

**CONTINUING CONTRACT FOR PROFESSIONAL ENGINEERING SERVICES  
FOR NASSAU COUNTY, FLORIDA**

THIS AGREEMENT made and entered into this 16th day of May 2012, by and between the Board of County Commissioners of Nassau County, a political subdivision of the State of Florida, hereinafter referred to as "County", and England-Thims & Miller, Inc., a Corporation, whose principal address is located at 14775 Old St. Augustine Road, Jacksonville, FL 32258, hereinafter referred to as "Consultant".

WHEREAS, the County desires to obtain continuing professional engineering services on an "as needed" project-by-project basis; and

WHEREAS, said services are more fully described in the Scope of Services, Attachment "A", which is attached hereto and made a part hereof; and

WHEREAS, the Consultant desires to render certain professional engineering services as described in the Scope of Services, and has the qualifications, experience, staff and resources to perform those services; and

WHEREAS, the County, through a competitive selection process conducted in accordance with the requirements of law and County policy has determined that it would be in the best interest of the County to award a contract to Consultant for the rendering of those services described in the Scope of Services.

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto agree as follows:

## **ARTICLE 1 - EMPLOYMENT OF CONSULTANT**

The County hereby agrees to engage Consultant, and Consultant hereby agrees to perform the services set forth in the Scope of Services.

## **ARTICLE 2 - SCOPE OF SERVICES**

**2.1** Consultant shall provide professional engineering services in accordance with the Scope of Services set forth in Attachment "A", attached hereto and incorporated by reference, and any additional services as may be specifically designated and additionally authorized by the parties. Such additional authorizations will be in the form of a Work Authorization. Each Work Authorization shall set forth a specific scope of services, the amount of compensation and the required completion date.

**2.2** The services shall be performed on an "as needed" basis per project and by Work Authorization to this contract. Each Work Authorization shall be approved by the Board of County Commissioners or their authorized designee.

## **ARTICLE 3 - THE COUNTY'S RESPONSIBILITY**

Except as provided in the Scope of Service, the County's responsibilities are to furnish required information, services, render approvals and decisions as necessary for the orderly progress of Consultant's services. The County hereby designates Engineering Services to act on the County's behalf with respect to the Scope of Services. The Director of Engineering Services, under the supervision of the County Manager shall have complete authority to transmit instructions, receive information, interpret and define County's policies and decisions with respect to materials, elements and systems pertinent to Consultant's services.

## **ARTICLE 4 - TERM OF AGREEMENT**

The term of this Agreement shall be for a three (3) year period beginning on the date of its complete execution. The performance period of this Agreement may be extended upon mutual agreement between both parties. Any extension of performance period under this provision shall be in one (1) year increments. Total contract length and individual one (1) year extensions shall be in the County's best interest and sole discretion. Any Agreement or amendment to the Agreement shall be subject to fund availability and mutual written agreement between the County and Consultant.

## **ARTICLE 5 - COMPENSATION**

**5.1** The County shall pay Consultant in accordance with the provisions contained in the "Loaded Billing Rates", which is attached hereto as Attachment "B", and incorporated herein as if set forth in full.

**5.2** Consultant shall prepare and submit to the Director of Engineering Services, for approval, a monthly invoice for the services rendered under this Agreement. Invoices for services shall be paid in accordance with the Florida Prompt Payment Act. All invoices shall be accompanied by a report identifying the nature and progress of the work performed. The statement shall show a summary of fees with an accrual of the total fees billed and credits for portions paid previously. The County reserves the right to withhold payment to Consultant for failure to perform the work in accordance with the provisions of this Agreement, and the County shall promptly notify Consultant if any invoice or report is found to be unacceptable and will specify the reasons therefore.

**5.3** All representation, indemnifications, warranties and guaranties made in, required by or given in accordance with this Agreement, as well as all continuing

obligations indicated in this Agreement, will survive final payment and termination or completion of this Agreement.

**5.4** Final Invoice per Work Authorization: In order for both parties herein to close their books and records, the Consultant will clearly state "Final Invoice" on the Consultant's final/last billing to the County. This indicates that all services have been performed and all charges and costs have been invoiced to the County and that there is no further work to be performed on the specific project.

**5.5** Each project shall have its own specific value on a "stand alone" basis.

**5.6** Labor Unit rates shall be established at the beginning of this Agreement and may be adjusted annually upon written agreement of the parties beginning with the next assigned project issued after the anniversary date of the Agreement. The labor unit rates are set forth in Attachment "B".

## **ARTICLE 6 - STANDARD OF CARE**

Consultant shall exercise the same degree of care, skill, and diligence in the performance of the Services as is ordinarily provided by a professional under similar circumstances and Consultant shall, at no additional cost to the County, re-perform services which fail to satisfy the foregoing standard of care.

## **ARTICLE 7 - DOCUMENTS**

The documents which comprise this Agreement between the County and the Consultant are attached hereto and made a part hereof and consist of the following:

**7.1** This Agreement;

**7.2** The Scope of Services attached hereto Attachment "A";

**7.3** Loaded Billing Rates attached hereto as Attachment "B";

- 7.4** Request for Qualifications for Engineering Services Continuing Contract, Bid No. NC11-021;
- 7.5** Proposal submitted by Consultant in response to the Request for Qualifications for Engineering Services, Bid No. NC11-021;
- 7.6** Any work authorizations, written amendments, modifications or addenda to this Agreement.

#### **ARTICLE 8 - EQUAL OPPORTUNITY EMPLOYMENT**

In connection with the work to be performed under this Agreement, Consultant agrees to comply with the applicable provisions of State and Federal Equal Employment Opportunity statutes and regulations.

#### **ARTICLE 9 - TRUTH-IN-NEGOTIATION/PUBLIC ENTITY CRIMES AFFIDAVIT**

Consultant certifies that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the county determines the contract price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. Consultant represents that it has furnished a Public Entity Crimes Affidavit pursuant to Section 287.133, Florida Statutes.

#### **ARTICLE 10 - INDEMNIFICATION**

**10.1** Consultant shall indemnify and hold harmless the County and its officers and employees from liabilities, damages, losses, and costs, including but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the consultant, in the performance of the contract.

## **ARTICLE 11 - INDEPENDENT CONTRACTOR**

Consultant undertakes performance of the services as an independent contractor under this Agreement, and shall be wholly responsible for the methods of performance. The County shall have no right to supervise the methods used, but the County shall have the right to observe such performance. Consultant shall work closely with the County in performing services under this Agreement.

## **ARTICLE 12 – EXTENT OF AGREEMENT**

**12.1** This Agreement represents the entire and integrated agreement between the County and Consultant and supersedes all prior negotiations, representations, or agreement, either written or oral.

**12.2** This Agreement may only be amended, supplemented, modified, changed or canceled by a duly executed written instrument.

## **ARTICLE 13 - COMPLIANCE WITH LAWS**

In performance of the services, Consultant will comply with applicable regulatory requirements including federal, state, and local laws, rules regulations, orders, codes, criteria and standards.

## **ARTICLE 14 - INSURANCE**

**14.1** The Consultant shall purchase and maintain such commercial (occurrence form) or comprehensive general liability, workers compensation, professional liability, and other insurance as is appropriate for the services being performed hereunder by Consultant, its employees or agents. The amounts and types of insurance shall conform to the following minimum requirements.

**14.1.1 Worker's Compensation:** Coverage must apply for all employees and statutory limits in compliance with the applicable state and federal laws. In addition, the policy must include the following:

- a. Employer's Liability with a minimum limit per accident in accordance with statutory requirements.
- b. Notice of Cancellation and/or Restriction. The policy must be endorsed to provide County with ten (10) days' written notice of cancellation and/or restriction.

**14.1.2 Comprehensive General Liability:** Coverage must include:

- a. \$1,000,000.00 combined limit per occurrence for bodily injury, personal injury and property damage; \$2,000,000 general aggregate.
- b. Contractual coverage applicable to this specific contract, including any hold harmless and/or indemnification agreement.
- c. Additional Insured. County is to be specifically included as an additional insured.
- d. Notice of Cancellation and/or Restriction. The policy must be endorsed to provide County with ten (10) days' written notice of cancellation and/or restriction.

**14.1.3 Professional Liability:**

- a. Consultant agrees to maintain Professional Liability with limits of not less than \$1,000,000 for professional services rendered in accordance with this Agreement.

- b. Consultant shall maintain such insurance for at least two (2) years from the termination of this Agreement and during this two (2) year period the Consultant shall use his best efforts to ensure that there is no change of the retroactive date on this insurance coverage.
- c. If there is a change that reduces or restricts the coverage carried during the Agreement, the Consultant shall notify the County within thirty (30) days of the change.

**14.1.4 Comprehensive Automobile Liability:** Coverage must be afforded on a form no more restricted than the latest edition of the Comprehensive Automobile Liability Policy filed by the Insurance Services Office and must include:

- a. \$1,000,000 combined single limit per accident for bodily injury and property damage.
- b. Owned Vehicles
- c. Hired and Non-Owned Vehicles
- d. Employee Non-Ownership
- e. Additional Insured. County is to be specifically included as an additional insured.
- f. Notice of Cancellation and/or Restriction. The policy must be endorsed to provide County with ten (10) days' written notice of cancellation and/or restriction.

**14.1.5** Umbrella policy: Coverage must be afforded on a form no more restricted than the latest Umbrella Policy filed by Insurance

Services Offices and must include:

- a. \$1,000,000 per occurrence
- b. General Liability underlying coverage: \$1,000,000 for bodily injury, personal injury and property damage. General Aggregate of \$2,000,000.
- c. Auto liability: Underlying Combined single limit of \$1,000,000.
- d. Employers' Liability: Underlying limit \$500,000/\$500,000/\$500,000.

**14.1.6** Additional Insured. County is to be specifically included as an additional insured.

**14.1.7** Notice of Cancellation and/or Restriction. The policy must be endorsed to provide County with ten (10) day's written notice of cancellation and/or restriction.

**14.2** Certificates of Insurance evidencing the insurance coverage specified in this Section shall be filed with the County. The Certificates of Insurance shall be filed with County before this Agreement is deemed approved by the County. The required Certificates of Insurance not only shall name types of policies provided, but also shall refer specifically to this Agreement. All the policies of insurance so required of Consultant except workers compensation and professional liability insurance shall be endorsed to include as additional insured the County, its officers, employees, and agents to the extent of the County's interest arising from any contract agreement between County and Consultant. If the initial insurance expires prior to completion of

the work, renewal Certificates of Insurance shall be furnished thirty (30) days prior to the date of their expiration.

**14.3** Insurance coverage shall be placed with insurers or self-insurance funds, satisfactory to the County, licensed to do business in the State of Florida and with a resident agent designated for the service of process. All insurers shall have an "A" policyholder's rating and a financial rating of at least Class IX in accordance with the most current Best's rating. Consultant shall provide the County with financial information concerning any self insurance fund insuring Consultant. At the County's option, a Best's rating or Self-Insurance Fund financial information may be waived.

#### **ARTICLE 15 – ACCESS TO PREMISES**

The County shall be responsible for providing access to all project sites, and for providing project-specific information.

#### **ARTICLE 16 - TERMINATION OF AGREEMENT**

**16.1 Termination for Convenience:** This Agreement may be terminated by the County for convenience, upon thirty (30) days of written notice to Consultant. In such event, the Consultant shall be paid its compensation for services performed prior to the termination date. In the event that the Consultant abandons this Agreement or causes it to be terminated, Consultant is liable to the County for any and all loss pertaining to this termination.

**16.2 Default by Consultant:** In addition to all other remedies available to the County, the County may terminate this Agreement for cause should the Consultant neglect, fail to perform, or observe any of the terms, provisions, conditions, or requirements herein contained. Prior to termination the County shall provide written

notice of the specific conditions warranting default, and the County shall allow thirty (30) days for Consultant to cure.

#### **ARTICLE 17 - NONDISCLOSURE OF PROPRIETARY INFORMATION**

Consultant shall consider all information provided by County and all reports, studies, calculations, and other documentation resulting from the Consultant's performance of the Services to be proprietary unless such information is available from public sources. Consultant shall not publish or disclose proprietary information for any purpose other than the performance of the services without the prior written authorization of County or in response to legal process.

#### **ARTICLE 18 - UNCONTROLLABLE FORCES**

**18.1** Neither the County nor Consultant shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the non-performing party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental actions.

**18.2** Neither party shall, however, be excused from performance if nonperformance is due to forces, which are preventable, removable, or remediable, and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances

and uncontrollable forces preventing continued performance of the obligations of this Agreement.

## **ARTICLE 19 - GOVERNING LAW AND VENUE**

This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Nassau County.

## **ARTICLE 20 - MISCELLANEOUS**

**20.1 Non-waiver:** A waiver by either County or Consultant of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

**20.2 Severability:** Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

**20.3** The provisions of this section shall not prevent the entire Agreement from being void should a provision, which is of the essence of the Agreement, be determined to be void.

## **ARTICLE 21 - SUCCESSORS AND ASSIGNS**

The County and Consultant each binds itself and its director, officers, partners, successors, executors, administrators, assigns and legal representatives to the other party to this Agreement and to the partners, successors, executors, administrators, assigns, and legal representatives.

## **ARTICLE 22 - CONTINGENT FEES**

The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant to solicit or secure this 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 contingent upon or resulting from the award or making of this Agreement.

## **ARTICLE 23 - OWNERSHIP OF DOCUMENTS**

Consultant shall be required to work in harmony with other consultants relative to providing information requested in a timely manner and in the specified form. Any and all documents, records, disks, original drawings, or other information shall become the property of the County upon completion for its use and distribution as may be deemed appropriate by the County.

## **ARTICLE 24 - FUNDING**

This agreement shall remain in full force and effect only as long as the expenditures provided for in the Agreement have been appropriated by the County Commission of the County of Nassau in the annual budget for each fiscal year of this Agreement, and is subject to termination based on lack of funding.

## **ARTICLE 25 - NOTICE**

**25.1** Whenever either party desires or is required under this Agreement to give notice to any other party, it must be given by written notice either delivered in person, sent by U.S. Certified Mail, U.S. Express Mail, air or ground courier services, or by messenger service, as follows:

### **COUNTY**

Nassau County Contract Management  
96135 Nassau Place, Suite 6  
Yulee, Florida 32097  
904-491-7377  
Fax: 904-321-2658  
cyoung@nassaucountyfl.com

With a copy to the County Attorney at the same address.

### **CONSULTANT:**

England-Thims & Miller, Inc.  
Matthew Maggiore, P.E., Vice President  
14775 Old St. Augusting Road  
Jacksonville, FL 32258  
904-265-3202  
Fax: 904-646-9485  
Mobile: 904-699-1401  
MaggioreM@etminc.com

**25.2** Notices shall be effective when received at the address specified above. Changes in the respective addresses to which such notice may be directed may be made from time to time by any party by written notice to the other party. Email and facsimile are acceptable notice effective when received, however, notices received (i.e.; printed) after 5:00 p.m. or on weekends or holidays, will be deemed received on the next business day. The original of the notice must additionally be mailed as required herein.

**25.3** Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of Consultant and County.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

**Nassau County,  
Board of County Commissioners**

  
\_\_\_\_\_

STACY T. JOHNSON

Its: Chair

Date: 5-16-12

ATTEST TO CHAIR  
SIGNATURE

  
\_\_\_\_\_

JOHN A. CRAWFORD

Its: Ex-Officio Clerk

Approved as to form and legal  
sufficiency:

  
\_\_\_\_\_

DAVID A. HALLMAN

MES 5-17-12

[Consultant signature on next page]



**ATTACHMENT "A"**  
**Consultant Scope of Services for**  
**Engineering Services**  
**Board of County Commissioners, Nassau County, Florida**

The Nassau County Engineering Services Department desires to secure the following required Engineering Services, but not limited to:

**Engineering Services**

- A. Road Design
- B. Bridge/Structural Design
- C. Pavement Design
- D. Drainage/Stormwater Design
- E. Sidewalk Design
- F. Maintenance of Traffic
- G. Signing and Markings
- H. Lighting Design
- I. Signal Design
- J. Construction Engineering Inspection including Contract Administration
- K. Software Analysis and Maintenance
- L. Expert Witness Services
- M. Impact Fee Justification
- N. PD&E and/or PE Studies
- O. General Engineering Consulting (GES)
- P. Program Management (PM) Services
- Q. Design Build Criteria Package Development
- R. Surveying & Geotechnical may be subcontracted or performed by the County
- S. Environmental Services
- T. Traffic Safety Studies and Design
- U. Transportation Planning Studies
- V. Transportation Modeling
- W. Public Involvement, Public Meeting preparation and participation
- X. CEI Services for minor construction projects
- Y. Bid Package Preparation/Assistance

Work will be awarded on a project by project basis that may include any or all of the above services, or services not specifically mentioned, but directly related to the specific discipline. Consultants may hire sub-consultants to be used for portions of the required services; however, the primary consultant must be responsible for all of the work performed.

For any project that will require a FDOT permit, the firm shall be prequalified by FDOT to perform that work.

NASSAU COUNTY CONTINUING CONTRACT FOR ENGINEERING SERVICES  
ENGLAND-THIMS & MILLER, INC.  
HOURLY FEE SCHEDULE

Employee Classification	Unloaded Rate \$/hr	Overhead* \$/hr	Profit \$/hr	Billing Rate	Multiplier
Principal	\$74.52			\$200.00	Cap
Project Manager	\$49.35	\$97.21	\$14.66	\$161.21	3.27
Senior Engineer	\$52.92	\$104.24	\$15.72	\$172.87	3.27
Engineer	\$34.70	\$68.35	\$10.30	\$113.35	3.27
Designer	\$28.32	\$55.78	\$8.41	\$92.51	3.27
Cadd Technician	\$24.20	\$47.67	\$7.19	\$79.05	3.27
Senior Project Engineer (CEI)	\$58.05	\$114.34	\$17.24	\$189.63	3.27
Project Administrator (CEI)	\$41.50	\$81.74	\$12.32	\$135.57	3.27
Senior Inspector (CEI)	\$26.94	\$53.06	\$8.00	\$88.00	3.27
Clerical	\$17.92	\$35.30	\$5.32	\$58.54	3.27

\* Overhead Rate taken from FDOT Audited Rates:

Home Office OH	184.89%
Facilities Capital Cost of Money	0.372%
Direct Expense	11.71%
<u>Total OH Rate</u>	<u>196.972%</u>