

**DEP AGREEMENT No. DC839
STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
AMENDMENT 10**

THIS AGREEMENT was entered into on the 5th day of August, 2008 and subsequently amended by Amendment #1 through Amendment #9, incorporated herein by reference, by and between, the Florida Department of Environmental Protection with headquarters at 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000, a state agency ("Department"), the Pinellas County Board of County Commissioners, 315 Court Street, Clearwater, Florida 33756, a Florida local governmental entity ("County"), and Humiston & Moore Engineers, P.A., with headquarters at 5679 Strand Court, Naples, Florida 34110, a Florida Profit Corporation ("Consultant").

RECITALS

WHEREAS, the Consultant was awarded an Agreement to provide Coastal Engineering services for the Honeymoon Island State Park Beach Stabilization and Renourishment Project ("Project") which includes performance duties for Post-Construction Monitoring for Phase II of the Project. The previous Agreement Amendments, the Request for Statement of Qualifications No. RFSOQBDC 02 06/07, and the Consultant's responses thereto are incorporated herein by reference.

WHEREAS, the Phase II Post-Construction monitoring requirements as mandated by the U.S. Army Corps of Engineers ("Corps") and the Department's Consolidated Joint Coastal Permit ("JCP") requires monitoring beyond the initial renewal end date of August 4, 2018. Therefore, this Agreement shall continue in a series of six-month extensions pursuant to §287.057(12), due to events beyond the control of the Consultant.

NOW, THEREFORE, this Agreement is hereby amended as follows:

1. **Paragraph 6.2** Designated Representatives, is hereby deleted in its entirety and replaced with the following:

6.2 Designated Representatives. All matters shall be directed to the designated representatives of the Parties for appropriate action or disposition. The Parties designated representatives and contact information is provided below:

Consultant

Brett D. Moore, P.E., D.CE,
President
Humiston & Moore Engineers
5679 Strand Court
Naples, Florida 34110
Ph. 239-566-2021
bdm@humistonandmoore.com

County

John E. Bishop, Ph.D
Coastal Mgmt. Coordinator
Pinellas County Environmental
Management
22211 US Hwy. 19 N, Bldg. 10
Clearwater, FL 33765
Phone (727) 464-8766
jbishop@pinellascounty.org

Department

Marshall W. Flake,
Coastal Coordinator
Department of Environmental
Protection
3900 Commonwealth Boulevard, MS 530
Tallahassee, Florida 32399-3000
Ph. 850-245-3170
marshall.flake@floridadep.gov

2. **Paragraph 6.3** is hereby deleted in its entirety and replaced with the following:

6.3 All notices and written communication between the parties shall be sent by electronic mail, U.S. Mail, a courier delivery service, or delivered in person. Notices shall be considered delivered when reflected by an electronic mail read receipt, a courier service delivery receipt, other mail service delivery receipt, or when receipt is acknowledged by recipient. Any and all notices required by this Agreement shall be delivered to the parties at the addresses identified under paragraph 6.2.

3. **Paragraph 6.4** is hereby deleted in its entirety and replaced with the following:

6.4 Any changes to the designated representatives of the Party's information identified must be noticed, in writing, to the other Parties within ten (10) calendar days of the change. The Party may provide notice to the other Parties by email identifying a change of a designated representative and providing the new contact information for the newly designated representative. Such notice is sufficient to effectuate this change without requiring a written amendment to the Agreement.

4. **Paragraph 6.5** is hereby deleted in its entirety and replaced with the following:

6.5 The Department's Designated Representative is Marshall Flake, or his successor, Phone (850) 245-3170. The Consultant's Designated Representative is Brett Moore, or his successor, Phone (239) 594-2021 and the County Designated Representative is John Bishop, or his successor, Phone (727) 464-8766. All matters shall be directed to the Designated Representative for appropriate action or disposition. Names and telephone numbers of successors shall be provided to the other parties within 10 days. Neither the Park Manager nor any other Department staff other than the Department's Designated Representative, or his successor has authority to administer this Agreement in any way, including approval of changes in any term or condition of this Agreement. Any changes performed pursuant to direction of anyone other than the Department's Designated Representative, or his successor shall be performed at the other party(ies) own risk and expense.

5. **General. Paragraph 1.13** is hereby added to the Agreement and incorporated herein:

1.13 Execution in Counterparts: This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

6. **General. Paragraph 1.14** is hereby added to the Agreement and incorporated herein:

1.14 Convicted Vendor List/ Prohibition Against Contracting with Scrutinized Companies:

The Consultant warrants that it is not an entity, affiliate of, or employer of a person who has been placed on the convicted vendor list following a conviction for a public entity crime, and therefore is not for that reason precluded from performing work as a contractor, supplier, subcontractor, or consultant by Section 287.133, Florida Statutes.

The Consultant certifies that it and any of its affiliates are not scrutinized companies as identified in Section §287.135, F.S, as may be amended from time-to-time. In addition, Consultant agrees to observe the requirements of Section §287.135, F.S. as may be amended from time-to-time, for applicable sub-agreements entered into for the performance of work under this Agreement. Pursuant to Section §287.135, F.S., the Department may immediately terminate this Agreement for cause if the Consultant, its affiliates, or its subcontractors are found to have submitted a false certification; or if the Consultant, its affiliates, or its subcontractors are placed on any applicable scrutinized companies list and/or engaged in prohibited contracting activity during the term of the Agreement. As provided in Subsection §287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions then they shall become inoperative.

7. **Paragraph 4.8** is hereby revised to add the following terms and incorporated herein:

Public Access Consultant shall comply with Florida Public Records law issued under Chapter 119, F.S.. Records made or received in conjunction with this Agreement are public records under Florida law, as defined in Section §119.011(12), F.S. Consultant shall keep and maintain public records required by the Department to perform the services under this Agreement.

This Agreement may be unilaterally canceled by the Department for refusal by the Consultant to either provide to the Department upon request, or to allow inspection and copying of all public records made or received by the Consultant in conjunction with this Agreement and subject to disclosure under Chapter §119, F.S., and Section 24(a), Article I, Florida Constitution. **Section §119.071(3), Florida Statutes, provides exemptions for security systems or plans, emergency evacuation plans, manuals or training for security personnel, building plans, blueprints, schematic drawings and diagrams, including draft, preliminary, and final drawings, which depict the internal layout and structural elements of a building or other structure owned by a state agency.**

If Consultant meets the definition of "Contractor" found in Section §119.0701(1)(a), F.S.; [i.e., an individual, partnership, corporation, or business entity that enters into a contract for services with a public agency and is acting on behalf of the public agency], then the following requirements apply:

- a. Pursuant to Section §119.0701, F.S., a request to inspect or copy public records relating to this Agreement for services must be made directly to the Department. If the Department does not possess the requested records, the Department shall immediately notify the Consultant of the request, and the Consultant must provide the records to the Department or allow the records to be inspected or copied within a reasonable time. If Consultant fails to provide the public records to the Department within a reasonable time, the Consultant may be subject to penalties under §119.10, F.S.

b. Upon request from the Department's custodian of public records, Consultant shall provide the Department with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter §119, F.S. or as otherwise provided by law.

c. Consultant shall identify and ensure that all public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Consultant does not transfer the records to the Department.

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

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

Telephone: (850) 245-2118

Email: public.services@floridadep.gov

Mailing Address: Department of Environmental Protection

ATTN: Office of Ombudsman and Public Services

Public Records Request

3900 Commonwealth Boulevard, MS 49

Tallahassee, Florida 32399

8. This Agreement is hereby extended from August 4, 2019, to February 4, 2020 pursuant to §287.057 (12), F.S. due to events beyond the control of the Consultant to allow completion of the required reporting at sixty (60) months, for Phase II Post Construction Monitoring, as more fully described within the Corps and JCP permits, and the Consultant's Physical Monitoring Plan updated April 9, 2015; DEP File 0249602-006-JC, approved by both the Department and the County, each incorporated herein by reference.

9. The maximum total fixed price of \$1,311,912.24 shall be paid to the Consultant per the Agreement's terms and conditions and remains the same as previously stated within Paragraph (3.) of Amendment 8. The Department's financial obligation of \$70,250.00 remains unchanged and was met in 2009.
10. It is acknowledged and accepted by all Parties, that in each and every respect, the terms of this Agreement, as previously amended and hereby, shall remain unchanged and in full force and effect, and the same are hereby ratified, approved and confirmed, by the Department, the County and the Consultant as of the date of this Amendment.
11. It is acknowledged and accepted by all Parties that this Amendment is binding upon the Department, County and Consultant, and their successors and assigns.

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The parties have caused this Amendment to be duly executed the day and year last written below.

FOR THE CONSULTANT

Principal, or Designee

Brett D. Moore, P.E., D.C.E

Print Name

President

Title

June 11, 2019

Date

65-0262357

FEID Number

FOR THE COUNTY

Pinellas County Administrator, or Designee

Barry Burton

Print Name

County Administrator

Title

July 8, 2019

Date

FOR THE DEPARTMENT

Wes Howell

Digitally signed by Wes Howell
Date: 2019.05.20 14:55:25
-04'00'

Signature of the Secretary, or Designee
Department of Environmental Protection

Wes Howell

Print Name

Bureau Chief

Title

May 20, 2019

Date

APPROVED AS TO FORM AND LEGALITY

Carolyn Ciarlariello

Digitally signed by Carolyn
Ciarlariello
Date: 2019.05.14 10:14:18 -04'00'

Department Attorney

APPROVED AS TO FORM AND LEGALITY

County Attorney