

**AGREEMENT FOR
PROFESSIONAL SERVICES ENGINEER OF RECORD
ROADWAY IMPROVEMENT PROJECT WIDENING OF
75TH STREET WEST FROM 44TH AVENUE WEST TO 53RD AVENUE**

THIS AGREEMENT is made and entered into by and between the **COUNTY OF MANATEE**, a political subdivision of the State of Florida, hereinafter referred to as the "County," with offices located at 1112 Manatee Avenue West, Bradenton, Florida, 34205-7804, and **CYRIX ENGINEERING, INC.** hereinafter called the "Consultant," duly authorized to conduct business in the State of Florida, located at 1410 Magellan Drive, Sarasota, FL 34243.

WHEREAS, the County has determined that it is necessary, expedient and in the best interest of the County to retain, obtain or employ Consultant to render and perform professional services in the manner set forth in this Agreement; and

WHEREAS, this Agreement is the result of competitive negotiation procedures instituted by the County.

WITNESSETH

Now therefore in consideration of the foregoing premises and the mutual covenants herein contained, it is agreed by and between the parties hereto as follows:

ARTICLE 1. SCOPE OF SERVICE

Consultant covenants and represents to County that Consultant shall provide services as described in Attachment A, hereinafter referred to as the "Scope of Services".

ARTICLE 2. CONTRACT DOCUMENTS

Consultant shall comply with the following attachments which are attached and made a part of this Agreement:

- Attachment "A" --- Scope of Services
- Attachment "B" --- Payment of Fees
- Attachment "C" --- Special Conditions
- Attachment "D" --- Certificate of Insurance

In the event of a conflict between the terms and conditions provided in Articles in this part of the Agreement and any attachment or exhibit, the Provisions contained within these Articles shall prevail unless the term or provision in the attachment or exhibit specifically states that it shall prevail.

ARTICLE 3. LIMITATION OF COSTS AND PAYMENTS

Consultant shall be paid by County an amount in accordance with Attachment B for the provision of the Scope of Services. Consultant has been advised that no employee of Consultant or employee of the County may authorize any increase in total compensation unless authorized in writing by both parties.

ARTICLE 4. CONTRACT TERM

- A. Unless renewed or terminated as provided in this Agreement, this Agreement shall be for a period detailed in Attachment "B" Compensation and Project Schedule.
- B. Renewals or extensions of this Agreement, if any, shall be as specified in Attachment "C" Special Conditions.

ARTICLE 5. TERMINATION

- A. This Agreement may be terminated by either party for any reason or for no reason by giving to the other party no less than thirty (30) days written notice of intent to terminate. County may terminate this Agreement immediately by delivery of written notice to Consultant upon determining that Consultant has failed to comply with the terms of this Agreement. If Consultant fails to comply with the terms of this Agreement, the Contract Administrator may, upon written notification to Consultant withhold payment until Consultant complies with the conditions or terms. The notice shall specify the manner in which the Consultant has failed to comply with this Agreement.

ARTICLE 6. NOTICES

All notices or written communications required or permitted hereunder shall be deemed to have been given when received if hand delivered or when deposited in the U.S. mail, postage paid and addressed as follows:

If mailed to Consultant: Cyrix Engineering, Inc.
 Attn: J. Mark Privette, P.E.
 1410 Magellan Drive
 Sarasota, FL 34243

If by hand delivery: Cyrix Engineering, Inc.
Attn: J. Mark Privette, P.E.
1410 Magellan Drive
Sarasota, FL 34243

If mailed to County: Manatee County Government
Public Works Department
Project Management Division
Attn: Deputy Director
1022 26th Avenue East
Bradenton, FL 34208

If by hand delivery: Manatee County Government
Public Works Department
Project Management Division
Attn: Deputy Director
1022 26th Avenue East
Bradenton, FL 34208

Notice of termination or withholding of payment shall be served by certified or registered mail, return receipt requested or by hand delivery.

ARTICLE 7. GENERAL CONDITIONS

A: MAINTENANCE OF RECORDS.

i. Consultant shall maintain records, accounts, property records, and personnel records in accordance with generally accepted accounting principles, as deemed necessary by County to assure proper accounting of funds and compliance with the provisions of this Agreement.

ii. Consultant shall provide County all necessary information, records and contracts required by this Agreement as requested by County for monitoring and evaluating services. Consultant's information shall be made available to County for audit, inspection or copying during normal business hours and as often as County may deem necessary, except for client records protected by client confidentiality rules or regulations established by State or Federal law. In cases where client confidentiality applies, Consultant shall provide requested records in a fashion which maintains confidentiality. County shall have the right to obtain and inspect any audit pertaining to the performance of this Agreement or License made by any local, State or Federal Agency. Consultant shall retain all of its records and supporting documents related to this Agreement in accordance with all applicable laws, rules and regulations; in the absence of any other requirement, such records and supporting

documents will be retained by Consultant for at least three (3) years after the termination of this Agreement.

- B: **COMPLIANCE WITH LAWS; NON-DISCRIMINATION.** The performance of this Agreement shall be in compliance with all applicable laws, orders and codes of Federal, State, and local governments and the Americans with Disabilities Act. Additionally Consultant covenants and agrees that no person shall on the grounds of race, creed, color, handicap, national origin, sex, age, political affiliation or beliefs be excluded from participation in, be denied the benefits of employment by Consultant, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available by the County.
- C: **CONTRACTUAL LIABILITY.** The relationship of the Consultant to the County shall be that of an independent Consultant. Nothing herein contained shall be construed as vesting or delegating to the Consultant or any of the officers, employees, personnel, Consultants, or SubConsultants of the Consultant any rights, interest or status as an employee of the County. The County shall not be liable to any person, firm or corporation that is employed by, contracts with or provides goods or services to the Consultant in connection with the Scope of Services or for debts or claims accruing to such parties. Consultant shall promptly pay, discharge or promptly take such action as may be necessary and reasonable to settle such debts or claims.
- D: **NON-ASSIGNABILITY.** Consultant may not assign, transfer, or encumber this Agreement or any right or interest in this Agreement.
- E: **Consultant's REPRESENTATIVES.** Within thirty (30) days from the date of execution of this Agreement by both parties, Consultant shall provide the County with a list of representatives authorized to act on behalf of the Consultant.

ARTICLE 8. INDEMNIFICATION

Consultant shall indemnify, keep and save harmless the County, its officials and employees, against all injuries, deaths, losses, damages, claims, patent claims, suits, liabilities, judgements, costs and expenses, which may accrue against the County arising out of the negligent performance of or intentional failure to perform the Scope of Services required by this Agreement or the terms of this Agreement. Consultant shall pay all charges of attorneys and all costs and other expenses incurred in connection therewith, and if any judgement shall be rendered against the County in any such action, Consultant shall, at its own expense, satisfy and discharge the same up to and including an amount equal to the total fees earned or to be earned under the terms of this Agreement. Consultant expressly understands and agrees that any performance bond or insurance

protection required by this Agreement, or otherwise provided by Consultant, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County as herein provided.

The indemnity hereunder shall continue until such time as any and all claims arising out of Consultant's negligent performance or intentional failure to perform under this Agreement have been finally settled, regardless of when such claims are made.

In the event that any action, suit or proceeding is brought against the County upon any liability arising out of this Agreement, County at once shall give notice thereof in writing to Consultant at the above listed address. Upon receipt of notice, Consultant, at its own expense, may defend against such action and take all such steps as may be necessary or proper to prevent a judgement against the County. Nothing in this Agreement shall be deemed to affect County's right to provide its own defense and to recover from Consultant attorneys fees and expenses associated with such representation or the rights, privileges and immunities of the County as set forth in Florida Statute 768.28.

ARTICLE 9. INSURANCE

Without limiting any of the other obligations or liabilities of the Consultant, the Consultant shall, at the Consultant's sole expense, procure, maintain and keep in force during the period of Consultant's Scope of Services under this Agreement, amounts and types of insurance conforming to the nature and type represented by the Certificates of Insurance attached hereto as Attachment D. Upon prior, written Agreement by and between Consultant and County, Consultant shall procure additional insurance for a term as may reasonably be requested by the County to protect the County from liability, during any such term.

Until such time as the specified insurance is no longer required under this Agreement the Consultant shall provide the County with renewal or replacement certificates of insurance not less than 15 days prior to the expiration or replacement of the insurance for which a previous certificate has been provided. In the event a renewal or replacement certificate is not available Consultant shall, not less than 15 days prior to expiration of any existing policy, provide County with evidence of a binder proving continuation of coverage and a new certificate as reasonably soon as possible.

Manatee County, a political subdivision of the State of Florida, shall be named as an additional insured on the certificate of insurance evidencing commercial general liability coverage. Further, Manatee County will be provided with copies of all underlying additional insured endorsements. County shall be under no obligation to pay Consultant for any services provided or for any costs associated with Consultant's Scope of Services for any period of time not covered by the insured required under this Agreement.

ARTICLE 10, COVENANTS OF THE COUNTY

The County hereby covenants and agrees:

- A. That Public Works, Project Management Deputy Director, or such other employee as may be designated in writing by the County's Purchasing Manager shall serve as County's Contract Administrator and is authorized to interpret this Contract and designate such additional employees as may be required to monitor Consultant's performance, provide technical assistance, and assume other administrative duties associated with the implementation of this Agreement. Disputes over any provision not satisfactorily resolved with the Contract Administrator shall be referred to the Purchasing Manager or his designee.
- B. The County shall make available at no cost to the Consultant all data relative to the project that is required by the Consultant for the performance of the Scope of Services.
- C. The County shall give prompt notice to the Consultant whenever the County observes or otherwise becomes aware of any defect in the performance of work under this Agreement.
- D. The County shall give careful and reasonable consideration to the findings and recommendations of the Consultant and shall respond and issue notices to proceed in a timely manner so as not to unduly delay the Consultant's work called for by this Agreement.
- E. The County shall perform activities in this Article at no cost to the Consultant.

ARTICLE 11. COVENANTS OF THE CONSULTANT

Consultant hereby covenants and agrees:

- A. That J. Mark Privette, PE, is hereby appointed as Consultant's Agent with respect to the services to be performed by the Consultant pursuant to this Agreement. The Consultant's Agent shall have the authority without limitation, to make representations on behalf of Consultant, receive information, and interpret and define the needs of Consultant and make decisions pertinent to services covered by the Agreement. Consultant's Agent shall have the right, from time to time, to designate such other employees of Consultant's as they desire, to serve in their absence. Consultant reserves the right to designate a different agent, provided that the County is given written notice thereof.

- B. That the Work shall be performed in accordance with the terms and conditions of this Agreement.
- C. That all employees assigned to render services under this Agreement shall be duly qualified, registered, licensed or certified to provide the services required. All services shall comply with such reasonable supplemental written memoranda and directives provided by the Contract Manager, which is not in conflict with this Agreement.
- D. That Consultant shall be responsible for collecting all existing data required for the successful completion of each task.
- E. That Consultant shall not knowingly engage in any contractual or professional obligations that create an appearance of a conflict of interest with respect to the service provided pursuant to this Agreement.
- F. Consultant shall be entitled to rely upon that information, which may be provided them from time to time, from the County or others on behalf of the County. Consultant shall, however, call to the County's attention any errors or deficiencies noted in such information provided and assist, to the extent practicable, the County in the identification and resolution of same. Information referred to above includes, but is not limited to, transportation engineering design, construction and additional services; consultations, investigation and reports and the like, including all other information to be provided to the Consultant by others and necessary for the execution of Consultant's work under the Agreement, as amended. The County shall, however, hold Consultant fully responsible for verifying, to the extent practicable, documents and information provided by the County and identifying its obvious deficiencies concerning documents and information provided. The Consultant agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed under this Agreement.

ARTICLE 12. DISPUTE RESOLUTION

Disputes shall be resolved as follows: good faith negotiations by the designated agents of the parties and if not resolved by such designated agents after twenty-one (21) days, Consultant shall submit his claim, with the basis for the dispute, in writing to the Manatee County Purchasing Manager for a determination and handling in accordance with the provisions of the Manatee County Procurement Code. Any dispute resolution agreed to by County's Contract Manager or the Manatee County Purchasing Manager, constituting a material change in this Agreement will not be final until approved by the Board of County Commissioners. If such dispute involves the percentage of task completed by Consultant,

County shall, as promptly as reasonably possible after resolution of such dispute, forward payment to Consultant of any amount determined to be due and owing.

The services shall be performed by the Consultant to the reasonable satisfaction of the County, and 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 and the character, quality, amount and value thereof, which cannot be settled by mutual agreement of the parties, shall be settled by recourse to litigation under Florida law. Any such lawsuit shall be filed only in Manatee County, Florida.

ARTICLE 13. INFORMATION REPORTS

The Consultant shall provide all information and reports required by County policies, procedures, regulations, rules, orders and/or instructions. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish the information, the Consultant shall certify such to the County, as appropriate, and shall set forth what efforts have been made to obtain the information.

ARTICLE 14. LEGAL RESTRAINTS AND LIMITATIONS

The Consultant acknowledges that the County, as a unit of local government and a political subdivision of the State of Florida, is subject to restraints, limitations, regulations and controls imposed or administered pursuant to numerous applicable laws, ordinances, rules and regulations of federal, state, regional and certain local governmental agencies or authorities. The Consultant agrees that all professional services rendered or performed by the Consultant pursuant to the provisions of this Agreement, as amended, shall be in compliance therewith.

ARTICLE 15. ASSIGNMENT AND SUBCONTRACTS

The Consultant shall not sublet, assign or transfer any work under this Agreement to another Consultant or Subconsultant, without the prior written consent of the County.

ARTICLE 16. SOLICITATION OF CONTRACT

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 company or person other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gift, contingent fee, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the County shall have the right to annul this Agreement, without liability or at its discretion to deduct from the contract price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gifts, or contingent fee

ARTICLE 17. GOVERNING LAW

This Agreement shall be governed by the laws of the State of Florida. Any action filed regarding this Agreement will be filed only in Manatee County, Florida.

ARTICLE 18. FORCE MAJEURE

Neither party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations, or any of them is delayed or prevented by Force Majeure. Force Majeure shall include, but not be limited to, hostility, revolution, civil commotion, strike, epidemic, accident, fire, flood, wind, earthquake, explosion, lack of or failure of transportation facilities, any law, proclamation, regulation, ordinance or other act of government, or any act of God or any cause whether of the same or different nature, existing or future; provided that the cause, whether or not enumerated in this Article, is beyond the control and without the fault or negligence of the party seeking relief under this Article.

ARTICLE 19. MISCELLANEOUS

- A. The Consultant and the County agree that the Consultant, its employees, and subconsultants are not employees or agents of the County as a result of this Agreement, as amended or in the performance of any duties pursuant to this Agreement.
- B. All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.
- C. This Agreement embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto.
- D. It is understood and agreed by the parties hereto that if any part, term or provision of this Agreement, is, by the courts held to be illegal or in conflict with any law, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.

ARTICLE 20. AMENDMENTS

This Agreement may not be modified, amended or extended orally. This Agreement may be amended only by written agreement executed by the governing bodies of both parties.

ARTICLE 21. SEVERABILITY

In the event that any paragraph of this Agreement is adjudged by a court of competent jurisdiction to be invalid, such adjudication shall not affect or nullify the remaining paragraphs hereof, but shall be confined solely to the paragraphs involved in such decision.

ARTICLE 22. HEADINGS


All articles and descriptive headings of paragraphs in this Agreement are inserted for convenience only and shall not affect the construction or interpretation hereof.

ARTICLE 23. AUTHORITY TO EXECUTE

Each of the parties hereto covenants to the other party that it has lawful authority to enter into this Agreement and has authorized the execution of this Agreement by the party's authorized representative.

IN WITNESS WHEREOF, the parties have executed this agreement to furnish and deliver the required professional consulting services.

CYRIX ENGINEERING, INC.

By: 

Print Name: J. MARK PRIVETTE

Title: PRESIDENT

Date: NOV 23, 2009

MANATEE COUNTY GOVERNMENT

By:  for the County

Print Name: Ron Schulhofer

Title: Director, Public Works

Date: 11-30-09

ATTACHMENT "A"

75th Street West (From 44th Ave. South to Roundabout @ 53rd Ave.)

1.0 INTRODUCTION

Manatee County (COUNTY) has requested CONSULTANT provide post design engineering services for the project. The scope of services is set out below, and will commence upon COUNTY approval of the agreement for the project. The agreement will remain in effect until the completion of the project. The project consists of construction of the two westerly lanes of 75th Street West and associated stormwater improvements. The approximate length of the project is 4,733 lf (0.90 miles).

2.0 BID DOCUMENTS

CONSULTANT shall provide to COUNTY, the Construction Cost Estimate, one set of Bid Tabulation Forms, five sets of Construction Plans (one set signed & sealed), and one set of CADD Drawings. The documents will be provided within two weeks of the CONSULTANT's agreement being executed. CONSULTANT shall provide to COUNTY technical assistance in preparing any bid addenda. CONSULTANT shall provide timely assistance and clarifications to the contractors during the Bid Process and attend all pertinent meetings. The CONSULTANT will review and analyze the submitted bids for completeness and consistency, relative to construction quantities and associated costs. Upon completion of review and analysis, CONSULTANT shall provide to COUNTY a Recommendation of Contract Award within seven calendar days of receipt of Contract Bids.

3.0 CONSTRUCTION ASSISTANCE

CONSULTANT shall provide to COUNTY qualified representation during construction to deal with issues concerning the intent and interpretation of the construction contract plans and documents, and respond accordingly to contractor's Request For Information. Should changed conditions be encountered in the field and when requested by COUNTY, CONSULTANT shall respond in a timely manner with suitable engineering solutions. On-site appearance of CONSULTANT shall be made during construction at the request of COUNTY or it's designated representative.

From time to time during construction, CONSULTANT may be requested by COUNTY or it's designated representative to review contractor proposed field changes or to respond with a recommended solution to remedy particular field situation not covered by the plans and/or specifications.

4.0 REVIEW OF SHOP DRAWINGS

CONSULTANT will be required to provide construction shop drawing reviews. CONSULTANT shall review the shop drawings and erection plans for all components supplied by the contractor, that require shop drawing review. This review shall verify conformance of shop drawings with design drawings.

Shop drawings shall be reviewed in accordance with the standard shop drawing review standards for compliance with the approved construction documents. CONSULTANT shall review and process shop drawing submittals within seven calendar days of their receipt. Upon completion of the shop drawing review, CONSULTANT shall forward the shop drawing package to COUNTY.

5.0 PLAN UPDATES

CONSULTANT may be required to provide revised plan sheets reflecting any changes made during the Post Design or Construction phases of the projects. The revised sheets shall be signed by the CONSULTANT.

On-site visits by the CONSULTANT shall primarily be made only at the request of COUNTY unless otherwise deemed necessary by the CONSULTANT. During the Post Design or Construction phases, CONSULTANT may be requested by COUNTY to review proposed field changes or to respond with a recommended solution to remedy particular field situations not covered by the plans and/or specifications.

6.0 ASBUILT SURVEY / RECORD DRAWINGS

CONSULTANT shall provide to COUNTY an Asbuilt Survey certified by a licensed Surveyor, to include setting of seven (7) post-construction Benchmarks. CONSULTANT shall review the data indicated on the Asbuilt Survey for compliance with the approved Construction Documents. Upon acceptance of the asbuilt data, CONSULTANT shall prepare and provide to COUNTY, within 30 days, the final Record Drawings. CONSULTANT shall also prepare and submit Final Certifications and other required documents to COUNTY and SWFWMD for the purpose of obtaining final Operations Permits.

7.0 GENERAL CONDITIONS AND UNDERSTANDINGS

- 7.1 By providing these services, CONSULTANT will augment the full-time construction inspection being conducted by COUNTY and COUNTY'S inspection staff. CONSULTANT shall be Engineer of Record for the project.
- 7.2 COUNTY'S contractor shall be responsible for executing an NPDES or SWPP in accordance with FDEP, SWFWMD and Manatee County standards. This scope and fee does not include providing direction to the contractor for means and methods of executing an approved NPDES or SWPP.
- 7.3 An approved Traffic Control Plan has been provided as part of the approved Construction Plans. The contractor may choose to employ an alternative plan, however it must be approved by all appropriate agencies before construction activities commence. This scope and fee does not include providing direction to the contractor for means and methods of executing an alternative Traffic Control Plan.
- 7.4 The scope and fee is based on an estimated construction duration of 180 calendar days. The work order shall remain in effect until project is complete.

ATTACHMENT "B"

PAYMENT OF FEES

<u>Paragraph / Service / Fee Type</u>	<u>Fee Amount</u>
2.0 (BID DOCUMENTS - FIXED FEE).....	\$12,250.00
3.0 (CONSTRUCTION ASSISTANCE - FIXED FEE).....	\$16,500.00
4.0 (REVIEW OF SHOP DRAWINGS - FIXED FEE).....	\$ 8,750.00
5.0 (PLAN UPDATES - TIME & MATERIALS).....	\$ 5,500.00
6.0 (ASBUILT SURVEY/RECORD DRAWINGS - FIXED FEE).....	\$10,775.00
TOTAL FEE AMOUNT.....	\$53,775.00

Invoices will be issued based on the percentage of the task completed for that specific billing cycle.

ATTACHMENT "B"

PAYMENT OF FEES

The following is a manhour estimate for each task, but is not necessarily the prime or major factor in ascertaining the percentage of task completion. These are only estimated hours due to the subjective nature of the tasks.

Estimated Project Task Hours:

2.0 BID DOCUMENTS

Project Engineer:	54 hr
Project Draftsman:	10 hr
Field Inspector:	0 hr
Admin Secretary:	38 hr

3.0 CONSTRUCTION ASSISTANCE

Project Engineer:	35 hr
Project Draftsman:	20 hr
Field Inspector:	90 hr
Admin Secretary:	22 hr

4.0 REVIEW OF SHOP DRAWINGS

Project Engineer:	28 hr
Project Draftsman:	12 hr
Field Inspector:	16 hr
Admin Secretary:	20 hr

5.0 PLAN UPDATES

Project Engineer:	10 hr
Project Draftsman:	24 hr
Field Inspector:	6 hr
Admin Secretary:	8 hr

6.0 ASBUILT SURVEY / RECORD DRAWINGS

Project Engineer:	16 hr
Project Draftsman:	22 hr
Field Inspector:	6 hr
Admin Secretary:	4 hr
Project Survey:	6 hr
2 Man Survey Crew:	28 hr
Survey Draftsman:	18 hr

ATTACHMENT "C"

SPECIAL CONDITIONS

1. Compensation payable to Contractor for services rendered and expenditures incurred in providing the services identified in Attachment "A".
2. Compensation to Contractor shall be computed based on actual service units and/or hours performed times unit fee rate.
3. The unit fee rates shall be the total compensation for the services and shall contain all costs to include salaries, office operation, transportation, equipment, overhead, general and administrative, incidental expenses, fringe benefits, operating margin and subcontractor costs.
4. Contractor shall provide County with invoices not more frequently than once a month for each calendar month in which services are provided.
5. Contractor's invoice shall be in a form acceptable to County, provide specific details with respect to actual service units and/or hours of work incurred and include other such detail as may reasonably be requested by County.
6. Any penalty for delay in payment shall be in accordance with the Florida Prompt Payment Act (Section 218.70, et seq., Florida Statutes).