DATE: May 3, 2018

TO: Ann Mytnik, Sr. Contracts Administrator
    Project Management

FROM: Pamela G. Hancock, D.C.

SUBJECT: April 19th BOCC Meeting

Attached is an electronic copy of each of the amendments listed below for your handling.

C21 First Amendment to the Continuing Professional Engineering and Surveying Services Agreement with Avirom and Associates, Inc. to revise the public records compliance language, includes required federal contract provisions, and establish a timeline for performance and cost estimating requirements.

C22 First Amendment to the Continuing Professional Engineering and Surveying Services Agreement with CPH, Inc., to revise the public records compliance language, include required federal contract provisions, and establish a timeline for performance and cost estimating requirements.

C25 First Amendment to the Continuing Professional Engineering and Surveying Services Agreement with Florida Keys Land Surveying, LLC, to revise the public records compliance language, include required federal contract provisions, and establish a timeline for performance and cost estimating requirements.

Should you have any questions, please feel free to contact me at extension 3550.

cc: County Attorney
    Finance
    File
FIRST AMENDMENT
TO THE CONSULTANT AGREEMENT FOR
PROFESSIONAL ENGINEERING AND SURVEYING SERVICES

This First Amendment ("Amendment") made and entered into this 19th day of April 2018, by and between Monroe County, a political subdivision of the State of Florida, whose address is 1100 Simonton Street, Key West, Florida 33040, its successors and assigns, hereinafter referred to as "County", through the Monroe County Board of County Commissioners ("BOCC"),

AND

Avirom & Associates, Inc., whose address is 50 S.W. 2nd Avenue, Suite 102, Boca Raton, FL 33432, its successors and assigns, hereinafter referred to as "Consultant" or "Contractor",

WITNESSETH:

WHEREAS, on the 21st day of October, 2015, the parties entered into a Consultant Agreement for Professional Engineering and Surveying Services ("Agreement"), pursuant to Florida Statute Sec. 287.055 (2) (g) to provide professional services for miscellaneous projects in which construction costs do not exceed One Hundred Thousand and 00/100 Dollars ($100,000.00) or for study activity if the fee for professional services for each individual study under the contract does not exceed Ten Thousand and 00/100 Dollars ($10,000.00); and

WHEREAS, County desires to revise language in its contracts and/or agreements for Public Records compliance in accordance with Chapter 119 of the Florida Statutes pursuant to legislative revisions to §119.0701 which became effective March 8, 2016, and any subsequent changes thereto; and

WHEREAS, County desires to add required Federal Contract Provisions to its contracts and/or agreements; and

WHEREAS, County desires to include an article in the Agreement establishing a timeline for performance and cost estimating requirements; and

WHEREAS, Consultant agrees and consents to such revisions in its Agreement to ensure Public Records compliance, Federal Required Contract Provision requirements, and a timeline for performance and cost estimating requirements; and
WHEREAS, the parties find it mutually beneficial to amend its Agreement as to the Public Records compliance, Federal Required Contract Provisions, and the timeline for performance and cost estimating requirements; and

NOW, THEREFORE, IN CONSIDERATION of the mutual promises and covenants set forth below, the parties agree as follows:

1. Article 9.21, PUBLIC ACCESS, of the Agreement dated October 21, 2015, shall be revised as follows with the aforementioned Consultant referred to herein also as Contractor for this provision only:

Article 9.21 Public Records Compliance. Contractor must comply with Florida public records laws, including but not limited to Chapter 119, Florida Statutes and Section 24 of article I of the Constitution of Florida. The County and Contractor shall allow and permit reasonable access to, and inspection of, all documents, records, papers, letters or other "public record" materials in its possession or under its control subject to the provisions of Chapter 119, Florida Statutes, and made or received by the County and Contractor in conjunction with this contract and related to contract performance. The County shall have the right to unilaterally cancel this contract upon violation of this provision by the Contractor. Failure of the Contractor to abide by the terms of this provision shall be deemed a material breach of this contract and the County may enforce the terms of this provision in the form of a court proceeding and shall, as a prevailing party, be entitled to reimbursement of all attorney’s fees and costs associated with that proceeding. This provision shall survive any termination or expiration of the contract.

Pursuant to Fla.Stat. Sec. 119.0701 and the terms and conditions of this contract, the Contractor is required to:

(1) Keep and maintain public records that would be required by the County to perform the service.
(2) Upon receipt from the County’s custodian of records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
(3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the County.
(4) Upon completion of the contract, transfer, at no cost, to the County all public records in possession of the Contractor or keep and maintain public records that would be required by the County to perform the service. If the Contractor transfers all public records to the County upon completion of the contract, the Contractor shall destroy any
duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County’s custodian of records, in a format that is compatible with the information technology systems of the County.

(5) A request to inspect or copy public records relating to a County contract must be made directly to the County, but if the County does not possess the requested records, the County shall immediately notify the Contractor of the request, and the Contractor must provide the records to the County or allow the records to be inspected or copied within a reasonable time.

If the Contractor does not comply with the County’s request for records, the County shall enforce the public records contract provisions in accordance with the contract, notwithstanding the County’s option and right to unilaterally cancel this contract upon violation of this provision by the Contractor. A Contractor who fails to provide the public records to the County or pursuant to a valid public records request within a reasonable time may be subject to penalties under Section 119.10, Florida Statutes.

The Contractor shall not transfer custody, release, alter, destroy or otherwise dispose of any public records unless or otherwise provided in this provision or as otherwise provided by law.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, BRIAN BRADLEY AT PHONE# 305-292-3470 BRADLEY-BRIAN@MONROECOUNTY-FL.GOV, MONROE COUNTY ATTORNEY’S OFFICE 1111 12TH Street, SUITE 408, KEY WEST, FL 33040.

2. Article IX, Paragraph 9.5 of the Agreement, is hereby amended to include the following Federal Required Contract Provisions, if applicable, wherein the aforementioned “Consultant” is also referred to herein as “Contractor” for the Federal Required provisions:

9.5 TERMINATION

A. In the event that the CONTRACTOR shall be found to be negligent in any aspect of service, the COUNTY shall have the right to terminate this Agreement after five (5) days’ written notification to the CONTRACTOR.
B. Either of the parties hereto may cancel this Agreement without cause by giving the other party sixty (60) days’ written notice of its intention to do so.

C. Termination for Cause and Remedies: In the event of breach of any contract terms, the COUNTY retains the right to terminate this Agreement. The COUNTY may also terminate this Agreement for cause with CONTRACTOR should CONTRACTOR fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, prior to termination, the COUNTY shall provide CONTRACTOR with five (5) calendar days’ notice and provide the CONTRACTOR with an opportunity to cure the breach that has occurred. If the breach is not cured, the Agreement will be terminated for cause. If the COUNTY terminates this Agreement with the CONTRACTOR, COUNTY shall pay CONTRACTOR the sum due the CONTRACTOR under this Agreement prior to termination, unless the cost of completion to the COUNTY exceeds the funds remaining in the contract; however, the COUNTY reserves the right to assert and seek an offset for damages caused by the breach. The maximum amount due to CONTRACTOR shall not in any event exceed the spending cap in this Agreement. In addition, the COUNTY reserves all rights available to recoup monies paid under this Agreement, including the right to sue for breach of contract and including the right to pursue a claim for violation of the County’s False Claims Ordinance, located at Section 2-721 et al. of the Monroe County Code.

D. Termination for Convenience: The COUNTY may terminate this Agreement for convenience, at any time, upon seven (7) days’ notice to CONTRACTOR. If the COUNTY terminates this Agreement with the CONTRACTOR, COUNTY shall pay CONTRACTOR the sum due the CONTRACTOR under this Agreement prior to termination, unless the cost of completion to the COUNTY exceeds the funds remaining in the contract. The maximum amount due to CONTRACTOR shall not exceed the spending cap in this Agreement. In addition, the COUNTY reserves all rights available to recoup monies paid under this Agreement, including the right to sue for breach of contract and including the right to pursue a claim for violation of the County’s False Claims Ordinance, located at Art. IX, Section 2-721 et al. of the Monroe County Code.

3. Article IX, Paragraph 9.17 of the Agreement, is hereby amended to include the following Federal Required Contract Provisions, if applicable, wherein the aforementioned “Consultant” is also referred to as “Contractor” for the Federal Required provisions:

9.17 NONDISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY

A. CONTRACTOR and COUNTY agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action of the part of any party, effective the date of the court order. CONTRACTOR or COUNTY agrees to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. This include but are not
limited to: 1) Title VII of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination on the basis of race, color or national origin; 2) Title IX of the Education Amendment of 1972, as amended (20 USC ss. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, as amended (20 USC s. 794), which prohibits discrimination on the basis of handicaps; 4) The Age Discrimination Act of 1975, as amended (42 USC ss. 6101-6107) which prohibits discrimination on the basis of age; 5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss. 690dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; 8) Title VIII of Civil Rights Act of 1968 (42 USC s. et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 1201 Note), as may be amended from time to time, relating to nondiscrimination of the basis of disability; 10) Monroe County Code Chapter 14, Article II, which prohibits discrimination on the basis of race, color, sex, religion, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age; 11) Any other nondiscrimination provisions in any Federal or state statutes which may apply to the parties to, or the subject matter of, this Agreement.


1) The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated equally during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

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2) The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

3) The CONTRACTOR will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee, who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions, discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the CONTRACTOR'S legal duty to furnish information.

4) The CONTRACTOR will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the CONTRACTOR'S commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5) The CONTRACTOR will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

6) The CONTRACTOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

7) In the event of the CONTRACTOR'S non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the CONTRACTOR may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
4. Article IX, Paragraph 9.29 of the Agreement, is hereby amended to include the following Federal Required Contract Provisions, if applicable, wherein the aforementioned "Consultant" is also referred to as "Contractor" for the Federal Required provisions:

9.29 DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY AND OBLIGATION

It is the policy of the COUNTY that DBE's, as defined in 49 C.F.R. Part 26, as amended, shall have the opportunity to participate in the performance of contracts financed in whole or in part with COUNTY funds under this Agreement. The DBE requirements of applicable federal and state laws and regulations apply to this Agreement. The COUNTY and its CONTRACTOR agree to ensure that DBE's have the opportunity to participate in the performance of this Agreement. In this regard, all recipients and contractors shall take all necessary and reasonable steps in accordance with applicable federal and state laws and regulations to ensure that the DBE's have the opportunity to compete for and perform contracts, including but not limited to 2 C.F.R. §200.321. The COUNTY and the CONTRACTOR and subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of contracts, entered pursuant to this Agreement. CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS.

a. If the CONTRACTOR, with the funds authorized by this Agreement, seeks to subcontract goods or services, then, in accordance with 2 C.F.R. §200.321, the CONTRACTOR shall take the following affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used whenever possible:

i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

v. Using services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
5. The Agreement is hereby amended to include the following identified as Article IX, Paragraphs 9.30, 9.31, and 9.32, Federal Contract Requirements, wherein the aforementioned "Consultant" is also referred to as "Contractor" for the Federal Required provisions:

9.30 FEDERAL CONTRACT REQUIREMENTS

The CONTRACTOR and its sub-contractors must follow the provisions as set forth in 2 C.F.R. §200.326 Contract provisions and Appendix II to Part 200, as amended, including but not limited to:

9.30.1 Clean Air Act and the Federal Water Pollution Control Act. CONTRACTOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387) and will report violations to FEMA and the Regional Office of the Environmental Protection Agency (EPA).

9.30.2 Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, which includes emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program and Transit Security Grant Program, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must comply with the Davis-Bacon Act (40 U.S.C. 31413144 and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, CONTRACTORS must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, CONTRACTORS must be required to pay wages not less than once a week. If applicable, the COUNTY must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The COUNTY must report all suspected or reported violations to the Federal awarding agency. When required by Federal program legislation, which includes emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program and Transit Security Grant Program (it does not apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program), the CONTRACTORS must also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). As required by the Act, each CONTRACTOR or subrecipient is prohibited from inducing, by any means, any person employed in the construction,
completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The COUNTY must report all suspected or reported violations to the Federal awarding agency. The CONTRACTOR shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

i) Subcontracts. The CONTRACTOR or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime CONTRACTOR shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

ii) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

9.30.3 Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, which includes all FEMA grant and cooperative agreement programs, all contracts awarded by the COUNTY in excess of $100,000 that involve the employment of mechanics or laborers must comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each CONTRACTOR must compute the wages of every mechanic and laborer on the basis of a standard work week of forty (40) hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of forty (40) hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

9.30.4 Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
9.30.5 Clean Air Act (42 U.S.C. 7401-7671q.), Water Pollution Control Act (33 U.S.C. 1251-1387) as amended. Contracts and subgrants of amounts in excess of $150,000 must comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

9.30.6 Debarment and Suspension (Executive Orders 12549 and 12689). A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.


9.30.8 Compliance with Procurement of recovered materials as set forth in 2 CFR § 200.322. CONTRACTOR must comply with section 6002 of the Solid Waste disposal Act, as amendment by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designed in guidelines of the Environmental Protection Agency (EPA at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. (1) In the performance of this contract, the CONTRACTOR shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired (i) Competitively within a timeframe providing for compliance with the contract performance schedule; (ii) Meeting contract performance requirements; or (iii) At a
reasonable price. (2) Information about this requirement, along with the list of EPA-designated items, is available at EPA’s Comprehensive Procurement Guidelines web site, https://www.epa.gov/epa/procurement-guidelines-cpg-program.

9.30.9 Americans with Disabilities Act of 1990 (ADA), as amended. The CONTRACTOR will comply with all the requirements as imposed by the ADA, the regulations of the Federal government issued thereunder, and the assurance by the CONTRACTOR pursuant thereto.

9.30.10 The CONTRACTOR shall utilize the U.S. Department of Homeland Security’s E-Verify system to verify the employment eligibility of all new employees hired by the CONTRACTOR during the term of the Contract and shall expressly require any subcontractors performing work or providing services pursuant to the Contract to likewise utilize the U.S. Department of Homeland Security’s E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the Contract term.

9.30.11 Fraud and False or Fraudulent or Related Acts. The CONTRACTOR acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the CONTRACTOR’S actions pertaining to this contract.

9.30.12 Access to Records. The following access to records requirements apply to this contract:
(1) The CONTRACTOR agrees to provide MONROE COUNTY, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the CONTRACTOR which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
(2) The CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
(3) The CONTRACTOR agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

9.30.13 Federal Government not a party to contract. CONTRACTOR acknowledges that the Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

9.30.14 Department of Homeland Security (DHS) Seal, Logo, and Flags. The CONTRACTOR shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.
9.30.15 Compliance with Federal Law, Regulations, and Executive Order. This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The CONTRACTOR will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

9.31 The CONTRACTOR is bound by the terms and conditions of the Federally-Funded Subaward and Grant Agreement between County and the Florida Division of Emergency Management (Division).

9.32 The CONTRACTOR shall hold the Division and County harmless against all claims of whatever nature arising out of the CONTRACTOR’S performance of work under this Agreement, to the extend allow and required by law.

6. The Agreement is hereby amended to include the following identified as Article IX, Paragraph 9.33, Time for Performance/Baseline Schedule/Cost Estimates:

9.33 TIME FOR PERFORMANCE/BASELINE SCHEDULE / COST ESTIMATES

Time is considered of the essence in the performance of the services required by this Agreement and defined in the scope of work.

The CONSULTANT will be prepared to commence work upon receiving a Notice to Proceed from the COUNTY and to complete all functions in accordance with the schedule and delivery requirements outlined in the “Baseline Schedule / Cost Estimates” special provisions and specifications included below:

9.33.1 SCHEDULING REQUIREMENTS

1. Baseline Schedule

1.1 A baseline project schedule indicating the preconstruction activities to be monitored and the anticipated completion dates for milestones are included in Section 3.1.

2. Monthly Schedule Update

2.1 The CONSULTANT will report detailed input and schedule updates on all preconstruction activities in accordance with the Baseline Schedule on a monthly basis. All preconstruction activities must be addressed each month even if there is
no change in status. Following the Notice to Proceed, this report will be considered due to the COUNTY on or before the fifth (5th) day of each month.

2.2 A brief narrative describing scheduled milestones with the status for each and a projection of milestone activities anticipated for the next sixty (60) days will be included in the report.

2.3 In the event that milestone dates are compromised for any reason, the CONSULTANT will participate in a schedule review and assessment with the COUNTY and the results will be incorporated into the report. The schedule review and assessment may include, but is not limited to, a detailed critical path analysis, consideration of potential delays, development of recovery plans, reporting recovery activities which are underway, assessing the impact of delays, and developing plans for schedule recovery.

2.4 The COUNTY will evaluate the schedule review and assessment results as reported by the CONSULTANT to determine if adequate provisions are proposed to enable the project to progress in accordance with the Baseline Schedule. If it is determined that an adjustment to the Baseline Schedule is warranted and if the delays are not directly attributed to the operations and/or project management practices of the CONSULTANT as required by this Contract, the COUNTY may grant an appropriate extension of time to complete all or any phase of the work. The CONSULTANT will incorporate recommendations for such time extensions into the monthly schedule update report.

2.5 The COUNTY reserves the right, but does not assume the obligation, to intercede at any time should the CONSULTANT fail to demonstrate the ability to progress the project in accordance with the milestone dates established in the Baseline Schedule. Such action on the part of the CONSULTANT shall be considered non-performance and the COUNTY shall have all rights to seek remuneration and other damages as provided for in this Agreement and the laws of the State of Florida.

3. Project Development Process

3.1 Preconstruction activities should at a minimum include the following elements as applicable.

<p>| PROJECT DEVELOPMENT PROCESS | 13 |</p>
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<th>Task Name</th>
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<th>Comments</th>
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<td><strong>Programming and Design Phase</strong></td>
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<td>Conduct Site Plan Meeting</td>
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<td>BOCC Approval of Construction Contract</td>
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<td>Issue Notice to Proceed to Construction Contractor</td>
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<td>Conduct Pre-Construction Meeting</td>
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<tr>
<td>Obtain Substantial Completion</td>
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<td>Obtain Final Completion</td>
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<td>Process Final Closeout Documents</td>
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3.2 The duration of the Contract should extend through the issuance of a Notice to Proceed to the construction contractor as part of the normal project development process.

**9.33.2 COST ESTIMATING REQUIREMENTS**

1.1 Baseline Cost Estimates

1.1.1 Following the Notice to Proceed for this Contract, the CONSULTANT will review the existing project cost estimate for the project and submit a written confirmation and/or recommendations for any refinements, changes, and revisions to the COUNTY. The COUNTY will consider any project cost estimate recommendations and issue a final Baseline Cost Estimate.
2.1 Cost Estimate Updates.

2.1.1 The CONSULTANT will update the Baseline Cost Estimate with 30% completion, 60% completion, 90% completion, the completion of the final design effort, and after any significant changes in the scope of the project as defined in this Contract.

2.1.2 In the event that the Baseline Schedule is suspended or delayed in any manner, additional updates of the Baseline Cost Estimate will be required at six (6) month intervals as long as this Contract remains in effect. The COUNTY may suspend this requirement by issuing a written notice to the CONSULTANT.

7. All other terms and conditions of the Consultant Agreement for Professional Architectural and Engineering Services dated October 21, 2015, shall remain in full force and effect.

IN WITNESS WHEREOF, each party has caused this First Amendment to be executed by its duly authorized representative on the day and year first above written.

(SEAL)
Attest: KEVIN MADOK, Clerk
By: __________________________
Deputy Clerk
Date: April 19, 2018

(SEAL)
Attest:

Witnesses to Consultant:

________________________
Jamie Clarke
Print Name
Date 4/19/18

________________________
Darice China
Print Name
Date 4/19/18

Title: Office Manager

________________________
John Doogan
Print Name
Date 4/19/18

Title: Land Surveyor

________________________
Michael D. Avirom
Print Name
Date April 5, 2018

Title: President

________________________
Patricia Eables
Print Name
Date 4-13-18

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: __________________________
Mayor/Chairman
Date: April 19, 2018

CONSULTANT:
AVIROM & ASSOCIATES, INC.

By: __________________________
Print Name
Date

Title: President

MONROE COUNTY ATTORNEY'S OFFICE
APPROVED AS TO FORM

PATRICIA EABLES
ASSISTANT COUNTY ATTORNEY
DATE: 4-13-18