

**Lee County Board Of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20050789

1. ACTION REQUESTED/PURPOSE: Award the Professional Services Agreement for CN-04-05 LeeTran Transit Facility to Carter & Burgess, Inc., in the amount of \$278,364.79.

2. WHAT ACTION ACCOMPLISHES: Provides a Consultant to provide land acquisition assistance, land use evaluation, environmental assessment and planning for site development. Project also includes the design of a transit terminal centrally location within Fort Myers. The design will facilitate transit services currently housed at the Lee Tran Office on Landing View Road and allow for planned expansions.

3. MANAGEMENT RECOMMENDATION: Staff Recommends Approval.

4. Departmental Category: <u>C2A</u>		5. Meeting Date: <u>06-21-2005</u>	
6. Agenda: <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Administrative <input type="checkbox"/> Appeals <input type="checkbox"/> Public <input type="checkbox"/> Walk-On	7. Requirement/Purpose: (specify)		8. Request Initiated: Commissioner _____ Department <u>Construction & Design</u> Division _____ By: <u>James Lavender, Director</u>
	Statute _____		
	Ordinance _____		
	<input checked="" type="checkbox"/> Admin. Code	<u>AC-4-4</u>	
	Other _____		

9. Background:

At the Board meeting of June 22, 2004, the Board approved the ranking of Consultants under CN-04-05 LeeTran Transit Facility. The ranking was as follows: 1) Earth Tech Consulting; 2) Carter & Burgess; and 3) BRPH Companies, Inc.

Contract negotiations were not successful with the #1 ranked firm Earth Tech Consulting. Staff terminated the negotiations and began negotiations with the #2 ranked firm Carter & Burgess. Contract negotiations were successful with Carter & Burgess and now require Board approval of the final contract.

Funds are available in account #: KI5440148640.503140.16

Attachment: 1) PSA for final execution

10. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr.	
<i>[Signature]</i> 6-6-05	<i>[Signature]</i> 6/6/05	N/A		<i>[Signature]</i> 6/7/05	<i>[Signature]</i> 6/9/05	<i>[Signature]</i> 6/9/05	<i>[Signature]</i> 6/9/05	<i>[Signature]</i> 6/9/05	<i>[Signature]</i> 6-6-05

11. Commission Action:

- Approved
- Deferred
- Denied
- Other

RECEIVED BY COUNTY ADMIN. <i>[Signature]</i>
<u>6-7-05</u>
<u>11:05</u>
COUNTY ADMIN FORWARDED TO: <i>[Signature]</i>
<u>6/7/05</u>
<u>11:00am</u>

Rec. by CoAtty
Date: <u>6/7/05</u>
Time: <u>10:15</u>
Forwarded To: Co.Mgr. <u>6/7/05 11:00am</u>

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT is made and entered into this _____ day of _____, 2005, between the Board of County Commissioners of LEE COUNTY, a political subdivision of the STATE OF FLORIDA hereinafter referred to as the "COUNTY", and Carter & Burgess, Inc. hereinafter referred to as the "CONSULTANT".

WITNESSETH

WHEREAS, the COUNTY desires to obtain the professional planning, engineering and architecture services of said CONSULTANT to provide and perform professional services as further described hereinafter concerning the Project to be referred to and identified as:

LeeTran Transit Facility, and

WHEREAS, the CONSULTANT hereby certifies that CONSULTANT has been granted and possesses valid, current licenses to do business in the State of Florida and in Lee County, Florida, issued by the respective State Boards and Government Agencies responsible for regulating and licensing the professional services to be provided and performed by the CONSULTANT pursuant to this Agreement; and

WHEREAS, the CONSULTANT has reviewed the professional services required pursuant to this Agreement and is qualified, willing and able to provide and perform all such services in accordance with the provisions, conditions and terms hereinafter set forth; and

WHEREAS, the selection and engagement of the CONSULTANT has been made by the COUNTY in accordance with the provisions of the Consultants' Competitive Negotiation Act, Chapter 287.055, Florida Statutes, and in accordance with the provisions of the Lee County Contract Manual for Professional Services as approved and put into effect by the Lee County Board of County Commissioners, September 25, 2001, and as subsequently revised.

NOW, THEREFORE, in consideration of the mutual covenants, terms and provisions contained herein, the parties hereto agree that with the mutual acceptance of this Agreement as indicated hereinafter by the execution of this Agreement by both parties that a Contract shall exist between both parties consisting of:

ARTICLE 1.00 - SCOPE OF PROFESSIONAL SERVICES

CONSULTANT hereby agrees to provide and perform the professional services required and necessary to complete the services and work as set forth EXHIBIT "A", entitled "SCOPE OF PROFESSIONAL SERVICES", which EXHIBIT "A" is attached hereto and made a part of this Agreement.

ARTICLE 2.00 - DEFINITIONS

The following definition of terms associated with this Agreement is provided to establish a common understanding between both parties to this Agreement as to the intended usage, application, and interpretation of such terms pertaining to this Agreement.

2.01 COUNTY

The term COUNTY shall refer to the Board of County Commissioners of Lee County, a political subdivision of the State of Florida, and any official and/or employees thereof who shall be duly authorized to act on the COUNTY'S behalf relative to this Agreement.

2.02 CONSULTANT

The term CONSULTANT shall refer to the individual or firm offering professional services which by execution of this Agreement shall be legally obligated, responsible, and liable for providing and performing any and all of the services, work and materials, including services and/or work of sub-consultants and subcontractors, required under the covenants, terms and provisions contained in this Agreement and any and all Change Orders thereto.

2.03 PROFESSIONAL SERVICES

The term PROFESSIONAL SERVICES shall refer to all of the services, work, materials and all related professional, technical and administrative activities which are necessary to be provided and performed by the CONSULTANT and its employees and any and all sub-consultants and subcontractors the CONSULTANT may engage to provide, perform and complete the services required pursuant to the covenants, terms and provisions of this Agreement.

2.04 SUB-CONSULTANT

The term SUB-CONSULTANT shall refer to any individual or firm offering professional services which is engaged by the CONSULTANT to assist the CONSULTANT in providing and performing the professional services, work and materials for which the CONSULTANT is contractually obligated, responsible and liable to provide and perform under this Agreement. The COUNTY shall not be a party to, responsible or liable for, or assume any obligation whatever for any Agreement entered into between the CONSULTANT and any SUB-CONSULTANT.

Date: 09/25/01

2.05 SUBCONTRACTOR

The term SUBCONTRACTOR shall refer to any individual, company or firm providing other than professional services which is engaged by the CONSULTANT to assist the CONSULTANT in providing and performing services, work and materials for which the CONSULTANT is contractually obligated, responsible, and liable to provide and perform under this Agreement. The COUNTY shall not be a party to, responsible or liable for, or assume any obligation whatever for any Agreement entered into between the CONSULTANT and any SUBCONTRACTOR.

2.06 PROJECT

The term PROJECT shall refer to such facility, system, program or item as described in the summary statement set forth in the Preamble on Page One of this Agreement.

2.07 BASIC SERVICES

The term BASIC SERVICES shall refer to the professional services set forth and required pursuant to this Agreement and as described in further detail in the attached EXHIBIT "A", entitled "SCOPE OF PROFESSIONAL SERVICES", which EXHIBIT "A" is attached hereto and made a part of this Agreement.

2.08 ADDITIONAL SERVICES

The term ADDITIONAL SERVICES shall refer to such professional services as the COUNTY may request and authorize, in writing, the CONSULTANT to provide and perform relative to this Agreement which are not included in the BASIC SERVICES. Additional services shall be authorized by the execution of both parties to this Agreement by a Change Order Agreement.

2.09 CHANGE ORDER

The term CHANGE ORDER shall refer to a written document, CHANGE ORDER AGREEMENT, executed by both parties to this Agreement setting forth and authorizing changes to the agreed upon Scope of Professional Services and Tasks, Compensation and Method of Payment, Time and Schedule of Performance, or Project Guidelines and Criteria as such were set forth and agreed to in the initial AGREEMENT, SUPPLEMENTAL TASK AUTHORIZATION(S), or previous CHANGE ORDERS issued thereto. The CHANGE ORDER document, which shall be executed on a Lee County standard form, shall set forth the authorized changes to the: scope of professional services, tasks, work or materials to be performed or provided by the CONSULTANT; the compensation and method of payment; the schedule or time period for performance and completion, and the guidelines, criteria and requirements pertaining thereto.

The amount of the change in contract compensation and time set forth in any and all Change Orders executed and issued under this Agreement shall be understood and agreed by both Parties to this Agreement to be fair,

Date: 09/25/01

equitable, adequate and complete. The changed compensation shall be understood and agreed to be the total of all costs associated with or impacted by the Change Order including, but not limited to any and all direct costs, indirect costs and associated costs which may result from or be caused by the Change Order, and shall be understood and agreed to include a fair, equitable and adequate adjustment to cover the CONSULTANT'S general administrative and overhead costs and profit.

In the event the County decides to delete all, or portions, of the scope of services, Task(s), or Requirements set forth in the initial Agreement, Supplemental Task Authorizations or previously authorized Change Orders, the COUNTY may do so by the unilateral issuance of a written Change Order to the CONSULTANT. Such a unilaterally issued Change Order shall set forth, if appropriate, (1) an agreement by both the COUNTY and the CONSULTANT establishing changes in the amount of compensation to be paid the CONSULTANT as a result of the deletion or decrease in services required, or (2) in the absence of such an agreement concerning compensation, the unilaterally issued Change Order shall set forth the basis to be used in subsequently considering, and reaching agreement on change(s) in the compensation to be paid the CONSULTANT. The failure on the part of the CONSULTANT to execute a Change Order issued unilaterally by the COUNTY to effect a deletion or decrease in the services required shall have no effect on, or otherwise prevent the COUNTY from exercising its rights to direct the stated deletion or decrease in the services to be provided or performed by the CONSULTANT.

2.11 SUPPLEMENTAL TASK AUTHORIZATION

The term Supplemental Task Authorization as used refers to a written document executed by both parties to an existing Professional Services Agreement, or Service Provider Agreement, setting forth and authorizing a limited number of Professional Services, tasks, or work. Such Supplemental Task Authorizations are consistent with and have previously been included within the scope of services in the initial Professional Services Agreement, or Service Provider Agreement, for which authorization has not been previously given or budgeted.

2.12 DEPARTMENT DIRECTOR

The term DEPARTMENT DIRECTOR shall refer to the Director of the Department requesting the service, employed by the Lee County Board of County Commissioners to serve and act on the COUNTY'S behalf, as it relates to this Project. The Chairman of the Board of County Commissioners, or his designated representative, shall act on behalf of the COUNTY to execute any and all CHANGE ORDER(S) or SUPPLEMENTAL TASK AUTHORIZATION(S) approved by the COUNTY and issued to the CONSULTANT pursuant to this Agreement. The DEPARTMENT DIRECTOR, within the authority conferred by the Board of County Commissioners, acting as the COUNTY'S designated representative shall issue written notification to the CONSULTANT of any and all changes approved by the COUNTY in the CONSULTANT'S: (1) compensation (2) time and/or schedule of service delivery; (3) scope of services; or other change(s) relative to BASIC SERVICES and ADDITIONAL SERVICES pursuant to this Agreement, or CHANGE ORDER(S) or SUPPLEMENTAL TASK AUTHORIZATION(S) pertaining thereto. The DEPARTMENT DIRECTOR shall be responsible for acting on the COUNTY'S behalf to administer, coordinate, interpret and otherwise manage the

Date: 09/25/01

contractual provisions and requirements set forth in this Agreement, CHANGE ORDER(S), or SUPPLEMENTAL TASK AUTHORIZATION(S) issued thereunder.

2.13 PROJECT MANAGER

The term PROJECT MANAGER shall refer to the person employed or retained by the COUNTY and designated, in writing, to serve and act on the COUNTY'S behalf to provide direct contact and communication between the COUNTY and CONSULTANT with respect to providing information, assistance, guidance, coordination, review, approval and acceptance of the professional services, work and materials to be provided and performed by the CONSULTANT pursuant to this Agreement and such written SUPPLEMENTAL TASK AUTHORIZATION(S) and CHANGE ORDER(S) as are authorized. The PROJECT MANAGER is not authorized to, and shall not, issue any verbal, or written, request or instruction to the CONSULTANT that would have the effect, or be interpreted to have the effect, of modifying or changing in any way whatever the: (1) Scope of services to be provided and performed by the CONSULTANT; (2) The time the CONSULTANT is obligated to commence and complete all such services; (3) The amount of compensation the COUNTY is obligated or committed to pay the CONSULTANT. The PROJECT MANAGER shall review and make appropriate recommendations on all requests submitted by the CONSULTANT for payment for services and work provided and performed, and reimbursable costs and expense, as provided for in this Agreement and approved CHANGE ORDER(S), or SUPPLEMENTAL TASK AUTHORIZATION(S) thereto.

2.14 LUMP SUM FEE(S)

Lump Sum Fee(s), hereinafter identified as L.S., are understood and agreed to include all direct and indirect labor costs, personnel related costs, overhead and administrative costs, costs of sub-consultant(s) and/or subcontractor(s), out-of-pocket expenses and costs, professional service fee(s) and any other costs or expenses which may pertain to the services and/or work to be performed, provided and/or furnished by the Consultant as may be required and/or necessary to complete each and every task set forth in the Scope of Professional Services, Exhibit "A", or as may be set in subsequent Supplemental Task Authorizations, and/or Change Orders agreed to in writing by both parties to this Agreement.

2.15 NOT-TO-EXCEED FEE(S)

When all, or any portion, of the CONSULTANT'S compensation to provide and perform the services and work necessary and required pursuant to the Tasks set forth in Agreement Exhibit "A", and any Change Orders, supplemental Task Authorizations, and Work Orders authorized thereto, is established to be made on a NOT-TO-EXCEED (N.T.E.) amount basis, it is mutually understood and agreed that such compensation for each completed Task shall be made on the following basis:

For the actual hours necessary, required and expended by the CONSULTANT'S professional and technical personnel, multiplied by the applicable hourly rates for each classification or position as set forth in Attachment No. 1 to Exhibit "B" to the above referenced Agreement and any Change Orders or Supplemental Task Authorizations authorized thereto; and

Date: 09/25/01

For the actual necessary, required and expended non-personnel reimbursable expenses and costs, multiplied by the applicable "Basis of Charges" for each item as set forth in Attachment No. 2 to Exhibit "B" to the above referenced Agreement and any Change Orders or Supplemental Task Authorizations authorized thereto; and

For the actual, necessary and required hours, and non-personnel expenses and costs, expended by Sub-Consultants and SubContractors engaged by the CONSULTANT, multiplied by such hourly rates and unit costs as are agreed to by the COUNTY and the CONSULTANT and as are set forth as a part of the above referenced Agreement and any Change Orders or Supplemental Task Authorizations authorized thereto; and

With the understanding and agreement that the COUNTY shall pay the CONSULTANT for all such costs and expenses within the established Not-to-Exceed amount for each Task or Sub-Task subject to the CONSULTANT presenting an itemized and detailed invoice with appropriate supporting documentation attached thereto to show evidence satisfactory to the COUNTY covering all such costs and expenses; and

With the understanding and agreement that the CONSULTANT'S invoices and all payments to be made for all Not-to-Exceed amounts shall be subject to the review, acceptance and approval of the COUNTY; and

With the understanding and agreement that when the CONSULTANT'S compensation is established on a Not-to-Exceed basis for a specific Task(s) or Sub-Task(s) the total amount of compensation to be paid the CONSULTANT to cover all personnel costs, non-personnel reimbursable expenses and costs, and Sub-Consultant and SubContractor costs for any such specific Task(s) or Sub-Task(s) shall not exceed the amount of the total Not-to-Exceed compensation established and agreed to for each specific Task(s) or Sub-Task(s). In the event the amount of compensation for any Task(s) or Sub-Task(s) to which the CONSULTANT is entitled on the Not-to-Exceed basis set forth above is determined to be necessary, required and actually expended and is determined to be actually less than the Not-to-Exceed amount established for the specific Task or Sub-Task, it is understood and agreed that any unexpended amount under a specific Task or Sub-Task may not be used, applied, transferred, invoiced or paid for services or work provided or performed on any other Task(s) or Sub-Task(s).

ARTICLE 3.00 - OBLIGATIONS OF THE CONSULTANT

The obligations of the CONSULTANT with respect to all the BASIC SERVICES and ADDITIONAL SERVICES authorized pursuant to this Agreement shall include, but not be limited to, the following:

3.01 LICENSES

The CONSULTANT agrees to obtain and maintain throughout the period this Agreement is in effect all such licenses as are required to do business in the State of Florida and in Lee County, Florida, including, but

Date: 09/25/01

not limited to, licenses required by the respective State Boards and other governmental agencies responsible for regulating and licensing the professional services provided and performed by the CONSULTANT pursuant to this Agreement.

3.02 PERSONNEL

(1) QUALIFIED PERSONNEL

The CONSULTANT agrees when the services to be provided and performed relate to a professional service(s) which, under Florida Statutes, requires a license, certificate of authorization or other form of legal entitlement to practice such services, to employ and/or retain only qualified personnel to be in responsible charge of all BASIC SERVICES and ADDITIONAL SERVICES to be provided pursuant to this Agreement.

(2) CONSULTANT'S PROJECT DIRECTOR

The CONSULTANT agrees to employ and designate, in writing, a qualified and, if required by law, a licensed professional to serve as the CONSULTANT'S Project Director. The CONSULTANT'S Project Director shall be authorized and responsible to act on behalf of the CONSULTANT with respect to directing, coordinating and administering all aspects of the services to be provided and performed under this Agreement thereto. The CONSULTANT'S Project Director shall have full authority to bind and obligate the CONSULTANT on any matter arising under this Agreement unless substitute arrangements have been furnished to the COUNTY in writing. The CONSULTANT agrees that the Project Director shall devote whatever time is required to satisfactorily direct, supervise and manage the services provided and performed by the CONSULTANT throughout the entire period this Agreement is in effect. The person selected by the CONSULTANT to serve as the CONSULTANT'S Project Director shall be subject to the prior approval and acceptance of the COUNTY.

(3) REMOVAL OF PERSONNEL

The CONSULTANT agrees, within thirty (30) calendar days of receipt of a written request from the COUNTY, to promptly remove and replace the CONSULTANT'S Project Director, or any other personnel employed or retained by the CONSULTANT, or personnel of the sub-consultant(s) or subcontractor(s) engaged by the CONSULTANT to provide and/or perform services and/or work pursuant to the requirements of this Agreement, who the COUNTY shall request, in writing, be removed, which request may be made by the COUNTY with or without cause.

3.03 TIMELY ACCOMPLISHMENT OF SERVICES

The timely performance and completion of the required services, work and materials is vitally important to the interests of the COUNTY. Time is of the essence for all of the duties and obligations contained in this Agreement thereto. The COUNTY may suffer damages in the event that the CONSULTANT does not accomplish and complete the required services in a timely manner. The CONSULTANT agrees to employ, engage, retain and/or assign an adequate number of personnel throughout the period of this

Date: 09/25/01

Agreement so that all BASIC SERVICES and ADDITIONAL SERVICES will be provided, performed and completed in a timely and diligent manner throughout.

LIMITATION OF DAMAGES

Notwithstanding any other provision of this Agreement to the contrary, the parties hereto mutually agree that neither party shall be liable to the other for any indirect, incidental, consequential, exemplary, punitive or special damages or loss of income, profit or savings of any party, including third parties, arising directly or indirectly from the parties' relationship under this Agreement or applicable law, including but not limited to claims based on contract, equity, negligence, intended conduct, tort or otherwise (including breach of warranty, negligence and strict liability in tort).

3.04 STANDARDS OF PROFESSIONAL SERVICE

The work and/or services to be provided and/or performed by the CONSULTANT and by any Sub-Consultant(s) and/or subContractor(s) engaged by the CONSULTANT as set forth in the Scope of Professional Services, Exhibit "A", shall be done in accordance with the generally accepted standards of professional practice and in accordance with the laws, rules, regulations, ordinances, codes, policies, standards or other guidelines issued by those governmental agencies which have jurisdiction over all or a portion of this project and which are in effect at the time the COUNTY approves this Agreement, or which may subsequently be changed or revised. Any subsequent change or revision to such laws, rules, regulations, ordinances, codes, policies, standards or other guidelines which requires the CONSULTANT to provide and/or perform work and/or services which are significantly different from that set forth in the Scope of Professional Services, Exhibit "A", shall serve as a basis for the COUNTY to consider the development and issuance of a Change Order to provide for a change to, or Additional Services to the services set forth in the Agreement.

3.05 CORRECTION OF ERRORS, OMISSIONS OR OTHER DEFICIENCIES

(1) RESPONSIBILITY TO CORRECT

The CONSULTANT agrees to be responsible for the professional quality, technical adequacy and accuracy, timely completion, and the coordination of all data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and other services, work and materials performed, provided, and/or furnished by CONSULTANT or by any sub-consultant(s) and/or subcontractor(s) retained or engaged by the CONSULTANT pursuant to this Agreement. The CONSULTANT shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in such data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents and instruments, and other services, work and materials resulting from the negligent act, errors or omissions or intentional misconduct of CONSULTANT or any sub-consultant(s) or subcontractor(s) engaged by the CONSULTANT.

Date: 09/25/01

(2) COUNTY'S APPROVAL SHALL NOT RELIEVE CONSULTANT OF RESPONSIBILITY

Neither review, approval, or acceptance by the COUNTY of data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and incidental professional services, work and materials furnished hereunder by the CONSULTANT, or any sub-consultant(s) or subcontractor(s) engaged by the CONSULTANT, shall in any way relieve CONSULTANT of responsibility for the adequacy, completeness and accuracy of its services, work and materials and the services, work and materials of any and all sub-consultants and/or subcontractors engaged by the CONSULTANT to provide and perform services in connection with this Agreement. Neither the COUNTY'S review, approval or acceptance of, nor payment for, any of the CONSULTANT'S services, work and materials shall be construed to operate as a waiver of any of the COUNTY'S rights under this Agreement, or any cause of action it may have arising out of the performance of this Agreement.

3.06 LIABILITY

(1) CONSULTANT TO HOLD COUNTY HARMLESS

The CONSULTANT shall be liable and agrees to be liable for and shall indemnify and hold the COUNTY harmless for any and all claims, suits, judgements or damages, losses and expenses including court costs and reasonable attorney's fees arising out of the CONSULTANT'S error, omission, and/or negligence negligent errors or omissions, or those of any and all sub-consultants and/or subcontractors engaged by the CONSULTANT during the providing, performing and furnishing of services, work and materials pursuant to this Agreement and any and all Change Orders, Supplemental Task Authorizations thereto. The CONSULTANT shall not be liable to nor indemnify the COUNTY for any portions of damages arising out of any error, omission, and/or negligence of the COUNTY, its employees, agents, or representatives or third parties. The CONSULTANT hereby acknowledges that the compensation to be paid the CONSULTANT by the COUNTY as set forth in Agreement Exhibit "B" entitled "COMPENSATION AND METHOD OF PAYMENT" includes compensation as consideration for the indemnification provided herein.

3.07 NOT TO DIVULGE CERTAIN INFORMATION

CONSULTANT agrees, during the term of this Agreement, not to divulge, furnish or make available to any third person, firm, or organization, without COUNTY'S prior written consent, or unless incident to the proper performance of CONSULTANT'S obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by CONSULTANT or any sub-consultant(s) or subcontractor(s) pursuant to this Agreement. CONSULTANT shall require all of its employees, sub-consultant(s) and subcontractor(s) to comply with the provisions of this paragraph.

Date: 09/25/01

3.08 CONSULTANT TO REPAIR PROPERTY DAMAGE CAUSED BY THE CONSULTANT

CONSULTANT agrees to promptly repair and/or replace, or cause to have repaired and/or replaced, at its sole cost and expense and in a manner acceptable to and approved by the COUNTY, any property damage arising out of, or caused by, the willful or negligent acts of the CONSULTANT, or of its sub-consultants and/or subcontractors. This CONSULTANT'S obligation under this sub-article does not apply to property damage caused by any other Consultant or Contractor engaged directly by the COUNTY.

The COUNTY reserves the right, should the CONSULTANT fail to make such repairs and/or replacement within a reasonable period of time, to cause such repairs and/or replacement to be made by others and for all costs and expenses associated with having such repairs and/or replacement done to be paid for by the CONSULTANT, or by the CONSULTANT reimbursing the COUNTY for all such costs and expenses.

3.09 RESPONSIBILITY FOR ESTIMATES

(1) In the event the services required pursuant to this Agreement include the CONSULTANT preparing and submitting to the COUNTY, cost estimates, the CONSULTANT, by exercise of his experience, effort, knowledge and judgment, shall develop such cost estimates as are set forth in, or as may be required under the Agreement and shall be held accountable, responsible and liable for the accuracy, completeness, and correctness of any and all such cost estimates. For purposes of the Liability Provisions of this Article only, the CONSULTANT'S estimate(s) shall be considered valid and effective for a period of six (6) months from the date of the COUNTY'S acceptance of the estimate(s).

(2) The cost estimates of CONSULTANTS or SUB-CONSULTANTS engaged by CONSULTANTS, for the appraisal or valuation of property or easements, or the estimate of damages or costs associated with the acquisition of property or easements are exempted from the provisions of Article 3.09.

(3) Cost Estimates

(A) ORDER OF MAGNITUDE ESTIMATE

This is an approximate estimate made without detailed architect/engineering data. Examples include, but are not limited to, an estimate from cost-capacity curves, an estimate using scale-up or scale-down factors, and an approximate ratio estimate. This type of estimate shall be accurate within plus fifty percent (50.0%). If the bids, as described above, fail to meet this prescribed accuracy, the cost associated with the preparation and development of the ORDER OF MAGNITUDE ESTIMATE shall be recoverable by the COUNTY.

(B) BUDGET ESTIMATE

Budget in this case applies to the COUNTY'S budget and not to the

budget as a project controlled document. A budget is prepared with the use of flowsheets, layouts, and equipment details. This type of estimate shall be accurate within plus twenty-five percent (25.0%). If the bids, as described above, fail to meet this prescribed accuracy, the cost associated with the preparation and development of the BUDGET ESTIMATE shall be recoverable by the COUNTY.

(C) CONSTRUCTION COST ESTIMATE.

A construction cost estimate for purposes of this Agreement is an estimate prepared on the basis of well defined engineering/architectural data and on detailed information set forth in specifications, designs or drawings which are to be used as a basis for obtaining bids or price proposals for constructing the project. This type of estimate shall be accurate within plus or minus ten percent (10%) of the cost of the construction of the project. The accuracy and reliability of a CONSTRUCTION COST ESTIMATE is vital to the COUNTY'S interests because it may be used for such purposes as, but not limited to the following; budgeting, obtaining, allocating or obligating funds for the project; evaluating and determining the reasonableness and acceptableness of bids or price proposals for construction projects; or establishing the assessment amounts for Municipal Service Benefit Units (M.S.B.U.).

In the event the COUNTY solicits and receives bids or price proposals from contractors on a construction project based on specifications, design, drawings and a CONSTRUCTION COST ESTIMATE prepared by the CONSULTANT, and the lowest bid or price proposal, submitted by a responsive and responsible bidder or proposer, which bid or price proposal exceeds the amount of the CONSULTANT'S CONSTRUCTION COST ESTIMATE by more than the percent accuracy set forth hereinabove, the CONSULTANT shall, upon notification by the COUNTY, assume responsibility for and proceed to provide and perform the following service without additional compensation:

The CONSULTANT will, subject to the review and approval of the COUNTY, modify at its expense the specifications, design, drawings and related bidding and contract documents to the extent necessary to reduce the anticipated construction costs so that the re-solicitation of bids or price proposals will realize bids or price proposals being received that are within the range of accuracy established for the CONSTRUCTION COST ESTIMATE prepared by the CONSULTANT. Any such modifications made by the CONSULTANT shall not conflict with the functional or operational requirements established by the COUNTY for the project and set forth in the Agreement or Change Order(s) or Supplemental Task Authorization(s) issued thereto, nor shall any such modifications conflict with established rules, regulations, requirements or professional standards pertaining to the design, specifications or drawings prepared by the CONSULTANT, nor shall such modifications adversely affect the safe use or operation of the constructed project.

In the event (1) the CONSULTANT'S modification of the design, specifications, drawings and related bidding and contract documents, and (2) the re-solicitation of bids or price proposals do not result in bids or price proposals being received from a responsive and responsible bidder or proposer that are within the established percent accuracy of the CONSULTANT'S CONSTRUCTION COST ESTIMATE, the costs associated with the CONSULTANT'S preparation and development of the CONSTRUCTION

COST ESTIMATE shall be recoverable by the COUNTY by an appropriate reduction in the CONSULTANT'S invoice requesting payment for services rendered.

For determination of compliance with the accuracy requirement established for the CONSTRUCTION COST ESTIMATE prepared by the CONSULTANT, the amount of the CONSTRUCTION COST ESTIMATE submitted by the CONSULTANT shall be adjusted from the date the CONSTRUCTION COST ESTIMATE was received by the COUNTY until the date bids or price proposals are received by the COUNTY, by applying the percent change in the "20 Cities Cost Index" as published in the ENR (formerly ENGINEERING NEWS-RECORD) a McGraw-Hill, Inc. publication.

If, in response to its solicitation, the COUNTY receives less than three bids or priced proposals for a project, there is the potential that such bids or priced proposals may not be a realistic representation of the costs expected to be associated with the project. If under such circumstances, and if in the professional judgment of the CONSULTANT, the low bid or the low priced proposal received from a responsive bidder or proposer does not realistically represent the costs associated with the project, the CONSULTANT may deem it appropriate to recommend the COUNTY reject any such bid(s) or priced proposal(s). If under such circumstances the COUNTY concurs with the CONSULTANT'S recommendation and rejects the bid(s) or priced proposal(s), the COUNTY will not hold the CONSULTANT responsible to, nor will the COUNTY require the CONSULTANT to, modify the specifications, design, drawings and related bidding and contract documents as set forth hereinbefore.

3.10 PERMITS

The CONSULTANT will be responsible for preparing and submitting all required applications and other supportive information necessary to assist the COUNTY in obtaining all reviews, approvals and permits, with respect to the CONSULTANT'S design, drawings and specifications required by any governmental body having authority over the project. Any fees required for such reviews, approvals or permits will be covered by a check issued by the COUNTY and made payable to the respective governmental body upon the CONSULTANT furnishing the COUNTY satisfactory documentation of such fees. The CONSULTANT will be similarly responsible for preparing and submitting all required applications and other supportive information necessary to assist the COUNTY in obtaining any renewals and/or extensions of reviews,

Date: 09/25/01

approvals or permits that may be required while this Agreement is in effect. The COUNTY shall, at the CONSULTANT'S request, assist in obtaining required signatures and provide the CONSULTANT with all information known to be available to the COUNTY so as to assist the CONSULTANT in the preparation and submittal of any original, renewal or extension of required reviews, approvals or permits.

3.11 ADDITIONAL SERVICES

Should the COUNTY request the CONSULTANT to provide and perform professional services for this project which are not set forth in EXHIBIT "A", the CONSULTANT agrees to provide and perform such ADDITIONAL SERVICES as may be agreed to in writing by both parties to this Agreement.

Such ADDITIONAL SERVICES shall constitute a continuation of the professional services covered under this Agreement and shall be provided and performed in accordance with the covenants, terms, and provisions set forth in this Agreement thereto.

ADDITIONAL SERVICES shall be administered and authorized as "SUPPLEMENTAL TASK AUTHORIZATIONS" or "CHANGE ORDERS" under the Agreement. The CONSULTANT shall not provide or perform, nor shall the COUNTY incur or accept any obligation to compensate the CONSULTANT for any ADDITIONAL SERVICES unless and until a written "SUPPLEMENTAL TASK AUTHORIZATIONS" or "CHANGE ORDER" shall have been agreed to and executed by both parties.

Each such "SUPPLEMENTAL TASK AUTHORIZATION" or "CHANGE ORDER" shall set forth a comprehensive, detailed description of: (1) the Scope of the ADDITIONAL SERVICES requested; (2) the basis of compensation; and (3) the period of time and/or schedule for performing and completing said ADDITIONAL SERVICES.

3.12 TRUTH-IN-NEGOTIATIONS CERTIFICATE

The COUNTY may request the CONSULTANT to execute a Truth-in-Negotiations Certificate ("Certificate"), in a form attached as EXHIBIT "F". The Certificate shall state that wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time this Agreement is executed. 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 or other factual unit costs.

3.13 COMPLETION OF TASKS

Unless otherwise set forth in the Agreement the CONSULTANT shall be responsible for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete all of the tasks set forth in Agreement Exhibit "A" entitled "Scope of Professional Services" and Change Orders, and Supplemental Task Authorizations authorized. The compensation to be paid the CONSULTANT as set forth in Agreement Exhibit "B" entitled "Compensation and Method of Payment" and Change Orders, and Supplemental Task Authorizations authorized thereto shall be understood and agreed to adequately and completely

Date: 09/25/01

compensate the CONSULTANT for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete the tasks set forth in Agreement Exhibit "A" and Change Orders, Supplemental Task Authorizations, and Work Orders authorized thereto as stated above."

3.14 AFFIRMATIVE ACTION BY CONSULTANT WHEN ENGAGING SUB-CONSULTANTS

Florida Statute #287.042(4)(f) establishes that agencies, including Lee County, are encouraged to spend twenty-five (25%) percent of the monies actually spent for contractual services for the purpose of entering into contracts with certified Minority Business Enterprises. Accordingly, the CONSULTANT is encouraged, when selecting or engaging the services of sub-consultants or subcontractors pursuant to this Agreement, to spend twenty-five (25%) percent of the amount of compensation established in this Agreement and in subsequent CHANGE ORDERS, and SUPPLEMENTAL TASK AUTHORIZATIONS authorized thereto for the engagement of the services of certified Minority Business Enterprise sub-consultants or subcontractors.

In furtherance of this statutory goal the COUNTY expects the CONSULTANT to take affirmative action towards achieving this goal. "Affirmative Action" as used herein shall constitute a good faith effort by the CONSULTANT to achieve the stated goal of engaging certified Minority Business Enterprise sub-consultants or subcontractors to provide or perform services and/or work pursuant to the SCOPE OF SERVICES required under this Agreement. Efforts taken by the CONSULTANT to assist the COUNTY in meeting this statutory goal must be documented in detail, records of sub-consultants or subcontractors contacted maintained, including negotiation efforts, and written Agreements maintained for services or work awarded to sub-consultants or subcontractors.

The CONSULTANT, upon receipt of a written request by the COUNTY, shall within ten (10) calendar days thereafter submit to the COUNTY copies of records and supporting documentation to show evidence of its affirmative action efforts to achieve the above stated goal.

The CONSULTANT is encouraged to contact the Lee County Department of Equal Opportunity for information and assistance regarding the COUNTY'S Minority Business Enterprise certification program and listing of certified Minority Business Enterprises.

ARTICLE 4.00 - OBLIGATIONS OF THE COUNTY

4.01 DESIGNATION OF PROJECT MANAGER

The COUNTY agrees after the execution of this Agreement to promptly advise the CONSULTANT, in writing, of the person designated to serve and act as the COUNTY'S PROJECT MANAGER pursuant to the provisions of Article 2.13 of this Agreement. Such notification shall be provided to the CONSULTANT by the COUNTY'S DEPARTMENT DIRECTOR.

4.02 AVAILABILITY OF COUNTY INFORMATION

(1) PROJECT GUIDELINES AND CRITERIA

Guidelines to the CONSULTANT regarding requirements the COUNTY has

established or suggests relative to the Project including, but not limited to such items as: goals, objectives, constraints, and any special financial, budgeting, space, site, operational, equipment, technical, construction, time and scheduling criteria are set forth in EXHIBIT "E", entitled "PROJECT GUIDELINES AND CRITERIA", which EXHIBIT "E" is attached hereto and made a part of this Agreement.

4.02 AVAILABILITY OF COUNTY INFORMATION (Continued)

(2) COUNTY TO PROVIDE PERTINENT REFERENCE MATERIAL

At the CONSULTANT'S request, the COUNTY agrees to provide to the CONSULTANT, at no cost to the CONSULTANT, all pertinent information known to be available to the COUNTY to assist the CONSULTANT in providing and performing the required professional services. Such information may include, but not be limited to: previous reports; plans, drawings and specifications; maps; property, boundary, easement, right-of-way, topographic, reference monuments, control points, plats and related survey data; data prepared or services furnished by others to the COUNTY such as sub-surface investigations, laboratory tests, inspections of natural and man-made materials, property appraisals, studies, designs and reports.

4.03 AVAILABILITY OF COUNTY'S DESIGNATED REPRESENTATIVES

The COUNTY agrees that the DEPARTMENT DIRECTOR and the PROJECT MANAGER shall be available within a reasonable period of time, with reasonable prior notice given by the CONSULTANT, to meet and/or consult with the CONSULTANT on matters pertaining to the services to be provided and performed by the CONSULTANT. The COUNTY further agrees to respond within a reasonable period of time to written requests submitted by the CONSULTANT.

4.04 ACCESS TO COUNTY PROPERTY

The COUNTY agrees, with reasonable prior written notice given by the CONSULTANT, to provide the CONSULTANT with access within a reasonable period of time to COUNTY property, facilities, buildings and structures to enable the CONSULTANT to provide and perform the required professional services and work pursuant to this Agreement. Such rights of access shall not be exercised in such a manner or to such an extent as to impede or interfere with COUNTY operations, or the operations carried on by others under a lease, or other contractual arrangement with the COUNTY, or in such a manner as to adversely affect the public health and safety. Such access may, or may not be, within the CONSULTANT'S normal office and/or field work days and/or work hours.

ARTICLE 5.00 - COMPENSATION AND METHOD OF PAYMENT

5.01 BASIC SERVICES

The COUNTY shall pay the CONSULTANT for all requested and authorized BASIC SERVICES rendered hereunder by the CONSULTANT and completed in accordance with the requirements, provisions, and/or terms of this Agreement and accepted by the COUNTY in accordance with the provisions for compensation and payment of said BASIC SERVICES set forth and prescribed in EXHIBIT "B", entitled "COMPENSATION AND METHOD OF PAYMENT", which EXHIBIT

Date: 09/25/01

"B" is attached hereto and made a part of this Agreement, or on the basis of such changes to the established compensation as may be mutually agreed to by both parties to this Agreement as evidenced by a written Change Order executed by both parties.

5.02 ADDITIONAL SERVICES

The COUNTY shall pay the CONSULTANT for all such ADDITIONAL SERVICES as have been requested and authorized by the COUNTY and agreed to, in writing, by both parties to this Agreement and which have been rendered as ADDITIONAL SERVICES by the CONSULTANT and completed in accordance with the requirements, provisions, and/or terms of this Agreement and accepted by the COUNTY in accordance with the provisions for compensation and payment of said ADDITIONAL SERVICES as set forth and prescribed in EXHIBIT "B", entitled "COMPENSATION AND METHOD OF PAYMENT", which EXHIBIT "B" is attached hereto and made a part of this Agreement, or on the basis of such changes to the established compensation as may be mutually agreed to by both parties to this Agreement as evidenced by a written Change Order or Supplemental Task Authorization executed by both parties.

5.03 METHOD OF PAYMENT

(1) MONTHLY STATEMENTS

The CONSULTANT shall be entitled to submit not more than one invoice statement to the COUNTY each calendar month covering services rendered during the preceding calendar month. The CONSULTANT'S invoice statement(s) shall be itemized to correspond to the basis of compensation as set forth in the Agreement, or CHANGE ORDER(S), and SUPPLEMENTAL TASK AUTHORIZATION(S) thereunder. The CONSULTANT'S invoice statements shall contain a breakdown of charges, description of service(s) and work provided and/or performed, and where appropriate, supportive documentation of charges consistent with the basis of compensation set forth in the Agreement, or in CHANGE ORDER(S), and/or SUPPLEMENTAL TASK AUTHORIZATION(S) thereunder.

(2) PAYMENT FOR SERVICES PERFORMED

The COUNTY shall pay the CONSULTANT for services performed using either of the following methods, or using a combination thereof:

- (A) The COUNTY shall pay the CONSULTANT on the basis of services completed for tasks set forth in Exhibits "A" and "B", as evidenced by work products such as reports, drawings, specifications, etc., submitted by the CONSULTANT and accepted by the COUNTY. No payments shall be made for CONSULTANT'S work-in-Progress until service items for which payment amounts have been established and set forth in this Agreement have been completed by the CONSULTANT and accepted by the COUNTY. Whenever an invoice statement covers services for which no work product is required to be furnished by the CONSULTANT to the COUNTY, the COUNTY reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.

- (B) The COUNTY shall pay the CONSULTANT for services performed for tasks set forth in Exhibits "A" and "B" on the basis of an invoice statement covering CONSULTANT'S work-in-Progress expressed as a percentage of the total cost of the service and/or work required for each task invoiced in this manner. All such work-in-Progress percentages are subject to the review and approval of the COUNTY. The decision of the COUNTY shall be final as to the work-in-Progress percentages paid. Payment by the COUNTY for tasks on a work-in-Progress percentage basis shall not be deemed or interpreted in any way to constitute an approval or acceptance by the COUNTY of any such service or work-in-Progress. The CONSULTANT shall be responsible for correcting, re-doing, modifying or otherwise completing the services and work required for each task before receiving final, full payment whether or not previous work-in-Progress payments have been made. All tasks to be paid for on a work-in-Progress percentage basis shall be agreed to by both parties to the Agreement and each task to be paid in this manner shall be identified in Exhibit "B" with the notation (WIPP). Only tasks so identified will be paid on a work-in-Progress percentage basis. The COUNTY reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.

(3) PAYMENT SCHEDULE

The COUNTY shall issue payment to the CONSULTANT within thirty (30) calendar days after receipt of an invoice statement from the CONSULTANT in an acceptable form and containing the requested breakdown and detailed description and documentation of charges. Should the COUNTY object or take exception to the amount of any CONSULTANT'S invoice statement, the COUNTY shall notify the CONSULTANT of such objection or exception within the thirty (30) calendar day payment period set forth hereinbefore. If such objection or exception remains unresolved at the end of said thirty (30) calendar day period, the COUNTY shall withhold the disputed amount and make payment to the CONSULTANT of the amount not in dispute. Payment of any disputed amount, or adjustments thereto, shall be made within thirty (30) calendar days of the date such disputed amount is resolved by mutual agreement of the parties to this Agreement.

5.04 PAYMENT WHEN SERVICES ARE TERMINATED AT THE CONVENIENCE OF THE COUNTY

In the event of termination of this Agreement at the convenience of the COUNTY, not at the fault of the CONSULTANT, the COUNTY shall compensate the CONSULTANT only for: (1) all services performed prior to the effective date of termination; (2) reimbursable expenses then due; and (3) reasonable expenses incurred by the CONSULTANT in affecting the termination of services and work, and incurred by the submittal to the COUNTY of project drawings, plans, data, and other project documents.

Date: 09/25/01

5.05 PAYMENT WHEN SERVICES ARE SUSPENDED

In the event the COUNTY suspends the CONSULTANT'S services and work on all or part of the services required to be provided and performed by the CONSULTANT pursuant to this Agreement, the COUNTY shall compensate the CONSULTANT only for the services performed prior to the effective date of suspension and reimbursable expenses then due and any reasonable expenses incurred or associated with, or as a result of such suspension.

5.06 NON-ENTITLEMENT TO ANTICIPATED FEES IN THE EVENT OF SERVICE TERMINATION, SUSPENSION, ELIMINATION, CANCELLATION AND/OR DECREASE

In the event the services required pursuant to this Agreement are terminated, eliminated, cancelled, or decreased due to: (1) termination; (2) suspension in whole or in part; and (3) and/or are modified by the subsequent issuance of SUPPLEMENTAL TASK AUTHORIZATION(S) and/or CHANGE ORDER(S), other than receiving the compensation set forth in Sub-Articles 5.04 and 5.05, the CONSULTANT shall not be entitled to receive compensation for anticipated professional fees, profit, general and administrative overhead expenses or for any other anticipated income or expense which may be associated with the services which are terminated, suspended, eliminated, cancelled or decreased.

ARTICLE 6.00 - TIME AND SCHEDULE OF PERFORMANCE

6.01 NOTICE TO PROCEED

Following the execution of this Agreement by both parties, and after the CONSULTANT has complied with the insurance requirements set forth hereinafter, the COUNTY shall issue the CONSULTANT a WRITTEN NOTICE TO PROCEED. Following the issuance of such NOTICE TO PROCEED the CONSULTANT shall be authorized to commence work and the CONSULTANT thereafter shall commence work promptly and shall carry on all such services and work as may be required in a timely and diligent manner to completion.

6.02 TIME OF PERFORMANCE

The CONSULTANT agrees to complete the services required pursuant to this Agreement within the time period(s) for completion of the various phases and/or tasks of the project services set forth and described in this Agreement, as set forth in EXHIBIT "C", entitled "SCHEDULE OF PERFORMANCE, which EXHIBIT "C" is attached hereto and made a part of this Agreement.

Should the CONSULTANT be obstructed or delayed in the prosecution or completion of its obligations under this Agreement as a result of causes beyond the control of the CONSULTANT, or its sub-consultant(s) and/or subcontractor(s), and not due to their fault or neglect, the CONSULTANT shall notify the COUNTY, in writing, within five (5) calendar days after the commencement of such delay, stating the cause(s) thereof and requesting an extension of the CONSULTANT'S time of performance. Upon receipt of the CONSULTANT'S request for an extension of time, the COUNTY shall grant the extension if the COUNTY determines the delay(s) encountered by the CONSULTANT, or its sub-consultant(s) and/or subcontractor(s), is due to

unforeseen causes and not attributable to their fault or neglect.

6.03 CONSULTANT WORK SCHEDULE

The CONSULTANT shall be required as a condition of this Agreement to prepare and submit to the COUNTY, on a monthly basis, commencing with the issuance of the NOTICE TO PROCEED, a CONSULTANT'S WORK SCHEDULE. The WORK SCHEDULE shall set forth the time and manpower scheduled for all of the various phases and/or tasks required to provide, perform and complete all of the services and work required completion of the various phases and/or tasks of the project services set forth and described in this Agreement, as set forth in EXHIBIT "C", pursuant to this Agreement in such a manner that the CONSULTANT'S planned and actual work progress can be readily determined. The CONSULTANT'S WORK SCHEDULE of planned and actual work progress shall be updated and submitted by the CONSULTANT to the COUNTY on a monthly basis.

6.04 FAILURE TO PERFORM IN A TIMELY MANNER

Should the CONSULTANT fail to commence, provide, perform and/or complete any of the services and work required pursuant to this Agreement in a timely and diligent manner, the COUNTY may consider such failure as justifiable cause to terminate this Agreement. As an alternative to termination, the COUNTY at its option, may, upon written notice to the CONSULTANT, withhold any or all payments due and owing to the CONSULTANT, not to exceed the amount of the compensation for the work in dispute, until such time as the CONSULTANT resumes performance of his obligations in such a manner as to get back on schedule in accordance with the time and schedule of performance requirements set forth in this Agreement, or any CHANGE ORDER(S), or SUPPLEMENTAL TASK AUTHORIZATION(S) issued thereto.

ARTICLE 7.00 - SECURING AGREEMENT

The CONSULTANT warrants that the CONSULTANT has not employed or retained any company or person other than a bona fide, regular, full time employee working for the CONSULTANT to solicit or secure this Agreement and that the CONSULTANT has not paid or agreed to pay any person, company, corporation 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 8.00 - CONFLICT OF INTEREST

The CONSULTANT represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder. The CONSULTANT further agrees that no person having any such interest shall be employed or engaged by the CONSULTANT for said performance.

If CONSULTANT, for itself and on behalf of its subconsultants, is about to engage in representing another client, which it in good faith believes could result in a conflict of interest with the work being performed by CONSULTANT or such sub-consultant under this Agreement, then it will promptly bring such potential conflict of interest to the COUNTY'S

attention, in writing. The COUNTY will advise the CONSULTANT, in writing, within ten (10) calendar days as to the period of time required by the COUNTY to determine if such a conflict of interest exists. If the COUNTY determines that there is a conflict of interest, CONSULTANT or such sub-consultant shall decline the representation upon written notice by the COUNTY.

If the COUNTY determines that there is not such conflict of interest, then the COUNTY shall give its written consent to such representation. If CONSULTANT or sub-consultant accepts such a representation without obtaining the COUNTY'S prior written consent, and if the COUNTY subsequently determines that there is a conflict of interest between such representation and the work being performed by CONSULTANT or such sub-consultant under this Agreement, then the CONSULTANT or such sub-consultant agrees to promptly terminate such representation. CONSULTANT shall require each of such sub-consultants to comply with the provisions of this Section.

Should the CONSULTANT fail to advise or notify the COUNTY as provided hereinabove of representation which could, or does, result in a conflict of interest, or should the CONSULTANT fail to discontinue such representation, the COUNTY may consider such failure as justifiable cause to terminate this Agreement.

ARTICLE 9.00 - ASSIGNMENT, TRANSFER AND SUBCONTRACTS

The CONSULTANT shall not assign or transfer any of its rights, benefits or obligations hereunder, except for transfers that result from: (1) the merger or consolidation of CONSULTANT with a third party; or (2) the disestablishment of the CONSULTANT'S professional practice and the establishment of a successor consultant, or consulting organization. Nor shall the CONSULTANT subcontract any of its service obligations hereunder to third parties, except as otherwise authorized in this Agreement thereto, without prior written approval of the COUNTY. The CONSULTANT shall have the right, subject to the COUNTY'S prior written approval, to employ other persons and/or firms to serve as sub-consultants and/or subcontractors to CONSULTANT in connection with CONSULTANT providing and performing services and work pursuant to the requirements of this Agreement. The COUNTY shall have the right and be entitled to withhold such approval. Such approval shall not be unreasonably withheld.

In providing and performing the services and work required pursuant to this Agreement, CONSULTANT intends to engage the assistance of the sub-consultant(s) and/or subcontractor(s) set forth in EXHIBIT "D", entitled "CONSULTANT'S ASSOCIATED SUB-CONSULTANTS AND SUBCONTRACTORS", which EXHIBIT "D" is attached hereto and made a part of this Agreement.

ARTICLE 10.00 - APPLICABLE LAW

Unless otherwise specified, this Agreement shall be governed by the laws, rules, and regulations of the State of Florida, or the laws, rules, and regulations of the United States when providing services funded by the United States government.

Date: 09/25/01

ARTICLE 11.00 - COVENANTS AGAINST DISCRIMINATION

11.01 FOR PROJECTS WITH FUNDS APPROPRIATED FROM GENERAL LEE COUNTY REVENUES

The CONSULTANT for itself, its successors in interest, and assigns as part of the consideration thereof, does hereby covenant and agree that in the furnishing of services to COUNTY hereunder, no person on the grounds of race, color, national origin, handicap, or sex shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination. The CONSULTANT shall comply with Lee County's Affirmative Action Plan or state laws in the hiring of sub-consultants. CONSULTANTS who are uncertain of their obligation must obtain a copy of all relevant guidelines concerning Lee County's Affirmative Action Plan from the Lee County Department of Equal Opportunity.

11.02 FOR PROJECTS WITH FUNDS APPROPRIATED EITHER IN PART OR WHOLLY FROM FEDERAL OR STATE SOURCES

The CONSULTANT for itself, its successors in interest, and assigns as part of the consideration thereof, does hereby covenant and agree that in the furnishing of services to COUNTY hereunder, no person on the grounds of race, color, national origin, handicap, or sex shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination. The CONSULTANT shall make every effort to comply with any Disadvantaged Business Enterprise goals, which have been established for this project. CONSULTANTS who are uncertain of their obligations regarding Disadvantaged Business Enterprises for this project must obtain a copy of all relevant federal or state guidelines from the Lee County Department of Equal Opportunity. The failure of the CONSULTANT to adhere to relevant guidelines shall subject the CONSULTANT to any sanctions, which may be imposed upon the COUNTY.

ARTICLE 12.00 - WAIVER OF BREACH

Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.

ARTICLE 13.00 - INSURANCE

13.01 INSURANCE COVERAGE TO BE OBTAINED

- (1) The CONSULTANT shall obtain and maintain such insurance as will protect him from: (1) claims under workers' compensation laws, disability benefit laws, or other similar employee benefit laws; (2) claims for damages because of bodily injury, occupational sickness or disease or death of his employees including claims insured by usual personal injury liability coverage; (3) claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees including claims insured by usual personal injury liability coverage; and (4) from claims for injury to or destruction

of tangible property including loss or use resulting therefrom; any or all of which claims may arise out of, or result from, the services, work and operations carried out pursuant to and under the requirements of this Agreement, whether such services, work and operations be by the CONSULTANT, its employees, or by any sub-consultant(s), subcontractor(s), or anyone employed by or under the supervision of any of them, or for whose acts any of them may be legally liable.

- (2) The insurance protection set forth hereinabove shall be obtained and written for not less than the limits of liability specified hereinafter, or as required by law, whichever is greater.
- (3) The CONSULTANT, throughout the time this Agreement is in effect, shall require and ensure that any and all of its Sub-Consultants and/or SubContractors obtain, have, and maintain the insurance coverages required by law to be provided.
- (4) The CONSULTANT shall obtain, have and maintain during the entire period of this Agreement all such insurance policies as are set forth and required herein.
- (5) In the event that the CONSULTANT engages Sub-Consultants or Sub-Contractors to assist the CONSULTANT in providing or performing services or work pursuant to the requirements of this Agreement, the insurance coverages required under Article 13.03 to be provided by the CONSULTANT shall cover all of the services or work to be provided or performed by all of the Sub-Consultants or SubContractors engaged by the CONSULTANT. However, in the event the services or work of Sub-Consultants or Sub-Contractors engaged by the CONSULTANT is not covered by the CONSULTANT'S INSURANCE POLICY(S), it shall be the responsibility of the CONSULTANT to ensure that all Sub-Consultants or Sub-Contractors have fully complied with the COUNTY insurance requirements for: (1) worker's Compensation; (2) Comprehensive General Liability; (3) Comprehensive Automobile Liability; or (4) Professional Liability as required and set forth in Agreement Article 13.00.

The services or work to be provided or performed by the following Sub-Consultant(s) or Sub-Contractor(s) identified in Agreement Exhibit "D" are exempted and excluded from the Professional Liability insurance coverage requirements set forth in this Agreement:

<u>Service and/or work to be Provided and/or Performed</u>	<u>Indicate Name of Individual or Firm</u>
Site Selection and Evaluation	Carter & Burgess
Maintenance Design and Site Flow	Maintenance Design Group
Site Survey	Bean, Whitaker, Lutz & Kareh, Inc.
Geotechnical Site Eval and HazMat	Nodarse, Inc.

- (6) The insurance coverage to be obtained by the CONSULTANT or by Sub-Consultants or Sub-Contractors engaged by the CONSULTANT, as set

forth in Agreement Article 13.03 for: (1) Workers' Compensation; (2) Comprehensive General Liability; (3) Comprehensive Automobile Liability; or (4) Professional Liability is understood and agreed to cover any and all of the services or work set forth in Agreement Exhibit "A" and all subsequent Change Order(s), or Supplemental Task Authorization(s). In the event the COUNTY shall execute and issue a written Change Order(s), or Supplemental Task Authorization(s) authorizing the CONSULTANT to provide or perform services or work in addition to those set forth in Agreement Exhibit "A", it is agreed that the COUNTY has the right to change the amount of insurance coverages required to cover the additional services or work. If the additional insurance coverages established exceeds the amount of insurance coverage carried by the CONSULTANT, the compensation established for the Change Order(s), or Supplemental Task Authorization(s) shall include consideration of any increased premium cost incurred by the CONSULTANT to obtain same.

13.02 CONSULTANT REQUIRED TO FILE INSURANCE CERTIFICATE(S)

- (1) The CONSULTANT shall submit to the COUNTY'S RISK MANAGEMENT DIVISION all insurance certificates which are required under this Agreement for review and approval with respect to compliance with the insurance requirements. After approval by the RISK MANAGEMENT DIVISION, the COUNTY will execute this Agreement and issue a written Notice to Proceed. The CONSULTANT may then commence with any service or work pursuant to the requirements of this Agreement.
- (2) All such insurance certificates shall be in a form and underwritten by an insurance company(s) acceptable to the COUNTY and licensed in the State of Florida.
- (3) Each Certificate of Insurance submitted to the COUNTY shall be an original and shall be executed by an authorized representative of the insurance company affording coverage.
- (4) Each Certificate of Insurance shall be addressed to the Lee County Board of County Commissioners, Attention: Lee County Contracts Management, P O Box 398, Fort Myers, Florida 33902-0398.
- (5) Each Certificate of Insurance shall specifically include all of the following:
 - (A) The name and type of policy and coverages provided; and
 - (B) The amount or limit applicable to each coverage provided and the deductible amount, if any, applicable to each type of insurance coverage being provided; and
 - (C) The date of expiration of coverage; and
 - (D) The designation of the Lee County Board of County Commissioners both as an additional insured and as a certificate holder. (This requirement is excepted for Professional Liability Insurance and for Workers' Compensation Insurance); and
 - (E) A specific reference to this Agreement and the Project to which

it pertains. (This requirement may be excepted for Professional Liability Insurance); or

In the event the CONSULTANT has, or expects to enter into an agreement for professional services other than those provided for in this Agreement, the CONSULTANT may elect to submit a certificate of insurance containing the following statement:

"This policy covers the services or work provided or performed by the Named Insured for any and all projects undertaken for Lee County pursuant to one or more written Professional Services Agreements, or written Supplemental Task Authorizations, or Change Orders thereto, and the limit(s) of liability shown shall not be intended or construed as applying to only one project."

Upon receipt and approval of such a certificate of insurance the COUNTY will administer the insurance required for all such agreements utilizing the single "multi-project" certificate of insurance and a separate certificate of insurance will not be required for each separate agreement.

(F) The following clause must appear on the Certificate of Insurance:

"Cancellation - should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail 30 days written notice to the Certificate Holder named."

(G) A statement indicating any services or work included in or required under Agreement Exhibit "A" Scope of Professional Services that is specifically excluded or exempted from coverage under the provisions, terms, conditions or endorsements of the CONSULTANT'S insurance policy(s). A statement which indicates any and all deductible amounts applicable to each type of insurance coverage required. In the absence of any such statements, the COUNTY will proceed with the understanding, stipulation and condition that there are no deductible amount(s), or exclusions or exemptions to the insurance coverage(s) provided.

(6) Each Certificate of Insurance shall be issued by an insurance agent and/or agency duly authorized to do so by and on behalf of the insurance company affording the insurance coverage(s) indicated on each Certificate of Insurance.

(7) If the initial, or any subsequently issued Certificate of Insurance expires prior to the completion of the work or termination of this Agreement, the CONSULTANT shall furnish to the COUNTY renewal or replacement Certificate(s) of Insurance, or Certified Binder(s), not later than fifteen (15) calendar days prior to the date of their expiration. Failure of the CONSULTANT to provide the COUNTY with such renewal certificate(s) shall be considered justification for the COUNTY to terminate this Agreement.

Date: 09/25/01

- (8) If any of the insurance coverage(s) required by this Agreement shall reach the date of expiration indicated on the approved Certificate(s) of Insurance without the COUNTY having received satisfactory evidence of renewal or replacement, the CONSULTANT shall automatically and without further notice stop performing all previously authorized services and work. During any time period that the CONSULTANT'S services or work is suspended for failure to comply with the insurance requirements set forth in the Agreement, the CONSULTANT shall not be entitled to any additional compensation or time to provide and perform the required services or work and the COUNTY shall not be required to make payment on any invoices submitted by the CONSULTANT. Upon receipt and approval of renewal or replacement Certificates of Insurance, payment for any such invoices shall be made promptly by the COUNTY.

13.03 - INSURANCE COVERAGES REQUIRED

The CONSULTANT shall obtain and maintain the following insurance coverages as provided hereinbefore, and in the type, amounts and in conformance with the following minimum requirements:

(1) WORKERS' COMPENSATION

Coverage to comply for all employees for 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, or a minimum limit of \$100,000 for each accident, whichever limit is greater.
- (B) Notice of Cancellation and/or Restriction - The policy must be endorsed to provide the COUNTY with thirty (30) days prior written notice of cancellation and/or restriction.

(2) COMMERCIAL GENERAL LIABILITY

Coverage must be afforded on a form no more restrictive than the last edition of the Commercial General Liability Policy filed by the Insurance Services Office and must include the following:

- (A) Minimum limits of \$100,000 per occurrence and \$300,000 aggregate for Bodily Injury Liability and a minimum limit of \$100,000 for Property Damage Liability, or a minimum combined single limit of \$300,000.
- (B) Contractual coverage applicable to this specific Agreement including any hold harmless and/or such indemnification agreement.
- (C) Such additional requirements as are set forth in Article 13.01 and 13.02 hereinabove.

(3) BUSINESS AUTOMOBILE LIABILITY

Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy filed by the Insurance Services Office and must include the following:

- (A) Minimum limits of \$100,000 per person and \$300,000 per accident for Bodily Injury Liability and a minimum limit of \$100,000 for Property Damage Liability, or a minimum combined single limit of \$300,000.
- (B) Coverage shall include owned vehicles, hired and leased, or non-owned vehicles.
- (C) Such additional requirements as are set forth in Articles 13.01

(4) PROFESSIONAL LIABILITY

Coverage must include the following:

- (A) A minimum aggregate limit of \$1,000,000.
- (B) Such additional requirements as are set forth in Articles 13.01 and 13.02 hereinabove.
- (C) Should the Professional Liability Insurance Policy issued pursuant to the above requirements and limits be written so as to provide an applicable deductible amount, or other exclusion or limitation as to the amount of coverage to be provided within the minimum coverage limits set forth above, the COUNTY shall hold the CONSULTANT responsible and liable for any such difference in the amount of coverage provided by the insurance policy. In the event of any such deductible amount, exclusion or limitation, the CONSULTANT shall be required to provide written documentation that is acceptable to the COUNTY establishing that the CONSULTANT has the financial resources readily available to cover damages, injuries and/or losses which are not covered by the policy's deductible amounts, exclusions and/or limitations as stated above.

ARTICLE 14.00 - DUTIES AND OBLIGATIONS IMPOSED ON THE CONSULTANT

The duties and obligations imposed upon the CONSULTANT by this Agreement and the rights and remedies available hereunder shall be in addition to, and not a limitation of, any otherwise imposed or available by law or statute.

ARTICLE 15.00 - REPRESENTATION OF THE COUNTY

The CONSULTANT in providing and performing the services and work required pursuant to this Agreement thereto shall only represent the COUNTY in the manner and to the extent specifically set forth in writing in this Agreement or thereto, and as provided in any written SUPPLEMENTAL TASK

Date: 09/25/01

AUTHORIZATION(S), and CHANGE ORDER(S) issued thereunder.

In the event the CONSULTANT'S services or work involves construction contract administrative support services, the CONSULTANT is not authorized to act on the COUNTY'S behalf, and shall not act on the COUNTY'S behalf, in such a manner as to result in change(s) to (1) the cost or compensation to be paid the construction contractor, or (2) the time for completing the work as required and agreed to in the construction contract, or (3) the scope of the work set forth in the construction contract documents, unless such representation is specifically provided for, set forth and authorized in this Agreement or thereto.

The COUNTY will neither assume nor accept any obligation, commitment, responsibility or liability which may result from representation by the CONSULTANT not specifically provided for and authorized as stated hereinabove.

ARTICLE 16.00 - OWNERSHIP OF DOCUMENTS

All documents such as drawings, tracings, notes, computer files, photographs, plans, specifications, maps, evaluations, reports and other records and data relating to this project, other than working papers, specifically prepared or developed by the CONSULTANT under this Agreement shall be property of the CONSULTANT until the CONSULTANT has been paid for providing and performing the services and work required to produce such documents.

Upon completion or termination of this Agreement, or upon the issuance by the COUNTY of a written Change Order deleting all or portions of the scope of services or task(s) to be provided or performed by the CONSULTANT, all of the above documents, to the extent requested in writing by the COUNTY, shall be delivered by the CONSULTANT to the COUNTY within seven (7) calendar days of the COUNTY making such a request. In the event the COUNTY gives the CONSULTANT a written Notice of Termination of all or part of the services or work required, or upon the issuance to the CONSULTANT by the COUNTY of a written Change Order deleting all or part of the services or work required, the CONSULTANT shall deliver to the COUNTY the requested documents as set forth hereinabove, with the mutual understanding and commitment by the COUNTY that compensation earned or owing to the CONSULTANT for services or work provided or performed by the CONSULTANT prior to the effective date of any such termination or deletion will be paid to the CONSULTANT within thirty (30) calendar days of the date of issuance of the Notice of Termination or Change Order.

The CONSULTANT, at its expense, may make and retain copies of all documents delivered to the COUNTY for reference and internal use. ~~The CONSULTANT shall not, and agrees not to, use any of these documents, and data and information contained therein on any other project or for any other client without the prior expressed written permission of the COUNTY.~~

Any use by the COUNTY of said documents, and data and information contained therein, obtained by the COUNTY under the provisions of this Agreement for any purpose not within the scope of this Agreement shall be at the risk of the COUNTY, and without liability to the CONSULTANT. The COUNTY shall be

Date: 09/25/01

liable and agrees to be liable for and shall indemnify, defend and hold the CONSULTANT harmless for any and all claims, suits, judgments or damages, losses and expenses including court costs, expert witness and professional consultation services, and attorneys' fees arising out of the COUNTY'S use of such documents in a manner contrary to the provisions set forth hereinabove. The COUNTY hereby acknowledges receipt of \$10.00 (ten and no hundreds dollars) and other good and valuable consideration from the CONSULTANT which has been paid as specific consideration for the indemnification provided herein.

Notwithstanding anything in this Agreement to the contrary, Consultant is hereby granted an irrevocable, royalty free, worldwide, perpetual license to use, reproduce, copy, distribute and make derivatives of all plans, specifications, drawings or designs delivered by Consultant to County under this Agreement (collectively, the "work Product"), regardless of whether Consultant has resigned, this Agreement has been terminated, Consultant's scope of services has been modified or Consultant's services under this Agreement have been completed.

ARTICLE 17.00 - MAINTENANCE OF RECORDS

The CONSULTANT will keep and maintain adequate records and supporting documentation applicable to all of the services, work, information, expense, costs, invoices and materials provided and performed pursuant to the requirements of this Agreement. Said records and documentation will be retained by the CONSULTANT for a minimum of five (5) years from the date of termination of this Agreement.

The COUNTY and its authorized agents shall, with reasonable prior notice, have the right to audit, inspect and copy all such records and documentation as often as the COUNTY deems necessary during the period of this Agreement, and during the period five (5) years thereafter; provided, however, such activity shall be conducted only during normal business hours and at the expense of the COUNTY, and provided further that to the extent provided by law the COUNTY shall retain all such records confidential.

ARTICLE 18.00 - HEADINGS

The HEADINGS of the Articles, Sections, Exhibits, Attachments, Phases or Tasks as contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions contained in such Articles, Sections, Exhibits, Attachments, Phases or Tasks.

ARTICLE 19.00 - ENTIRE AGREEMENT

This Agreement, including referenced Exhibits and Attachments hereto, constitutes the entire Agreement between the parties hereto and shall supercede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matters set forth herein, and any such prior agreements or understandings shall have no force or effect whatever on this Agreement.

The following listed documents, which are referred to hereinbefore,

Date: 09/25/01

are attached to and are acknowledged, understood and agreed to be an integral part of this Agreement:

- (1) EXHIBIT "A" entitled "Scope of Professional Services" dated April 1, 2005.
- (2) EXHIBIT "B" entitled "Compensation and Method of Payment" dated April 1, 2005.
- (3) EXHIBIT "C" entitled "Time and Schedule of Performance" dated April 1, 2005.
- (4) EXHIBIT "D" entitled "Consultant's Associated Sub-Consultant(s) and SubContractor(s)", dated April 1, 2005.
- (5) EXHIBIT "E" entitled "Project Guidelines and Criteria", dated April 1, 2005.
- (6) EXHIBIT "F" entitled "Truth in Negotiation Certificate", dated April 1, 2005.
- (7) EXHIBIT "G" entitled "Insurance". (Containing copies of applicable Certificates of Insurance).
- (8) EXHIBIT "H" entitled "Amendment to Articles", dated April 1, 2005.

ARTICLE 20.00 - NOTICES AND ADDRESS OF RECORD

20.01 NOTICES BY CONSULTANT TO COUNTY

All notices required and/or made pursuant to this Agreement to be given by the CONSULTANT to the COUNTY shall be in writing and shall be

Date: 09/25/01

given by the United States Postal Service Department first class mail service, postage prepaid, addressed to the following COUNTY address of record and sent to the attention of the County's Project Manager:

Lee County Board of County Commissioners
Post Office Box 398
Fort Myers, Florida 33902-0398
Department: Public Works

20.02 NOTICES BY COUNTY TO CONSULTANT

All notices required and/or made pursuant to this Agreement to be given by the COUNTY to the CONSULTANT shall be made in writing and shall be given by the United States Postal Service Department first class mail service, postage prepaid, addressed to the following CONSULTANT'S address of record:

Carter & Burgess, Inc.
(CONSULTANT'S Business Name)
8875 Hidden River Parkway, Suite 300
(Street/P.O. Box)
Tampa, Florida 33637
(City)(State)(Zip Code)

Telephone Number: (813) 975-7241
Fax Number: (813) 975-7242

ATTENTION: Cassandra Ecker
Project Manager

20.03 CHANGE OF ADDRESS OF RECORD

Either party may change its address of record by written notice to the other party given in accordance with the requirements of this Article.

ARTICLE 21.00 - TERMINATION

This Agreement may be terminated by the COUNTY at its convenience, or due to the fault of the CONSULTANT, by the COUNTY giving thirty (30) day

Date: 09/25/01

written notice to the CONSULTANT.

If the CONSULTANT is adjudged bankrupt or insolvent; if it makes a general assignment for the benefit of its creditors; if a trustee or receiver is appointed for the CONSULTANT or for any of its property; if it files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws; if it disregards the authority of the COUNTY'S designated representatives; if it otherwise violates any provisions of this Agreement; or for any other just cause, the COUNTY may, without prejudice to any other right or remedy, and after giving the CONSULTANT a thirty (30) calendar day written notice, terminate this Agreement.

In addition to the COUNTY'S contractual right to terminate this Agreement in its entirety as set forth above, the COUNTY may also, at its convenience, stop, suspend, supplement or otherwise change all, or any part of, the Scope of Professional Services as set forth in Exhibit "A", or the Project Guidelines and Criteria as set forth in Exhibit "E", or as such may be established by a Supplemental Task Authorization or Change Order Agreement. The COUNTY shall provide written notice to the CONSULTANT in order to implement a stoppage, suspension, supplement or change.

The CONSULTANT may request that this Agreement be terminated by submitting a written notice to the COUNTY dated not less than thirty (30) calendar days prior to the requested termination date and stating the reason(s) for such a request. However, the COUNTY reserves the right to accept or not accept the termination request submitted by the CONSULTANT, and no such termination request submitted by the CONSULTANT shall become effective unless and until CONSULTANT is notified, in writing, by the COUNTY of its acceptance.

21.01 CONSULTANT TO DELIVER MATERIAL

Upon termination, the CONSULTANT shall deliver to the COUNTY all papers, drawings, models, and other material in which the COUNTY has exclusive rights by virtue hereof or of any business done, or services or work performed or provided by the CONSULTANT on behalf of the COUNTY.

ARTICLE 22.00 - AMENDMENTS

The covenants, terms and provisions set forth and contained in all of the Articles to this Agreement may be amended upon the mutual acceptance thereof, in writing, by both parties to this Agreement, as evidenced by Exhibit H for amending articles. In the event of any conflicts between the requirements, provisions and/or terms of the Agreement and any written Amendment (Exhibit H), the requirements, provisions and/or terms of the Amendment shall take precedence.

ARTICLE 23.00 - MODIFICATIONS

Modifications to covenants, terms and provisions of this Agreement shall only be valid when issued in writing as a properly executed CHANGE ORDER(S) or SUPPLEMENTAL TASK AUTHORIZATION(S). In the event of any conflicts between the requirements, provisions, and/or terms of this Agreement and any written CHANGE ORDER(S), and/or SUPPLEMENTAL TASK AUTHORIZATIONS, the latest executed CHANGE ORDER(S), and/or SUPPLEMENTAL

Date: 09/25/01

TASK AUTHORIZATION(S) shall take precedence.

In the event the COUNTY issues a purchase order, memorandum, letter, or other instruments covering the professional services, work and materials to be provided and performed pursuant to this Agreement, it is hereby specifically agreed and understood that such purchase order, memorandum, letter or other instruments are for the COUNTY'S internal control purposes only, and any and all terms, provisions and conditions contained therein, whether printed or written, shall in no way modify the covenants, terms and provisions of this Agreement and shall have no force or effect thereon.

No modification, waiver, or termination of the Agreement or of any terms thereof shall impair the rights of either party.

ARTICLE 24.00 - ACCEPTANCE

Acceptance of this Agreement shall be indicated by the signature of the duly authorized representative of the hereinabove named parties in the space provided hereinafter and being attested and witnessed as indicated.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement effective the day and year first written above.

ATTEST:

CLERK OF CIRCUIT COURT
Charlie Green, Clerk

COUNTY: LEE COUNTY, FLORIDA
BOARD OF COUNTY COMMISSIONERS

BY: _____

BY: _____
Chairman

DATE: _____

APPROVED AS TO FORM

BY: _____
County Attorney's Office

ATTEST:

(CONSULTANT)

[Handwritten Signature]
(Witness)

BY: *[Handwritten Signature]*
(Authorized Signature)

[Handwritten Signature]
(Witness)

Managing Principal
(Title)

DATE: 5/18/05

CORPORATE SEAL:
Date: 09/25/01



Date: *April 1, 2011*

SCOPE OF SERVICES

for

BASIC SERVICES

Section 1. GENERAL SCOPE STATEMENT

The CONSULTANT shall provide and perform the following services, which shall constitute the GENERAL SCOPE of the BASIC SERVICES under the covenants, terms, and provisions of this SERVICE PROVIDER AGREEMENT.

Section 2. TASKS

Pursuant to the GENERAL SCOPE of the BASIC SERVICES stated herein above, the CONSULTANT shall perform all services and/or work necessary to complete the following task(s) and/or provide the following item(s) which are enumerated to correspond to the task(s) and/or items set forth in EXHIBIT "B" entitled "COMPENSATION AND METHOD OF PAYMENT".

EXHIBIT A

SCOPE OF PROFESSIONAL SERVICES

LEE TRAN TRANSIT FACILITY

LEE COUNTY, FLORIDA

LEE COUNTY PROJECT NUMBER: CN-04-05

WORK ASSIGNMENT 1

CARTER & BURGESS

SITE OPTIONS

To assess the functional/operational compatibility, a schematic level master plan will be developed for the three study sites. The major elements of the site: bus parking, administration and operations building, servicing building, and maintenance shop will be arranged in block form to evaluate the site circulation features, and access from public roads. The most favorable site will receive additional development to identify major areas within buildings, parking arrangements, and building massing.

In conjunction with Lee Tran, the consultants will develop evaluation criteria, weighting factors for each criteria, and document the results for each site. within the LeeTran service area and that will house Administration, Operations and Maintenance offices, functions and facilities, as well as passenger transfer and customer service areas. The new facility must also be designed to accommodate anticipated growth in service, vehicle fleet and staff.

The development of any public transportation project requires an understanding of transportation provider needs, user needs and community needs for protection of neighborhoods and cost effective operations; the relationships between these factors; and the effect of Federal, state and local requirements on related to these factors. Most importantly, a central transit terminal must be developed

within a consensus building process taking into account agency needs, community needs and impacts, and linkages to destinations.

The project is comprised of four major phases:

1. SITE OPTIONS

- Site selection preferences
- Acquisition options
- Acquisition assistance

2. PLANNING

- Program confirmation
- Master planning
- Environmental documentation

3. DESIGN

- Design
- Construction document development

4. CONSTRUCTION

- Bidding support
- Permitting
- Construction administration/management

PHASE 1 - DESCRIPTION OF SERVICES

Due to the nature of the project and project management desires of Lee County, Florida and LeeTran, the project services are divided into phases. The services to be provided under the first phase are described below. As the project progresses, a scope will be developed for each of the subsequent phases Tasks (2-4) or sub phases.

The purpose of Task 1 is to assist Lee County in evaluating and acquiring an appropriate site for the new LeeTran Facility while preparing for subsequent tasks. One of the major challenges of this task will be to achieve Lee Tran's desire to acquire developable land quickly while maintaining flexibility for future grant funds.

PHASE 1 – SERVICES TO BE PERFORMED

Due to the rapidly increasing costs of real property in Lee County, Florida, it is critical that site options and acquisition be completed as quickly as possible.

1.1 SITE EVALUATION/SELECTION

The purpose of Site Evaluation/Selection is to identify and evaluate 3-5 alternative locations that will accommodate the functions of the proposed LeeTran Transit Facility. The consultant will use the Pre-Concept Level Program and Budget Study document previously prepared by a Lee County consultant.

Site Criteria, Search Area, and Preliminary Master Plan

Using the Pre-Concept Level Program and Budget Study, the consultant will validate previous programming that defined minimum/maximum site requirements such as facility size, accessibility and road access, preliminary budget, and site and building configuration (as applicable). This subtask will include the development of one conceptual site layout to verify and determine the site square footage, circulation requirements, and functional area required to accommodate the facility.

The consultant will review these first screen criteria and preliminary master plan with the Lee County Project Manager before proceeding to site alternatives identification.

Deliverable: Memorandum: First Screen Preliminary Site Evaluation Criteria and Site Layout Prototype– Review Draft

Site Alternatives Identification and Suitability Evaluation

Based on the First Screen Criteria, the consultant will identify 3-5 appropriate alternative site locations within the prescribed search area that meet the search criteria. Of the 3-5 initial sites identified through the initial screen, the Lee County Project Manager in cooperation with LeeTran staff will select three (3) sites that will advance to a site suitability evaluation.

The consultant will identify acquisition issues, development issues, and environmental issues for each of the three sites. The site suitability evaluation will include a fatal flaw analysis of the following site characteristics:

- Environmental impacts
- Neighborhood/land use/zoning compatibility
- Accessibility/circulation
- Functional/operational compatibility
- Real estate requirements
- Operations/construction cost

To assess the functional/operational compatibility, a schematic level master plan concept will be developed for each of the three (3) study sites. The major elements of the site (bus parking, administration and operations building, servicing building, and maintenance shop) will be arranged in block form to evaluate the site circulation features and access from public roads. The most favorable site will receive additional development to identify major areas within buildings, parking arrangements, and building massing.

In conjunction with Lee Tran, the consultants will develop evaluation criteria, weighting factors for each criteria, and document the results for each site.

Lee County Division of County Lands will conduct a title search of each of the three (3) candidate properties at the request of the Lee County Project Manger and consultant.

In order to maintain Lee County's confidentiality, the consultant may contact prospective property sellers to discuss possible acquisition, as required by this task. The result of this task will be a preferred site for which a purchase option will be pursued.

Deliverable: Site Alternatives Identification and Suitability Evaluation Report– Review Draft

1.2 FDOT AND FTA COORDINATION

The purpose of coordination with the Florida Department of Transportation (FDOT) and Federal Transit Administration (FTA) is to maintain: open dialogue with FDOT and FTA staff; adherence to FDOT and FTA project development requirements; and eligibility for future grants funds and local match requirements. It is critical that FTA Region 4 be involved in this process to the greatest extent possible. This coordination effort may require in person meetings with the FTA. The consultant will be available to attend up to two (2) meetings at the FTA Region 4 offices in Atlanta, Georgia as directed by the Lee County Project Manager.

Letter of No Prejudice

The consultant will assist LeeTran's coordination with FDOT and FTA staff in an effort to establish and obtain a Letter of No Prejudice. This letter will be required in order to have any real property purchase be considered for local match requirements for future FTA funds. Under this task, the consultant will alert Lee County of any potential actions that may preclude future FDOT/FTA involvement in the project.

Class of Action Determination

Based on the known characteristics of the preferred site, the consultant will proceed with a class of action determination, in coordination with the FDOT and FTA, as prescribed by the National Environmental Policy Act (NEPA). The result of this task will be an understanding of what level of environmental clearance will be required in the next phase of the project.

Deliverable: Memorandum: Class of Action Determination

1.3 SITE ACQUISITION ASSISTANCE

The purpose of Site Acquisition Assistance is to assist the Lee County Division of County Lands with the purchase of the recommended site while maintaining compliance with all FTA regulations.

Preliminary Cost Estimates

As part of the site evaluation and selection process, the consultant will develop preliminary cost estimates for up to three (3) of the site alternatives selected from task 1.1.

Due Diligence

The recommended site will be reviewed and assessed for features that could affect its acquisition, the ability of LeeTran to implement the project and/or expose Lee County or LeeTran to increased liability. A due diligence report will include site specific issues such as:

- Natural land features
- Floodplain locations
- Topography
- Soil suitability
- Natural or man made barriers
- Transportation access – highway/rail access
- Private and public utilities
- Future development plans in the immediate vicinity
- Environmental considerations (visible) and any pertinent legislation
- Conceptual site layouts
- Utility availability & summary of estimated annual operating costs
- Phase I hazardous material environmental assessment

Property Survey, Appraisal and Acquisition

The Lee County Project Manager and consultant will coordinate with the Lee County Property Appraiser, County Lands Department and/or other Lee County departments as needed during this task.

The consultant will provide a survey of the recommended site in a manner compliant with FTA guidance in coordination with the Lee County Division of County Lands.

Lee County Division of County Lands will be responsible to conduct an appraisal and acquisition of the preferred site. The consultant will provide guidance in ensuring compliance with the National Uniform Relocation Assistance Act and FTA guidance such as Circular 5010.1C, Chapter II-2, as coordinated with FTA Region 4.

SERVICES TO BE PROVIDED BY LEE COUNTY

Provide oversight and general supervision for the duration of this assignment.

Review and provide substantive comments on deliverables produced by the consultant.

Provide background data and project information.

Provide copies of project plans, maps and aerials.

Provide advertising and mailing costs for meetings, if required.

LENGTH OF SERVICE

Due to the compressed time frame for this task assignment, the consultant will coordinate closely with the Lee County staff to meet agency deadlines. We will provide our services in an expedient manner to meet the schedule approved by the Lee County Project Manager and mutually agreed upon for various elements of the project.

ASSIGNMENT FEES

Details of the estimated costs are attached in Exhibit B.

Section 3. REIMBURSABLE EXPENSES AND COSTS

When the CONSULTANT'S compensation and method of payment is based on an hourly rate for professional and/or technical personnel, the CONSULTANT shall, in addition to such hourly rates as are set forth in Attachment No. 1 hereto, be entitled to reimbursement of out-of-pocket, non-personnel expenses and costs as set forth in ATTACHMENT NO. 2 hereto dated 1/1/05, entitled "NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS".

ATTACHMENT NO. 1 TO EXHIBIT B

Date: 1/1/05

CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE ***

for

Lee Tran Transit Facility

CARTER & BURGESS

(A separate Attachment No. 1 should be included for each Sub-Consultant)

Rates subject to a 5.5% annual increase.

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct* Payroll Average Hourly Rate (2005)	(3) Multiplier**	(4) (2005) Hourly Rate To Be Charged (Column 2x3)
Project Director	\$49.75	3.05	\$151.74
Chief Engineer	\$67.31		\$205.30
Senior Engineer	\$55.29		\$168.63
Traffic Engineer	\$37.26		\$113.64
Senior Architect	\$57.70		\$175.99
Project Architect	\$28.85		\$87.99
Senior Real Estate Analyst	\$41.40		\$126.27
Senior Planner	\$33.66		\$102.66
Planner	\$26.00		\$79.30

MISCELLANEOUS & OUT-OF-POCKET EXPENSES

Financial Project ID: 0 Contract #: 0 Project Name: Task #1
 Name of Consultant: Carter & Burgess Date: Not Issued FAP No.: 0

ITEM DESCRIPTION		SUB TOTAL	ITEM TOTAL
REPRODUCTION			
Photocopy 8.5 x 11	2000 copies @ \$0.10 each =	\$ 200.00	
11 x 17	2000 copies @ \$0.18 each =	\$ 360.00	
Color copies	300 copies @ \$1.00 each =	\$ 300.00	
Film and Processing	0 roll @ \$0.00 each =	\$ -	\$ 860.00
PLOTTING			
11 x 17 Xerographic Bond	0 Sheets @ \$ 0.25 Per Sheet	\$ -	
30x42 Roll Maps (Visual Aid Maps)	100 Sheets @ \$ 0.55 Per Sheet	\$ 55.00	\$ 55.00
TRAVEL			
Assumes 2 trips of 2 people for each: Dallas (Architect) and Ft. Worth (RE Analyst):			
Trips	2.0 x		@ \$ 21.00 per day
Composite Per Diem	4 people	\$ 504.00	@ \$ 65.00 per day
Rental Car	2.0 x 4 vehicles	\$ 1,560.00	@ \$ 400.00 per ticket
Transport. - (Comm.)	2.0 x 4 people	\$ 3,200.00	@ \$ - per mile
(POV)	0.0 x 0 miles	\$ -	@ \$ 150.00 per night
Hotel	2.0 x 4 people	\$ 2,400.00	
		\$ 7,664.00	
SHIPPING, TELEPHONE & FAX			
Shipping:	6 months @ \$100.00 per month =	\$ 600.00	
Telephone:	6 months @ \$100.00 per month =	\$ 600.00	
		\$ 1,200.00	
TOTAL EXPENSES			\$ 9,779.00

For comparison: Carter & Burgess audited expense rate used for DOT projects is 15.66% of raw labor.
 If used for this project, that percentage would result in expenses of: \$ 11,297.91

MAINTENANCE DESIGN GROUP

Rates subject to a 5.5% annual increase.

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct* Payroll Average Hourly Rate (2005)	(3) Multiplier**	(4) (2005) Hourly Rate To Be Charged (Column 2x3)
Facility Design Manager	\$56.00	3.00	\$168.00
Planner	\$29.50		\$88.50

NODARSE & ASSOCIATES

Rates subject to a 5.5% annual increase.

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct* Payroll Average Hourly Rate (2005)	(3) Multiplier**	(4) (2005) Hourly Rate To Be Charged (Column 2x3)
Haz Mat Manager	\$50.00	3.00	\$150.00
Senior Engineer	\$45.00		\$135.00
Project Engineer	\$35.00		\$105.00
CADD Operator	\$20.00		\$60.00
Engineering Technician	\$18.00		\$54.00
Administrative Assistant	\$15.00		\$45.00

**ESTIMATE OF WORK EFFORT AND COST
ATTACHMENT "B-2"**

Name of Consultant: Maintenance Design Group
 Project Name: LeeTran Transit Facility - Phase 1
 Contract No.: 0
 Contract Name: LeeTran Transit Facility
 Financial Project No.: 0
 F.A.P. No.: 0
 Date of NTP: Not issued

No.	Activities	Facility Design Manager		Planner		Total Activity Hours	Total Activity Salary	Average Hourly Rate
		Hours	Rate	Hours	Rate			
1.1	Site Evaluation/Selection	4	\$56.00		\$29.50	4	\$224.00	\$56.00
	Site Criteria, Search Area, and Preliminary Master Plan			40		160	\$7,900.00	\$49.38
1.2	Site Alternatives Identification and Suitability Evaluation							
	FDOT and FTA Coordination							
	Letter of No Prejudice					0	\$0.00	#DIV/0!
	Class of Action Determination					0	\$0.00	#DIV/0!
1.3	Site Acquisition Assistance							
	Preliminary Cost Estimates					0	\$0.00	#DIV/0!
	Due Diligence					0	\$0.00	#DIV/0!
	Property Survey, Appraisal and Acquisition					0	\$0.00	#DIV/0!
	Total	124	\$6,944.00	40	\$1,180.00	164	\$8,124.00	\$49.54

FEE COMPUTATION

Salary Costs		\$	8,124.00
Overhead plus operating margin)	x3	\$	16,248.00
Subtotal (Salary Related Costs)		\$	24,372.00
Expenses	See worksheet	\$	5,721.50
		\$	30,093.50

MISCELLANEOUS & OUT-OF-POCKET EXPENSES

Financial Project ID: 0 Contract #: 0 Project Name: Task #1
 Name of Consultant: Maintenance Design Group Date: Not Issued FAP No.: 0

ITEM DESCRIPTION		SUB TOTAL	ITEM TOTAL
REPRODUCTION			
Photocopy	8.5 x 11	750 copies @ \$0.10 each =	\$ 75.00
	11 x 17	750 copies @ \$0.18 each =	\$ 135.00
Color copies		500 copies @ \$1.00 each =	\$ 500.00
Film and Processing		0 roll @ \$0.00 each =	\$ -
PLOTTING			\$ 710.00
11 x 17 Xerographic Bond		0 Sheets @ \$ 0.25 Per Sheet	\$ -
30x42 Roll Maps (Visual Aid Maps)		50 Sheets @ \$ 0.55 Per Sheet	\$ 27.50
TRAVEL			
To Project:			
Composite Per Diem	Trips 3.0 x	2 people @ \$ 21.00 per day	\$ 504.00
Rental Car	3.0 x	1 vehicles @ \$ 65.00 per day	\$ 780.00
Transport. - (Comm.) Wash	3.0 x	1 people @ \$ 300.00 per ticket	\$ 900.00
Houston	2.0	1 @ \$ 500.00	\$ 1,000.00
- (POV)	0.0 x	0 miles @ \$ - per mile	\$ -
Hotel	3.0 x	2 people @ \$ 150.00 per night	\$ 600.00
SHIPPING, TELEPHONE & FAX			\$ 3,784.00
Shipping:	6 months	@ \$100.00 per month =	\$ 600.00
Telephone:	6 months	@ \$100.00 per month =	\$ 600.00
TOTAL EXPENSES			\$ 1,200.00
			\$ 5,721.50

**ESTIMATE OF WORK EFFORT AND COST
ATTACHMENT "B-3"**

Name of Consultant: Nodarse
 Project Name: Lee Tran Transit Facility - Phase 1
 Contract No.: 0
 Contract Name: Lee Tran Transit Facility
 Financial Project No.: 0
 F.A.P. No.: 0
 Date of NTP: Not issued

No.	Activities	Haz Mat Manager		Senior Engineer		Project Engineer		CADD Operator		Engineering Technician		Administrative Asst.		Total Activity Hours	Total Activity Salary	Average Hourly Rate
		Hours	Rate	Hours	Rate	Hours	Rate	Hours	Rate	Hours	Rate	Hours	Rate			
1.3	Site Acquisition Assistance	2	\$50.00	6	\$45.00	20	\$35.00	6	\$20.00	36	\$18.00	8	\$15.00	78	\$1,958.00	\$25.10
	Total	2		6		20		6		36		8		78	\$1,958.00	\$25.10

FEE COMPUTATION

Salary Costs	100%	\$	1,958.00
Overhead	185%	\$	3,622.30
Operating margin	15%	\$	293.70
Subtotal (Salary Related Costs)	300%	\$	5,874.00
Expenses: Geotechnical Field and Lab Testing		\$	4,016.00
TOTAL		\$	9,890.00

BEAN, WHITAKER, LUTZ & KAREH, INC.

Rates subject to a 5.5% annual increase.

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct* Payroll Average Hourly Rate (2005)	(3) Multiplier**	(4) (2005) Hourly Rate To Be Charged (Column 2x3)
Project Manager (Reg. Land Surveyor)	\$49.00	2.756	\$135.00
Field Crew (2-Man)	\$36.67	2.727	\$100.00
GPS ()	\$45.00	1.11	\$50.00
Reg. Land Surveyor	\$28.00	3.571	\$100.00
CAD Tech. III	\$20.00	3.4	\$68.00
Average Multiplier		2.589	

*NOTE: Direct Payroll hourly rate means the actual gross hourly wage paid.

**NOTE: Indicate applicable multiplier for indirect personnel costs, general administrative and overhead costs, and profit.

***NOTE: A separate personnel hourly rate schedule should also be attached for each Sub-Consultant listed in Exhibit "D".

ATTACHMENT NO. 2 TO EXHIBIT B

Date: 11/11/2011

NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS

For Lee Tran Transit Facility

CONSULTANT OR SUB-CONSULTANT NAME See Individual Sheets

SEE ATTACHED SPREADSHEETS FOR ESTIMATED COST OF REIMBURSABLE EXPENSES – PROVIDED FOR EACH CONSULTANT AND SUBCONSULTANT

**ESTIMATE OF WORK EFFORT AND COST
ATTACHMENT "B-4"**

Name of Consultant: BWLK
 Project Name: LeeTran Transit Facility - Phase 1
 Contract No.: 0
 Contract Name: LeeTran Transit Facility
 Financial Project No.: 0
 F.A.P. No.: 0
 Date of NTP: Not issued

No.	Activities/Raw Cost	Principal-Surveyor/Engineer		Field Crew (2-man)		Field Crew GPS-2-man		Reg. Land Surveyor		CAD Tech. III		Administrative Asst.		Total Activity Hours	Total Activity Salary	Average Hourly Rate
		Hours	Rate	Hours	Rate	Hours	Rate	Hours	Rate	Hours	Rate	Hours	Rate			
1.3	Site Acquisition Assistance	18	\$49.00	24	\$36.67	16	\$45.00	16	\$28.00	22	\$20.00			96	\$3,370.08	\$35.11
	Total	18	\$49.00	24	\$36.67	16	\$45.00	16	\$28.00	22	\$20.00			96	\$3,370.08	\$35.11
No.	Activities/Loaded Rates	Principal-Surveyor/Engineer		Field Crew (2-man)		Field Crew GPS-2-man		Reg. Land Surveyor		CAD Tech. III		Administrative Asst.		Total Activity Hours	Total Activity Salary	Average Hourly Rate
		Hours	Rate	Hours	Rate	Hours	Rate	Hours	Rate	Hours	Rate	Hours	Rate			
1.3	Site Acquisition Assistance	18	\$135.00	24	\$100.00	16	\$50.00	16	\$100.00	22	\$68.00			96	\$8,726.00	\$35.11
	Total	18	\$135.00	24	\$100.00	16	\$50.00	16	\$100.00	22	\$68.00			96	\$8,726.00	\$35.11

Raw Cost	\$3,370.08
Loaded	\$8,726.00
Avg. Multiplier	2.589
Subtotal (Salary Related Costs)	\$8,726.00
Expenses	\$ -
TOTAL	\$ 8,726.00

EXHIBIT D

Date:

CONSULTANT'S ASSOCIATED SUB-CONSULTANT(S) AND SUBCONTRACTOR(S)

for Lee Tran Transit Facility

CONSULTANT has identified the following Sub-Consultant(s) and/or SubContractor(s) which may be engaged to assist the CONSULTANT in providing and performing services and work on this Project:

(If none, enter the word "none" in the space below.)

Service and/or Work to be Provided or Performed	Name and Address of Individual or Firm	Disadvantaged, Minority, Women, or Business Enterprise, (If Yes, Indicate Type)			Sub-Consultant Services are Exempted from Prime Consultant's Insurance Coverage	
		Yes	No	Type	Yes	No
Architecture / Engineering / Facility Design	Maintenance Design Group		X		X	
Geotechnical and Haz Mat Services	Nodarse & Associates	X		W	X	
Survey	Bean, Whitaker, Lutz & Kareh Inc.		X		X	

for
Lee Tran Transit Facility

EXHIBIT E
APRIL 1, 2005

The COUNTY has established the following Guidelines, Criteria, Goals, Objectives, Constraints, Schedule, Budget and/or Requirements, which shall serve as a guide to the CONSULTANT in performing the professional services and work to be provided pursuant to this Agreement:

(If none, enter the word "none" in the space below)

Item No. 1

Option for land purchase/land purchase contract shall be offered on an appropriate parcel within 1 year from Notice to Proceed.

EXHIBIT F

DATE: April 1, 2005

TRUTH IN NEGOTIATION CERTIFICATE

This Certificate is executed and given by the undersigned as a condition precedent to entering into a Professional Services Agreement with the Lee County Board of County Commissioners for the project known as:

Before me, the undersigned authority personally appeared, who having personal knowledge as to the facts and statements contained herein after being duly sworn, deposes and states under oath that:

1. This Certificate shall be attached to and constitute an integral part of the above said Professional Services Agreement as provided in Article 3.11.
2. The undersigned hereby certifies that the wage rates and other factual unit costs supporting the compensation on which this Professional Services Agreement is established are accurate, complete, and current on the date set forth here-in-above.
3. The truth of statements made herein may be relied upon by the County and the undersigned is fully advised of the legal effect and obligations imposed upon him by the execution of this instrument under oath.

Executed on behalf of the Party to the Professional Services Agreement referred to as the CONSULTANT, doing business as:

BY: Carter & Burgess, Inc
Frank Carlile
 TITLE: Managing Principal

The foregoing instrument was signed and acknowledged before me this 19th day of May, 2005, by Frank Carlile who has produced Driver's Identification C-644-56 as 49-102-0 (Type of Identification and Number) identification.

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY)
5/20/05

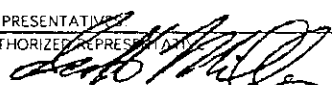
PRODUCER Wm. Rigg Co. 777 Main Street, Suite C-50 Fort Worth, TX 76102-5333 817-820-8100	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
	INSURERS AFFORDING COVERAGE
INSURED Carter & Burgess, Inc. 1000 Legion Place, #1400 Orlando, FL 32801	INSURER A: American Zurich Ins Co
	INSURER B: Sentry Ins a Mutual Co
	INSURER C: Great American Ins. Co
	INSURER D: American Guarantee & Liab
	INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	CPO3981552-02 Blanket Addl.Insd & Blkt.Waiver of Subrogation as Required by Written Contract.	3/31/05	7/01/06	EACH OCCURRENCE \$ 1000000 FIRE DAMAGE (Any one fire) \$ 50000 MED EXP (Any one person) \$ 5000 PERSONAL & ADV INJURY \$ 1000000 GENERAL AGGREGATE \$ 2000000 PRODUCTS - COMP/OP AGG \$ 2000000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	BAP3981554-03 Blanket Addl.Insd & Blanket Waiver of Subrogation as Required by written contract.	3/31/05	7/01/06	COMBINED SINGLE LIMIT (Ea accident) \$ 1000000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
	EXCESS LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$ 10000	UBA9310317-02 COMPANY D TUE3577730-05 = COMPANY C EXCESS LIABILITY	3/31/05	7/01/06	EACH OCCURRENCE \$ 3000000 AGGREGATE \$ 3000000 Each Occur. \$ 22000000 Aggregate \$ 22000000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	90-05811 incl Blkt Waiver of Subrogation per Contract	3/31/05	7/01/06	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input checked="" type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1000000 E.L. DISEASE - EA EMPLOYEE \$ 1000000 E.L. DISEASE - POLICY LIMIT \$ 1000000
A	OTHER PROPERTY,SPECIAL 80% CO INS..RC	CPO3981552-01	3/31/05	7/01/06	BLDG, BPP & VALUABLE PAPERS \$43,377,100;\$25,000 PROP.DED.

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS
 ATTN: DEPARTMENT OF PUBLIC WORKS
 RE: C&B PROJECT: LEE COUNTY TRANSIT FACILITY 490045

CERTIFICATE HOLDER	ADDITIONAL INSURED: INSURER LETTER:	CANCELLATION
LEE COUNTY BOARD OF COUNTY COMMISSIONERS P O BOX 398 FORT MYERS, FL 33902-0398		SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVE. AUTHORIZED REPRESENTATIVE: 

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY)
5/20/05

PRODUCER
Wm. Rigg Co.
777 Main Street, Suite C-50
Ft. Worth, TX 76102-5333
817-820-8100 Fax-817-870-0310

INSURED
Carter & Burgess, Inc.
1000 Legion Place #1400
Orlando, FL 32801

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

INSURER A: Lexington Ins Co
INSURER B: Lloyds of London
INSURER C: CNA (Columbia Casualty)
INSURER D: Quanta Specialty Lines Ins Co
INSURER E:

COVERAGES

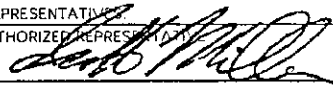
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	**CONTRACTORS POLLUTION LIAB. INCLUDED IN PROFESSIONAL POLICIES AS SHOWN BELOW			EACH OCCURRENCE \$ FIRE DAMAGE (Any one fire) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
	EXCESS LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
	OTHER A-PROF LIABILITY B-XS PROF LIAB	4580454 LDUSA0500352	5/24/05	7/01/06	\$10,000,000 \$10MIL XS \$10 MIL

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

ATTN: DEPARTMENT OF PUBLIC WORKS
RE: C&B PROJECT: LEE COUNTY TRANSIT FACILITY 490045

C-POLICY #EXN114096010-\$5MIL;D- POLICY #AEP1000193-05 \$5MIL
C-POLICY #EXN276180321-\$5MIL;B- POLICY #LDUSA0500445 \$5MIL = \$40MIL

CERTIFICATE HOLDER	ADDITIONAL INSURED: INSURER LETTER:	CANCELLATION
LEE COUNTY BOARD OF COUNTY COMMISSIONERS P O BOX 398 FORT MYERS, FL 33902-0398		SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVE. AUTHORIZED REPRESENTATIVE: 

63

Marisel A. Walls
Notary Public Signature

Marisel A. Walls
Printed Name of Notary Public

1/15/2008
Notary Commission Number/Expiration

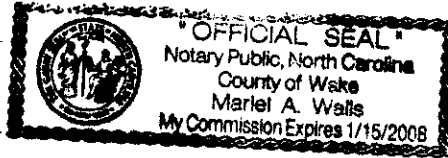


EXHIBIT H

Date: _____

AMENDMENT TO ARTICLES

for

Lee Tran Transit Facility

For amending (i.e., changing, deleting from or adding to) the articles.

(NOTE: Each Article to be amended should be set forth and described in such a manner as to clearly indicate what the proposed changes, deletions or additions are with respect to the present Article provisions, and should set forth the wording of the Article resulting from the Amendment. The following identification system should be followed: Indicate additional (new) words or phrases by inserting the words in the text and then underline. (i.e., Months) and indicated words or phrases in the text to be deleted by striking over (i.e. Weeks).

THE PROVISIONS HEREBY SUPERCEDE ANY PROVISIONS TO THE CONTRARY CONTAINED ELSEWHERE IN THE ARTICLES OR EXHIBITS.

AMENDMENT NO. 1

Section 3.33. Carter & Burgess's standard provision on Limitation of Damages, a copy which is attached hereto is added to the Agreement.

LIMITATION OF DAMAGES

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT TO THE CONTRARY, THE PARTIES HERETO MUTUALLY AGREE THAT NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES OR LOSS OF INCOME, PROFIT OR SAVINGS OF ANY PARTY, INCLUDING THIRD PARTIES, ARISING DIRECTLY OR INDIRECTLY FROM THE PARTIES' RELATIONSHIP UNDER THIS AGREEMENT OR APPLICABLE LAW, INCLUDING BUT NOT LIMITED TO CLAIMS BASED ON CONTRACT, EQUITY, NEGLIGENCE, INTENDED CONDUCT, TORT OR OTHERWISE (INCLUDING BREACH OF WARRANTY, NEGLIGENCE AND STRICT LIABILITY IN TORT).

Section 3.06(1). In the fourth and fifth lines of the paragraph, delete "errors, omissions, and/or negligence" and replace such language with "negligent errors or omissions". "reasonable" will be inserted in the fourth line of the paragraph before "attorney's".

Article 16.00. Notwithstanding anything in this Agreement to the contrary, Consultant is hereby granted an irrevocable, royalty free, worldwide, perpetual license to use, reproduce, copy, distribute and make

derivatives of all plans, specifications, drawings or designs delivered by Consultant to County under this Agreement (collectively, the "Work Product"), regardless of whether Consultant has resigned, this Agreement has been terminated, Consultant's scope of services has been modified or Consultant's services under this Agreement have been completed.