGINEERING, INC.

By: 
Javier Rodriguez, P.E.
Executive Director

By: 
Signature of Authorized Officer

Ramon Soria
Print Name of Authorized Officer

President
Title of Authorized Officer

ATTEST 
Secretary/Assistant Secretary Signature

[CONSULTANT SEAL]

Endorsed by the Operations Committee: 5/11/16

Approved by MDX Board: 5/31/16



46. EXHIBITS

The following exhibits are incorporated herein and attached hereto, unless otherwise noted:

- Exhibit A Scope of Services
- Exhibit B Solicitation Documents inclusive of Addenda*
- Exhibit C Consultant's Proposal*
- Exhibit D Method of Compensation (MOC)
 - D.1 Compensation Rates
 - D.2 MDX Established Rate Caps
 - D.3 Invoice Submittal Forms*
 - a. Certificate of Partial Payment/Final Payment, Waiver and Release from Contractor/Consultant **
 - b. MDX Invoice Tracking Form**
 - c. Certification of Disbursement to Subcontractors / Subconsultants / Suppliers **
 - d. Contractor's/Consultant Final Release and Affidavit
 - e. Copy of EXECUTED TA
 - D.4 FDOT Negotiation Handbook Professional Services Contracts (2/24/16)
- Exhibit E Insurance Requirements
- Exhibit F Small Business and/or Local Business Participation Statement
- Exhibit G Subcontractor/Subconsultant Utilization Report
- Exhibit H Contract Performance Evaluation Form
- Exhibit I MDX Procurement Policy **
- Exhibit J MDX Small Business Participation Policy**



Exhibit K MDX Local Business Participation Policy**

Exhibit L MDX Code of Ethics **

Exhibit M Request Authorization to Subcontract Work**

Exhibit N Personnel Change Request Form**

Exhibit O MDX Annual Disclosure Form**

* Provided in Electronic Format

** Current Policies and Forms available on the MDX website at:
http://www.mdxway.com/doing_business/procurement