

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

Blue Sheet No. 20050895

1. ACTION REQUESTED/PURPOSE:

Approve Service Provider contract for services with ERES for Geographical Information System (GIS) in the amount of \$1,386,375.03 based collection of digital images of County maintained roads, a pavement inventory, a traffic sign inventory, data base development and interface software. Lee County will piggyback from the City of Ft. Myers contract. Also, approve transfer from reserves in the amount of \$1,056,503 from the Transportation Trust Fund.

2. WHAT ACTION ACCOMPLISHES:

The transfers and allocation of funds allows the project to be completed over the next 10 months as one package resulting in a negotiated cost savings of \$247,746.00, due primarily to the volume of data collection and the joint efforts in cost sharing with the City of Fort Myers. The final product provides the County with digital images of all County jurisdiction roads in a GIS data base format, a pavement management inventory, a traffic sign inventory and the software to create other data base inventories of infrastructure such as street lighting and pavement marking.

3. MANAGEMENT RECOMMENDATION: Staff recommends approval.

4. Departmental Category: 09

C9G

5. Meeting Date: *06-28-2005*

6. Agenda:

- Consent
- Administrative
- Appeals
- Public
- Walk-On

7. Requirement/Purpose: (specify)

- Statute
- Ordinance
- Admin. Code
- Other

8. Request Initiated:

Commissioner _____
 Department Transportation
 Division _____
 By: Scott Gilbertson, Director

9. Background:

The following is a breakdown of some of the over \$184M in key assets that Lee County DOT Traffic maintains:

- 21,762 street segments estimated at 31,340,745 square yards of asphalt surface (at 1" thickness), with an estimated present worth of over \$105M.
- An estimated, minimum of 340,000 signs and about 200,000 signposts yielding a minimum inventory present value of over \$27M.
- 2,138 streetlights with an additional 1,440 new street lights coming on line in the next 18 months, and the present value of this inventory will exceed \$17M.
- 360 signalized intersections with an estimated present worth of over \$35M.

Continued on Page 2

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>	<i>[Signature]</i>	NA		<i>[Signature]</i>	RK 6/17	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>	<i>[Signature]</i>

11. Commission Action:

- Approved
- Deferred
- Denied
- Other

RECEIVED BY COUNTY ADMIN:	<i>[Signature]</i>
6-17-05	
8 35	
COUNTY ADMIN FORWARDED TO:	<i>[Signature]</i>
	<i>[Signature]</i>

Date:	<i>6/17/05</i>
Time:	<i>3:30</i>
Forwarded to:	<i>[Signature]</i>
	<i>6/17/05 8:40 AM</i>

9 BACKGROUND (Continued):

In order to properly manage some of these critical assets DOT has deployed a Pavement Management System and has software in place for establishment of a Traffic Signs Inventory database. Placing inventory data for these very critical roadway elements in an “asset database” and having digital images of the assets is a critical requirement of the County’s management plan. Essential to a complete inventory is a digital image tied to a GIS street segment file. In response to this critical need, Lee County and City of Fort Myers’ staff worked together to develop a joint contract with ERES for the GIS based Inventory. The proposed authorization utilizes a City of Fort Myers contract with ERES that was approved on June 6, 2005. The contract’s terms and costs have been negotiated by City and County staff to meet the County’s and the City’s joint requirements and they reflect price reductions due to the quantity of work. The proposed contract with ERES is a coordinated effort to address the first priority of Lee County DOT’s critical needs.

The County’s portion of the contract with ERES is projected to cost \$1,386,375.03. The County’s contract would provide a digital image for all County roads, a pavement inventory, a County traffic signs inventory, and the software interface platform for County staff to locate and input an inventory of other assets, such as street lighting.

The portion of the project cost not allocated within existing eligible funding sources is \$1,056,377.02. This portion is recommended for funding from Transportation Reserves. The remainder of the project cost is allocated within GIS Project 4040 (\$94,759.86) and by Road Resurfacing Project 4683 for Pavement Management (\$235,238.14). All of the contract work contains critical components of the project and thus, are essential expenditures.

Funds will be made available in account: PD5410917500.503490.

REQUEST FOR TRANSFER OF FUNDS

FUND NAME: Transportation Trust DATE: 06/14/05 BATCH NO. _____

FISCAL YEAR: 2005 FUND #: 17500 DOC TYPE: YB LEDGER TYPE: BA

TO: Traffic Signs & Markings
 (DIVISION NAME) (PROGRAM NAME)

NOTE: PLEASE LIST THE ACCOUNT NUMBER BELOW IN THE FOLLOWING ORDER:
 FUND #-DEPT/DIV #-PROGRAM #-OBJECT CODE #-SUBFUND #-PROJECT#-COST CENTER #.
 (EXAMPLE: BB5120100100.503450)

ACCOUNT NUMBER	OBJECT NAME	DEBIT
PD5410917500.503490	Other Cont. services	\$ 1,056,503

TOTAL TO: \$ 1,056,503

FROM: Non-Departmental Reserves
 (DIVISION NAME) (PROGRAM NAME)

ACCOUNT NUMBER	OBJECT NAME	CREDIT
GC5890117500.509910	Reserve for Contingencies	\$1,056,503

TOTAL FROM: \$ 1,056,503

EXPLANATION Per Blue Sheet #20050895

DIVISION DIRECTOR SIGNATURE DATE

DBS: APPROVAL DENIAL _____

APPROVAL DENIAL _____

CO. ADMIN.: APPROVAL _____ DENIAL _____

BCC APPROVAL DATE _____

[Handwritten Signature]
 DEPARTMENT DIRECTOR SIGNATURE DATE

[Handwritten Signature] 6/17/05
 OPERATIONS ANALYST SIGNATURE DATE

[Handwritten Signature] 6/17/05
 BUDGET OPERATIONS MANAGER SIGNATURE DATE

CO. ADMIN. SIGNATURE DATE

BCC CHAIRMAN SIGNATURE

BA NO: _____ AUTH CODE: _____ TRANS DATE: _____

REV. 05/93



June 14, 2005

Amy Hoyt
GIS Specialist
Lee County Department of Transportation
5650 Enterprise Parkway
Ft. Myers, FL 33905

Dear Amy:

Per your request, this letter is to confirm that Applied Research Associates, Inc. agrees to the "piggy-backing" arrangement between the City of Fort Myers and Lee County to perform professional engineering services for asset management in Lee County.

We look forward to working with you on this important project.

Sincerely,

A handwritten signature in black ink that reads "Michael I. Hammons". The signature is written in a cursive, flowing style.

Michael I. Hammons, Ph.D., P.E.
Principal Engineer

SERVICE PROVIDER AGREEMENT

This SERVICE PROVIDER AGREEMENT is made and entered into this 14th day of June, 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 Applied Research Associates, Inc., hereinafter referred to as the "PROVIDER".

WITNESSETH

WHEREAS, the COUNTY desires to obtain the professional engineering services of said PROVIDER as further described herein referred to as asset management, and,

WHEREAS, the PROVIDER hereby certifies that it 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 Board and Government Agencies responsible for regulating and licensing the services to be provided and performed by the PROVIDER pursuant to this Agreement; and,

WHEREAS, the PROVIDER has reviewed the 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.

NOW, THEREFORE, in consideration of the foregoing, and the terms and provisions as contained herein, the parties agree that a Contract shall exist between them consisting of the following:

ARTICLE 1.0 - SCOPE OF SERVICES

PROVIDER hereby agrees to provide and perform the services required and necessary to complete the services and work as set forth in EXHIBIT "A", dated 14 June 2005, entitled "SCOPE OF SERVICES", which is attached hereto and made a part of this Agreement.

ARTICLE 2.0 - DEFINITIONS

2.1 COUNTY shall mean the Board of County Commissioners of Lee County, a political subdivision of the State of Florida, and all officials and employees.

2.2 PROVIDER shall mean the individual, firm or entity offering 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 the work of subcontractors, required under the covenants, terms and provisions contained in this Agreement.

2.3 SERVICES shall mean all services, work, materials, and all related professional, technical and administrative activities that are necessary to perform and complete the services required pursuant to the terms and provisions of this Agreement.

2.4 ADDITIONAL SERVICES shall mean any additional services that the COUNTY may request and authorize, in writing, which are not included in the Scope of Services as set forth in Article 1.0 above.

2.5 CHANGE ORDER shall mean a written document executed by both parties to this Agreement setting forth such changes to the Scope of Services as may be requested and authorized in writing by the COUNTY.

2.6 SUPPLEMENTAL TASK AUTHORIZATION as used refers to a written document executed by both parties to an existing Professional Service 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.

ARTICLE 3.0 - OBLIGATIONS OF THE PROVIDER

The obligations of the PROVIDER with respect to all the Basic Services and Additional Services authorized pursuant to this Agreement shall include, but not be limited to the following:

3.1 LICENSES. The PROVIDER agrees to obtain and maintain throughout the terms of this Contract all such licenses as are required to do business in the State of Florida and in Lee County, Florida, including, but not limited to, licenses required by the respective State Boards and other governmental agencies responsible for regulating and licensing the services provided and performed by the PROVIDER.

3.2 QUALIFIED PERSONNEL. The PROVIDER agrees that 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 charge of all Basic Services and Additional Services to be provided pursuant to this Agreement.

3.3 STANDARDS OF PROFESSIONAL SERVICE. The PROVIDER agrees to provide and perform all services pursuant to this Agreement in accordance with generally accepted standards of professional practice and, in accordance with the laws, statutes, ordinances, codes, rules, regulations and requirements of governmental agencies which regulate or have jurisdiction over the services to be provided and/or performed by the PROVIDER.

3.4 CORRECTION OF ERRORS, OMISSIONS OR OTHER DEFICIENCIES

- (1) Responsibility to Correct. The PROVIDER agrees to be responsible for the professional quality, technical adequacy and accuracy, timely completion, and the coordination of all data, studies, reports, memoranda, other documents and other services, work and materials performed, provided, and/or furnished by PROVIDER. The PROVIDER shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in such data, studies and other services, work and materials resulting from the negligent act, errors or omissions or intentional misconduct of PROVIDER.

- (2) County's Approval Shall Not Relieve Provider of Responsibility. Neither review, approval, or acceptance by COUNTY of data, studies, reports, memoranda, and incidental professional services, work and materials furnished hereunder by the PROVIDER, shall in any way relieve PROVIDER of responsibility for the adequacy, completeness and accuracy of its services, work and materials. Neither the COUNTY'S review, approval or acceptance of, nor payment for, any part of the PROVIDER'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.

3.5 LIABILITY - PROVIDER TO HOLD COUNTY HARMLESS.

The PROVIDER shall be liable and agrees to be liable for, and shall indemnify, defend and hold the COUNTY 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 PROVIDER'S errors, omissions, and/or negligence. The PROVIDER shall not be liable to, nor be required to 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.

3.6 NOT TO DIVULGE CERTAIN INFORMATION. PROVIDER agrees, during the term of this Agreement, not to divulge, furnish or make available to any third person, firm, or organization, without the COUNTY'S prior written consent, or unless incident to the proper performance of PROVIDER'S obligations hereunder, or as provided for or required by law, 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 PROVIDER, AND PROVIDER shall require all of its employees and subcontractor(s) to comply with the provisions of this paragraph.

3.7 RESPONSIBILITY FOR ESTIMATES. In the event the services required pursuant to this Agreement include the PROVIDER preparing and submitting to the COUNTY any cost estimates, the PROVIDER, by exercise of his experience and judgement shall develop its best cost estimates and shall be held accountable, responsible and liable for the accuracy, completeness, and correctness of any and all such cost estimates to the extent provided hereafter.

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

ADDITIONAL SERVICES shall be administered and executed as "CHANGE ORDERS" or "SUPPLEMENTAL TASK AUTHORIZATIONS" under the Agreement. The Provider shall not provide or perform, nor shall the COUNTY incur or accept any obligation to compensate the PROVIDER for any ADDITIONAL SERVICES, unless a written CHANGE ORDER or SUPPLEMENTAL TASK AUTHORIZATION shall be executed by the parties.

Each such CHANGE ORDER or SUPPLEMENTAL TASK AUTHORIZATION shall set forth a 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 the ADDITIONAL SERVICES.

ARTICLE 4.0 - COMPENSATION AND METHOD OF PAYMENT

4.1 BASIC SERVICES. The COUNTY shall pay the PROVIDER for all requested and authorized basic services rendered hereunder by the PROVIDER and completed in accordance with the requirements, provisions, and/or terms of this Agreement as set forth in EXHIBIT "B" dated 14 June 2005, which is attached hereto and made a part of this Agreement.

4.2 ADDITIONAL SERVICES. The COUNTY shall pay the PROVIDER for all ADDITIONAL SERVICES as have been requested and authorized by the COUNTY and agreed to in writing by both parties to this Agreement, and according to the terms for compensation and payment of said ADDITIONAL SERVICES as set forth in EXHIBIT "B".

4.3 METHOD OF PAYMENT.

(1) MONTHLY STATEMENTS.

The PROVIDER shall be entitled to submit not more than one invoice statement to the COUNTY each calendar month covering services rendered and completed during the preceding calendar month. The PROVIDER'S invoice statement(s) shall be itemized to correspond to the basis of compensation as set forth in the Agreement or CHANGE ORDER(S) or SUPPLEMENTAL TASK AUTHORIZATION(S). The PROVIDER'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) or SUPPLEMENTAL TASK AUTHORIZATION(S).

(2) PAYMENT SCHEDULE.

The COUNTY shall issue payment to the PROVIDER within thirty (30) calendar days after receipt of an invoice statement from the PROVIDER 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 PROVIDER'S invoice statement, the COUNTY shall notify the PROVIDER of such objection or exception with 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 PROVIDER of the amount not in dispute. Payment of any disputed amount will be resolved by the mutual agreement of the parties to this Agreement.

4.4 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, the COUNTY shall compensate the PROVIDER for: (1) all services performed prior to the effective date of termination; (2) reimbursable expenses then due; and (3) reasonable expenses incurred by the PROVIDER in affecting the termination of services and work, and incurred by the submittal to the COUNTY of any documents.

4.5 PAYMENT WHEN SERVICES ARE SUSPENDED. In the event the COUNTY suspends the PROVIDER'S services or work on all or part of the services required by this Agreement, the COUNTY shall compensate the PROVIDER for all 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.

4.6 NON-ENTITLEMENT TO ANTICIPATED FEES IN THE EVENT OF SERVICE TERMINATION, SUSPENSION, ELIMINATION, CANCELLATION AND/OR DECREASE IN SCOPE OF SERVICES. 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 CHANGE ORDER(S), the PROVIDER 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 5.0 - TIME AND SCHEDULE OF PERFORMANCE

5.01 NOTICE TO PROCEED. Following the execution of this Agreement by both parties, and after the PROVIDER has complied with the insurance requirements set forth hereinafter, the COUNTY shall issue the PROVIDER a WRITTEN NOTICE TO PROCEED. Following the issuance of such NOTICE TO PROCEED the PROVIDER shall be authorized to commence work and the PROVIDER 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.

5.02 TIME OF PERFORMANCE. The PROVIDER 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 PROVIDER 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 PROVIDER, or its sub-consultant(s) and/or subcontractor(s), and not due to their fault or neglect, the PROVIDER 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 PROVIDER'S time of performance. Upon receipt of the PROVIDER'S request for an extension of time, the COUNTY shall grant the extension if the COUNTY determines the delay(s) encountered by the PROVIDER, or its sub-consultant(s) and/or subcontractor(s), is due to unforeseen causes and not attributable to their fault or neglect.

5.03 PROVIDER WORK SCHEDULE. The PROVIDER 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 PROVIDER'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 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", pursuant to this Agreement in such a manner that the PROVIDER'S planned and actual work progress can be readily determined. The PROVIDER'S WORK SCHEDULE of planned and actual work progress shall be updated and submitted by the PROVIDER to the COUNTY on a monthly basis.

5.04 FAILURE TO PERFORM IN A TIMELY MANNER. Should the PROVIDER 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 PROVIDER, withhold any or all payments due and owing to the PROVIDER, not to exceed the amount of the compensation for the work in dispute, until such time as the PROVIDER 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 as set forth in this Agreement.

ARTICLE 6.0 - SECURING AGREEMENT

The PROVIDER warrants that the PROVIDER has not employed or retained any company or person other than a bona fide employee working solely for the PROVIDER to solicit or secure this Agreement and that the PROVIDER has not paid or agreed to pay any person, company, corporation or firm other than a bona fide employee working solely for the PROVIDER any commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

ARTICLE 7.0 - ASSIGNMENT, TRANSFER AND SUBCONTRACTS

The PROVIDER 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 PROVIDER with a third party; or (2) the disestablishment of the PROVIDER'S professional practice and the establishment of the successor PROVIDER. Nor shall the PROVIDER subcontract any of its service obligations hereunder to third parties without prior written approval of the COUNTY. The PROVIDER shall have the right, subject to the COUNTY'S prior written approval, to employ other persons and/or firms to serve as subcontractors to PROVIDER in connection with the PROVIDER performing services and work pursuant to the requirements of this Agreement.

In providing and performing the services and work required pursuant to this Agreement, PROVIDER intends to engage the assistance of subcontractor(s) as set forth in EXHIBIT "D", dated 14 June 2005, entitled "PROVIDER'S ASSOCIATED SUBCONTRACTORS", which EXHIBIT "D" is attached hereto and made a part of this Agreement.

ARTICLE 8.0 - APPLICABLE LAW

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.

ARTICLE 9.0 - NON-DISCRIMINATION

The PROVIDER 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 the 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. Should PROVIDER authorize another person, with the COUNTY'S prior written consent, to provide services to the COUNTY hereunder, PROVIDER shall obtain from such person a written agreement pursuant to which such person shall, with respect to the services which he is authorized to provide, undertake for himself the obligations contained in this Section.

ARTICLE 10.0 - INSURANCE

10.1 INSURANCE COVERAGE TO BE OBTAINED

- (1) The PROVIDER shall obtain and maintain such insurance or self-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 PROVIDER, 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 for not less than the limits of liability specified hereinafter, or as required by law, whichever is greater
- (3) The PROVIDER shall require, and shall be responsible for insuring, throughout the time that this Agreement is in effect, that any and all of its subcontractors obtains and maintains until the completion of that subcontractor's work, such of the insurance coverages described herein and as are required by law to be provided on behalf of their employees and others.

- (4) The PROVIDER shall obtain, have and maintain during the entire period of this Agreement all such insurance or a self-insurance program as set forth and required herein.

10.2 PROVIDER REQUIRED TO FILE INSURANCE CERTIFICATE(S)

- (1) The PROVIDER, within fourteen (14) calendar days from receipt of the COUNTY'S written Notice of Award, shall submit to the COUNTY all such insurance certificates or self-insurance program documentation as are required under this Agreement. Failure of the PROVIDER to submit such certificates and documents within the required time shall be considered cause for the COUNTY to find the PROVIDER in default and terminate the contract. Before the PROVIDER shall commence any service or work pursuant to the requirements of this Agreement, the PROVIDER shall obtain and maintain insurance coverages of the types and to the limits specified hereinafter, and the PROVIDER shall file with the COUNTY certificates of all such insurance coverages.
 - (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 or self-insurance program documentation shall be submitted to the COUNTY in triplicate.
 - (4) Each Certificate of Insurance shall include the following:
 - (A) The name and type of policy and coverages provided;
 - (B) The amount or limit applicable to each coverage provided;
 - (C) The date of expiration of coverage.
 - (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) Cancellation - Should any of the 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.
- (5) If the initial, or any subsequently issued Certificate of Insurance expires prior to the completion of the work or termination of this Agreement, the PROVIDER shall furnish to the COUNTY renewal or replacement Certificate(s) of Insurance not later than thirty (30) calendar days prior to the date of their expiration. Failure of the PROVIDER to provide the COUNTY with such renewal certificate(s) shall be justification for the COUNTY to terminate this Agreement.

ARTICLE 11.0 - INSURANCE COVERAGES REQUIRED

The PROVIDER shall obtain and maintain the following insurance coverages:

(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 shall 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 latest edition of the Commercial General Liability Policy filed by the Insurance Services Office and shall 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.

(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 non-owned vehicles, and employee non-ownership.

(4) PROFESSIONAL LIABILITY

Coverage shall include the following:

(A) A minimum aggregate limit of \$

(B) Should the Professional Liability Insurance Policy issued pursuant to the above requirements and limits, or self-insurance program, provide an applicable deductible amount, or other exclusion or limitation, or sovereign immunity as to the amount of (4) coverage to be provided within the minimum coverage limits set forth above, the COUNTY shall hold the PROVIDER 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, or amount of sovereign immunity, the PROVIDER shall be required to provide written documentation that is acceptable to the COUNTY establishing that the PROVIDER 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 12.0 - DUTIES AND OBLIGATIONS IMPOSED ON THE PROVIDER

The duties and obligations imposed upon the PROVIDER 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 13.0 - OWNERSHIP AND TRANSFER OF DOCUMENTS

All documents such as payment records, notes, computer files, evaluations, reports and other records and data relating to the services specifically prepared or developed by the PROVIDER under this Agreement shall be the property of the PROVIDER until the PROVIDER has been paid for performing the services and work required to produce such documents.

Upon completion or termination of this Agreement, all of the above documents to the extent requested by the COUNTY shall be delivered to the COUNTY or to any subsequent PROVIDER within thirty (30) calendar days.

The PROVIDER, at its expense, may make and retain copies of all documents delivered to the COUNTY for reference and internal use.

ARTICLE 14.0 - MAINTENANCE OF RECORDS

The PROVIDER 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 PROVIDER for a minimum of five (5) years from the date of termination of this Agreement, or for such period as required by law.

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 as set forth in the paragraph above; provided, however, such activity shall be conducted only during normal business hours of the PROVIDER and at the expense of the COUNTY.

ARTICLE 15.0 - HEADINGS

The headings of the Articles, Sections, Exhibits, and Attachments 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, Section, Exhibits and Attachments.

ARTICLE 16.0 - ENTIRE AGREEMENT

This Agreement, including the referenced Exhibits and Attachments, constitutes the entire Agreement between the parties and shall supersede all prior agreements or understandings, written or oral, relating to the matters set forth herein.

ARTICLE 17.0 - NOTICES AND ADDRESS

17.1 NOTICES BY PROVIDER TO COUNTY All notices required and/or made pursuant to this Agreement to be given to the PROVIDER to the COUNTY shall be in writing and shall be given by the United States Postal Service to the following COUNTY address of record:

Lee County Board of County Commissioners
PO Box 398
Ft Myers FL 33902-0398
Attention: Amy Hoyt

17.2 NOTICES BY AUTHORITY TO PROVIDER All notices required and/or made pursuant to this Agreement to be given by the COUNTY to the PROVIDER shall be made in writing and shall be given by the United States Postal Service to the following PROVIDER'S address of record:

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

ATTEST: COUNTY: LEE COUNTY, FLORIDA

CLERK OF CIRCUIT COURT BOARD OF COUNTY COMMISSIONERS
Charlie Green, Clerk

BY: _____ BY:

DATE:

APPROVED AS TO FORM

BY:

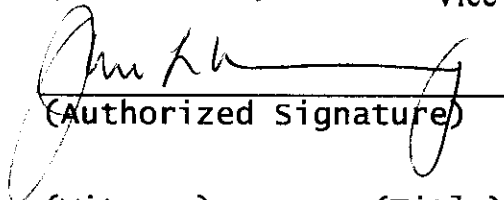
County Attorney's Office

APPLIED RESEARCH ASSOCIATES, INC
4300 SAN MATEO NE SUITE A-220
ALBUQUERQUE, NEW MEXICO 87110

ATTEST:


Jack L. McChesney
Vice President, Contracts

(CONSULTANT)


(Authorized Signature)

(Witness)

(Title)

BY:  (Witness)
Margaret E. Stacy
Subcontracts Manager

DATE: 6/14/2005

CORPORATE SEAL:

EXHIBIT A

Date: 14 June 2005

SCOPE OF SERVICES

for ASSET MANAGEMENT

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".

Task 1: Kick-Off Meeting

The CONSULTANT will conduct a 1-day kick-off meeting to clarify the proposed work activities, coordinate the data collection efforts, and finalize the proposed work plan for the project. The meeting will be conducted in Lee County and should involve representatives of each County department that is participating in the asset management data collection project.

Task 2: Project Planning and Mobilization

The CONSULTANT will perform the following activities:

- With assistance from the County's staff, the CONSULTANT will compile any changes in roadway information since the original system implementation in 2002. This information includes construction history (layer type, thickness, and construction date), traffic, roadway classification, subgrade conditions, street dimensions, ROW width, and other pertinent information. The data will be acquired from sources made available by the County (e.g., digital files, construction plans, reports). The CONSULTANT will compile the information into an appropriate format (either Microsoft Access® or Microsoft Excel® depending on the source data) that will be ultimately uploaded into the PAVEMENTview Plus pavement management software.
- The CONSULTANT will work with the County's GIS staff to update the pavement management sectioning to reflect the latest roadway information. The CONSULTANT will update the PAVEMENTview Plus database as necessary during this step. Changes to this database will be sent to the County

in text format with CartêGraph import filters. The CONSULTANT will provide assistance to the County with the upload as required.

- The CONSULTANT will develop a survey routing plan based on the amount and make up of streets included in the survey. The routing plan will optimize the survey efficiency and minimize the cost to the County.
- The CONSULTANT will mobilize the digital survey equipment and staff to Lee County.

Task 3: Collect Digital Images of Roadway Surfaces and Roadway Assets

The CONSULTANT will conduct an automated survey using a vehicle equipped with digital pavement and right-of-way cameras and a set of lasers mounted on the front bumper. The CONSULTANT's digital survey vehicle will simultaneously record the surface condition, rutting, and roughness of the pavement surface. It will also record images of roadside signs, traffic signals, sidewalks, in-pavement manholes, guardrails, pavement markings, fencing, and other roadside assets while traveling at prevailing traffic speeds. The County will provide no traffic control.

Task 4: Update Pavement Management Database

The CONSULTANT will use the digital images obtained in Task 3 to determine pavement distress using the survey guides and protocols accomplished in the original system implementation in 2002. Pavement condition data will be taken directly from the images for loading into the database.

The CONSULTANT will upload the updated roadway information and the new condition data into the PAVEMENTview Plus databases.

The CONSULTANT will work closely with the County to update the engineering analysis parameters in the PAVEMENTview Plus pavement management software so that they accurately incorporate the latest condition data for the arterial and collector roads, the most recent roadway information (construction history, traffic), and the County's current maintenance and rehabilitation practices. Specifically, the CONSULTANT will perform the following services:

- The CONSULTANT will update the pavement performance models based on the new pavement condition data collected for the arterial and collector roads. The performance modeling will use the pavement "family class" approach, where a "family class" is defined as a group of pavements with similar composition and use. The final models will be stored in the PAVEMENTview Plus pavement management software.
- The CONSULTANT will update the decision-making models that reflect the current Maintenance, Repair, and Rehabilitation (MR&R) practices employed by the County. Included in this activity will be an update to the cost data stored in the pavement management system database and the addition of any new pavement rehabilitation methods.
- The CONSULTANT will work with the County to define the different budgeting scenarios and priorities that Lee County wants to use in its MR&R programming analyses.

- The CONSULTANT will update the County's multi-year MR&R program using the simulation capabilities of PAVEMENTview Plus.
- The CONSULTANT will prepare a summary report to be delivered at the completion of the project. The report will document the system update process and results. Appendices will also be included that contain pavement management system-generated reports and maps showing information on inventory, pavement condition, performance models, maintenance and rehabilitation decision criteria, budget scenarios, and MR&R multi-year repair plans.

Task 5: Process Digital Images to Inventory Roadway Assets

The CONSULTANT will process the digital images to inventory roadway assets selected by Lee County. The CONSULTANT will configure CartêGraph for the following asset types to be inventoried with the digital survey vehicle:

- Roadside and overhead signage

The CONSULTANT will inventory the selected assets using digital workstations and the Geo-3D Trident Analyst software. The CONSULTANT will upload the asset inventory data to the Lee County database. The CONSULTANT will add the appropriate fields to the database that do not already exist in the system. The CONSULTANT will work with the County to design new data entry and viewing "forms" for each asset type. Finally, the CONSULTANT will assist the County with the design of new reports that can be printed out or included in reports to the County's decision makers.

Task 6: Supplemental and Quality Control Surveys

The CONSULTANT will collect inventory data and attributes for assets outside of the view of the digital survey vehicle by conducting supplemental surveys. The CONSULTANT will deploy field surveyors with a handheld computer with an integrated global positioning system (GPS) unit that can be used to locate and record attributes of a particular asset. The surveyor will also carry a digital camera to take a digital image of the asset.

Task 7: Submit Final Deliverables

The CONSULTANT will prepare and submit a final written report that summarizes the data collection and processing efforts performed in this project. Additionally, we will compile and submit the following deliverables to Lee County:

- Copy of the digital images on removable hard drives.
- Copy of final CartêGraph database delivered to the County.
- Copies of any new or modified GIS files or databases.
- Final project report.

Final deliverables for hard drives and all other computer hardware shall be approved by a representative of Lee County IT to be compatible with County systems.

Task 8: Provide Geo-3D Trident Analyst Software

The CONSULTANT will provide the Geo-3D Trident Analyst software and training for the County staff. The software will include the basic software license and key with "tokens" to locate up to 35,000 assets. Additional tokens can be purchased by the County directly from Geo-3D. The CONSULTANT will train the County employees to inventory and attribute assets using this software and the raw data delivered as a part of Task 7.

Task 9: Data Updates and Maintenance

The CONSULTANT will assist the in the acquisition of demonstration units of ruggedized field-portable Tablet PCs from various suppliers for evaluation. The CONSULTANT will develop an ArcPad application for updating the SIGNview database. This also includes developing a process for transferring data between the field Tablet PC and CarteGraph database to the satisfaction of the client. The CONSULTANT will create a training program for the use of the hardware and software. The CONSULTANT will acquire the units selected and install and provide on-site training for field and office personnel.

EXHIBIT B

Date: 14 June 2005

COMPENSATION AND METHOD OF PAYMENT

For ASSET MANAGEMENT

Section 1. BASIC SERVICES/TASK(S)

The COUNTY shall compensate the CONSULTANT for providing and performing the Task(s) set forth and enumerated in EXHIBIT "A", entitled "SCOPE OF PROFESSIONAL SERVICES", as follows:

NOTE: A Lump Sum (L.S.) or Not-to-Exceed (N.T.E.) amount of compensation to be paid the CONSULTANT should be established and set forth below for each task or sub-task described and authorized in Exhibit "A". In accordance with Agreement Article 5.02(2) "Method of Payment", tasks to be paid on a Work-in-Progress payment basis should be identified (WIPP).

Task Number	Task Title	Amount of Compensation	Indicate Basis of Compensation LS or NTE	If Applicable Indicate (W.I.P.P.)
1	Kick-Off Meeting	\$4262.99	NTE	W.I.P.P
2	Project Planning and Mobilization	\$23,970.59	NTE	W.I.P.P
3	Collect Digital Images of Roadway Surfaces and Roadway Assets	\$387,701.53	NTE	W.I.P.P
4	Update Pavement Management Database	\$214,016.91	NTE	W.I.P.P
5	Process Digital Images to Inventory Roadway Assets	\$468,004.85	NTE	W.I.P.P
6	Supplemental and Quality Control Surveys	\$74,000.29	NTE	W.I.P.P
7	Submit Final Deliverables	\$16,871.18	NTE	W.I.P.P
8	Provide Geo-3D Trident Analyst Software	\$23,505.21	NTE	W.I.P.P
9	Data Updates and Maintenance	\$127,707.36	NTE	W.I.P.P
TOTAL (Unless list is continued on next page)		\$1,340,040.91		

CMO:033

09/25/01

Section 2. ADDITIONAL SERVICES

The COUNTY shall compensate the CONSULTANT for such ADDITIONAL SERVICES as are requested and authorized in writing for such amounts or on such a basis as may be mutually agreed to in writing by both parties to this Agreement. The basis and/or amount of compensation to be paid the CONSULTANT for ADDITIONAL SERVICES requested and authorized in writing by the COUNTY shall be as set forth in Article 3.11 of this Agreement.

Should it be mutually agreed to base compensation for ADDITIONAL SERVICES on an hourly rate charge basis for each involved professional and technical employee's wage rate classification, the applicable hourly rates to be charged are as set forth and contained in ATTACHMENT NO. 1 hereto dated 14 June 2005, entitled "CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE".

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 14 June 2005, entitled "NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS".

09/25/01

ATTACHMENT NO. 1 TO EXHIBIT B

Date: 14 June 2005

CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE ***

for ASSET MANAGEMENT

(Enter Project Name from Page 1 of the Agreement)

CONSULTANT OR SUB-CONSULTANT NAME: APPLIED RESEARCH ASSOCIATES, INC.

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

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct* Payroll Average Hourly Rate	(3) Multiplier**	(4) Hourly Rate To Be Charged (Column 2x3)
Principal Engineer	\$50.00	3.0	\$150.00
Senior Engineer	\$35.00	3.0	\$105.00
Staff Engineer	\$25.00	3.0	\$ 75.00
Technician	\$15.00	3.0	\$ 45.00

*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".

CMO:033
09/25/01

ATTACHMENT NO. 1 TO EXHIBIT B

Date: 14 June 2005

CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE ***
for ASSET MANAGEMENT

(Enter Project Name from Page 1 of the Agreement)

CONSULTANT OR SUB-CONSULTANT NAME: AIM ENGINEERING AND SURVEYING, INC.

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

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct* Payroll Average Hourly Rate	(3) Multiplier**	(4) Hourly Rate To Be Charged (Column 2x3)
Senior Inspector	23.97	3.024	72.49
Inspector	19.29	3.024	58.33

*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".

CMO:033
09/25/01

ATTACHMENT NO. 1 TO EXHIBIT B

Date: 14 June 2005

CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE ***
for ASSET MANAGEMENT

(Enter Project Name from Page 1 of the Agreement)

CONSULTANT OR SUB-CONSULTANT NAME: ALLIED ENGINEERING & TESTING, INC.

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

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct* Payroll Average Hourly Rate	(3) Multiplier**	(4) Hourly Rate To Be Charged (Column 2x3)
Project Engineer, P.E./Project Mgr.	\$41.77	3.0	\$125.31
Staff Engineer, E.I.	\$21.63	3.0	\$64.89
Technical Services Manager	\$21.63	3.0	\$64.89
Engineering Tech III (5-9 years exp.)	\$15.00	3.0	\$45.00
Engineering Tech II (1-4 years exp.)	\$14.00	3.0	\$42.00
Engineering Tech I (1 year exp.)	\$12.00	3.0	\$36.00
Technical Draftsperson	\$14.75	3.0	\$44.25
Technical Secretary	\$15.75	3.0	\$47.25
Water Well Contractor/Drill Crew Chief	\$24.05	3.0	\$72.15
Threshold Inspector	\$24.23	3.0	\$72.69
Threshold Engineer	\$35.00	3.0	\$105.00
Certified Welding Inspector	\$24.23	3.0	\$72.69
Asphalt B.P. Inspector (FDOT Inspector)	\$25.00	3.0	\$75.00
Concrete B.P. Inspector (FDOT Inspector)	\$25.00	3.0	\$75.00
Drilling Crew	\$27.50	3.0	\$82.50

*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".

CMO:033
09/25/01

ATTACHMENT NO. 2 TO EXHIBIT B

Date: 14 June 2005

NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS
for ASSET MANAGEMENT

(Enter Project Name from Page 1 of the Agreement)

CONSULTANT OR SUB-CONSULTANT NAME : APPLIED RESEARCH ASSOCIATES, INC.

(A separate Attachment No. 2 should be included for each Sub-Consultant)

ITEM	BASIS OF CHARGE
Telephone (Long Distance)	Actual Cost
Postage and Shipping	Actual Cost
Commercial Air Travel	Actual Cost (Coach)
Vehicle Travel Allowance (or)	\$0.405/Mile
Vehicle Rental/Gas	Actual Cost
Lodging (Per Person)	Actual Cost or NTE \$100.00
Meals: Breakfast, Lunch & Dinner *Unless Otherwise Specified	*In accordance with the Runzheimer rate service for Travel utilizing the "average"
Reproduction (Photocopy) 8 1/2" x 11"	\$0.15/Page
8 1/2" x 14"	\$0.20/Page
11" x 14"	\$0.35/Page
Reproduction (Blue/White Prints)	\$0.20/Sq. Ft.
Printing/Binding	Actual Cost
Mylar Sheets	Actual Cost
Photographic Supplies & Services	Actual Cost
Tolls	Actual Cost
*List other specific project related reimbursables (i.e. film/developing):	
Digital Survey Vehicle Travel	\$1.00/Mile
Computers	\$2.50/hour
Data Analysis Workstations	\$5.00/hour
NOTE: Receipts or in-house logs are required for all non-personnel reimbursable expenses unless exempt (such as meals).	
Administrative Services Fee – Applicable only when specifically authorized by the County, for administering the procurement of special additional services, equipment, reimbursables etc. not covered under the costs and/or changes established in the Agreement.	10%

NOTE: N.T.E. indicates Not-To-Exceed
CMO:033

09/25/01

ATTACHMENT NO. 2 TO EXHIBIT B

Date: 14 June 2005

NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS

for ASSET MANAGEMENT

(Enter Project Name from Page 1 of the Agreement)

CONSULTANT OR SUB-CONSULTANT NAME : AIM ENGINEERING AND SURVEYING, INC.

(A separate Attachment No. 2 should be included for each Sub-Consultant)

ITEM	BASIS OF CHARGE
Telephone (Long Distance)	Actual Cost
Postage and Shipping	Actual Cost
Commercial Air Travel	Actual Cost (Coach)
Vehicle Travel Allowance (or)	\$0.405/Mile
Vehicle Rental/Gas	Actual Cost
Lodging (Per Person)	Actual Cost or NTE \$100.00
Meals: Breakfast, Lunch & Dinner *Unless Otherwise Specified	*In accordance with the Runzheimer rate service for Travel utilizing the "average"
Reproduction (Photocopy) 8 1/2" x 11"	\$0.15/Page
8 1/2" x 14"	\$0.20/Page
11" x 14"	\$0.35/Page
Reproduction (Blue/White Prints)	\$0.20/Sq. Ft.
Printing/Binding	Actual Cost
Mylar Sheets	Actual Cost
Photographic Supplies & Services	Actual Cost
Tolls	Actual Cost
*List other specific project related reimbursables (i.e. film/developing):	
Computers	Standard Billing Rate
NOTE: Receipts or in-house logs are required for all non-personnel reimbursable expenses unless exempt (such as meals).	
Administrative Services Fee – Applicable only when specifically authorized by the County, for administering the procurement of special additional services, equipment, reimbursables etc. not covered under the costs and/or changes established in the Agreement.	10%

NOTE: N.T.E. indicates Not-To-Exceed
CMO:033
09/25/01

ATTACHMENT NO. 2 TO EXHIBIT B

Date: 14 June 2005

NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS

for ASSET MANAGEMENT

(Enter Project Name from Page 1 of the Agreement)

CONSULTANT OR SUB-CONSULTANT NAME : ALLIED ENGINEERING & TESTING, INC.

(A separate Attachment No. 2 should be included for each Sub-Consultant)

ITEM	BASIS OF CHARGE
Telephone (Long Distance)	Actual Cost
Postage and Shipping	Actual Cost
Commercial Air Travel	Actual Cost (Coach)
Vehicle Travel Allowance (or)	\$0.405/Mile
Vehicle Rental/Gas	Actual Cost
Lodging (Per Person)	Actual Cost or NTE \$100.00
Meals: Breakfast, Lunch & Dinner *Unless Otherwise Specified	*In accordance with the Runzheimer rate service for Travel utilizing the "average"
Reproduction (Photocopy) 8 1/2" x 11"	\$0.15/Page
8 1/2" x 14"	\$0.20/Page
11" x 14"	\$0.35/Page
Reproduction (Blue/White Prints)	\$0.20/Sq. Ft.
Printing/Binding	Actual Cost
Mylar Sheets	Actual Cost
Photographic Supplies & Services	Actual Cost
Tolls	Actual Cost
*List other specific project related reimbursables (i.e. film/developing):	
Computers	Standard Billing Rate
NOTE: Receipts or in-house logs are required for all non-personnel reimbursable expenses unless exempt (such as meals).	
Administrative Services Fee – Applicable only when specifically authorized by the County, for administering the procurement of special additional services, equipment, reimbursables etc. not covered under the costs and/or changes established in the Agreement.	10%

NOTE: N.T.E. indicates Not-To-Exceed
CMO:033
09/25/01

EXHIBIT C

Date:14 June 2005

TIME AND SCHEDULE OF PERFORMANCE

For ASSET MANAGEMENT

(Enter Project Name from Page 1 of the Agreement)

This EXHIBIT C establishes times of completion for the various phases and tasks required to provide and perform the services and work set forth in EXHIBIT "A" of this Agreement. The times and schedule of performance set forth hereinafter is established pursuant to Article 6.00 of this Agreement.

Phase and/or Task Reference As Enumerated in EXHIBIT "A"	NAME OR TITLE Of Phase and/Task	Number Of Calendar Days For Completion Of Each Phase And/or Task	Cumulative Number Of Calendar Days For Completion From Date of Notice to Proceed
1	Kick-off Meeting	15	15
2	Project Planning and Mobilization	60	75
3	Collect Digital Images of Roadway Surfaces and Roadway Assets	45	120
4	Update Pavement Management Database	30	150
5	Process Digital Images to Inventory Roadway Assets	45	195
6	Supplemental and /QC Surveys	15	210
7	Submit Final Deliverables	30	240
8	Provide Geo-3D Trident Analysis Software	15	255
9	Data Updates and Maintenance	90	345

EXHIBIT D

Date: 14 June 2005

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

For ASSET MANAGEMENT

(Enter Project Name From Page 1 of This Agreement)

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 or Women Business Enterprise. (If Yes, Indicate Type)			Sub-Consultant Services are Exempted from Prime Consultant's Insurance Coverage	
		Yes	No	Type	Yes	No
Supplemental Surveys	AIM Engineering & Surveying, Inc. 5300 Lee Boulevard Lehigh Acres, FL 33971		NO		YES	
Supplemental Surveys	Allied Engineering and Testing, Inc 5850 Corporation Circle Ft. Myers, FL 33905	YES		MBE / WBE	YES	



City of Fort Myers, Florida

P. O Box 2443
Fort Myers, Florida 33902

www.cityofmyers.com

Phone: 239-332-6301
Fax: 239-332-0593

June 15, 2005

Lee County Contracts Management
Attn: Cindy Logan
1500 Monroe Street
Fort Myers, Florida 33901

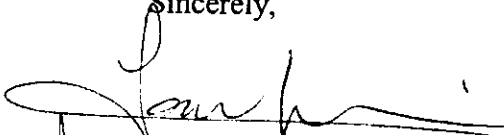
Re: RFQ #1001-05, Pavement Inventory Database Update Asset Data Collection

Dear Cindy,

It is the policy of the City of Fort Myers Purchasing Division to allow other governmental agencies to "piggyback" onto quotes, bids, RFP's and RFQ's providing the firm contractor and/or vendor is in agreement.

If you require additional information, please contact us at 239-332-6301.

Sincerely,



Laurie Victory, CPPB
Purchasing Manger
City of Fort Myers

**CITY OF FORT MYERS
PROFESSIONAL SERVICES AGREEMENT**

between

**THE CITY OF FORT MYERS
FORT MYERS, FLORIDA**

and

Applied Research Associates, Inc.

for the project known as

**PAVEMENT INVENTORY DATABASE UPDATE ASSET DATA
COLLECTION
(RFQ #1001-05)**

Date: April 25, 2005

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT is made and entered into this ____ day of _____ 20__ between the City of Fort Myers, Florida, a municipal corporation in the STATE OF FLORIDA hereinafter referred to as the "CITY", and Applied Research Associates, Inc. hereinafter referred to as the "CONSULTANT".

WITNESSETH

WHEREAS, the CITY desires to obtain the professional engineering services of said CONSULTANT to provide and perform PROFESSIONAL SERVICES as further described hereinafter concerning the Project to be referred to and identified as: PAVEMENT INVENTORY DATABASE UPDATE ASSET DATA COLLECTION (RFQ #1001-05), and

WHEREAS, the term of this agreement shall be from date of acceptance through June 1, 2008, and may be renewed for two (2) additional one-year periods upon mutual agreement of both parties; and

WHEREAS, this CONTRACT may be utilized by other governmental entities during the contract period at the terms and conditions contained herein if mutually agreeable between the CONSULTANT and governmental entity; and

WHEREAS, the CONSULTANT hereby certifies that CONSULTANT has been granted and possesses valid, current licenses to do business in the State of Florida, in Lee County, and in the City of Fort Myers, 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, perform or acquire 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 CITY in accordance with the provisions of the Consultants' Competitive Negotiation Act, Chapter 287.055, Florida Statutes, and in accordance with the provisions of the City of Fort Myers Purchasing Manual, as approved and put into effect by the City of Fort Myers City Council, AUGUST 17, 1998, 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 in EXHIBIT "A" entitled "SCOPE OF PROFESSIONAL SERVICES", which EXHIBIT "A" is attached hereto and made a part of this Agreement.

ARTICLE 2.00 - DEFINITIONS

Professional Services for Pavement Inventory Database Update Asset Data Collection, RFQ#1001-05
PROFESSIONAL SERVICES AGREEMENT

2.01 CITY

The term CITY shall refer to the City of Fort Myers, Florida, a municipal corporation in the State of Florida, and any official and/or employees thereof who shall be duly authorized to act on the CITY'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 SUB-CONTRACTORS, required under the covenants, terms and provisions contained in this Agreement, and any and all Amendments, SUPPLEMENTAL AGREEMENTS, or 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 SUB-CONTRACTORS 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 CITY 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.

2.05 SUB-CONTRACTOR

The term SUB-CONTRACTOR 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 CITY 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-CONTRACTOR.

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 CITY 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 of either a SUPPLEMENTAL AGREEMENT or a CHANGE ORDER AGREEMENT.

2.09 SUPPLEMENTAL AGREEMENT

The term SUPPLEMENTAL AGREEMENT shall refer to a written document executed by both parties to this Agreement setting forth and authorizing professional service tasks, which were not set forth in, and are supplemental to the Scope of Services contained in the initial PROFESSIONAL SERVICES AGREEMENT or other SUPPLEMENTAL AGREEMENTS issued thereto. The SUPPLEMENTAL AGREEMENT, which shall be executed on a City of Fort Myers standard form, shall set forth the authorized supplement(s) to the: Scope of the 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, or requirements pertaining thereto. The amount of the change in contract compensation and time set forth in any and all SUPPLEMENTAL AGREEMENTS executed and issued under this Agreement shall be understood and agreed by both Parties to this Agreement to be fair, 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 SUPPLEMENTAL AGREEMENTS including, but not limited to any costs which may result from or be caused by the SUPPLEMENTAL AGREEMENTS, 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.

2.10 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 AGREEMENTS, or previous CHANGE ORDERS issued thereto. The CHANGE ORDER document, which shall be executed on a City of Fort Myers 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, 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 CITY decides to delete all, or portions, of the Scope of Services, Task(s), or Requirements set forth in the initial Agreement, SUPPLEMENTAL AGREEMENTS or previously authorized CHANGE ORDERS, the CITY 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 CITY 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 CITY, to effect a deletion or decrease in the services required, shall have no effect on, or otherwise prevent the CITY from exercising its rights to direct the stated deletion or decrease in the services to be provided or performed by the CONSULTANT.

2.11 WORK ORDER

The term WORK ORDER shall refer to the written document executed by both parties to this Agreement, whereby the CITY provides authorization and notification to the CONSULTANT, and the CONSULTANT agrees, to proceed to provide or perform certain PROFESSIONAL SERVICES, tasks or work for which the Scope of Services and Compensation to be paid the CONSULTANT were set forth and agreed to in the initial AGREEMENT, or other SUPPLEMENTAL AGREEMENTS or CHANGE ORDERS thereto, such PROFESSIONAL SERVICES, tasks or work having previously been excluded and not included in written Notice(s) to Proceed issued by the CITY to the CONSULTANT. The WORK ORDER document, which shall be executed on a City of Fort Myers standard form, shall provide confirmation of the previously agreed to: 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.

2.12 CONTRACT ADMINISTRATOR

The term CONTRACT ADMINISTRATOR shall refer to the person employed by the City of Fort Myers to serve and act on the CITY'S behalf as the CITY'S CONTRACT ADMINISTRATOR. The Mayor shall act on behalf of the CITY to execute any and all SUPPLEMENTAL AGREEMENT(S) or CHANGE ORDER(S) approved by the CITY and issued to the CONSULTANT pursuant to this Agreement. The CONTRACT ADMINISTRATOR, within the authority conferred by the City of Fort Myers, acting as the CITY'S designated representative shall issue written notification to the CONSULTANT of any and all changes approved by the CITY in the CONSULTANT'S: (1) compensation (2) time and/or schedule of service delivery; (3) scope of services; and (4) any Amendment(s) or other change(s) relative to BASIC SERVICES and ADDITIONAL SERVICES pursuant to this Agreement, or SUPPLEMENTAL AGREEMENT(S), WORK ORDER(S), or CHANGE ORDER(S) pertaining thereto. The CONTRACT ADMINISTRATOR shall be responsible for acting on the CITY'S behalf to administer, coordinate, interpret and otherwise manage the contractual provisions and requirements set forth in this Agreement, or any Amendment(s), CHANGE ORDER(S), SUPPLEMENTAL AGREEMENT(S) or WORK ORDER(S) issued there under.

2.13 PROJECT MANAGER

The term PROJECT MANAGER shall refer to the person employed or retained by the CITY and designated, in writing, to serve and act on the CITY'S behalf to provide direct contact and communication between the CITY 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 WORK ORDER(S), SUPPLEMENTAL AGREEMENT(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 CITY 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 WORK ORDER(S), SUPPLEMENTAL AGREEMENT(S), CHANGE ORDER(S), and Amendment(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 SUB-CONTRACTOR(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 forth in subsequent WORK ORDERS, SUPPLEMENTAL AGREEMENTS, 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 SUPPLEMENTAL AGREEMENTS, CHANGE ORDERS 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 SUPPLEMENTAL AGREEMENTS or CHANGE ORDERS authorized thereto; and

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 SUPPLEMENTAL AGREEMENTS or CHANGE ORDERS authorized thereto; and

For the actual necessary, and required hours, and non-personnel expenses and costs, expended by SUB-CONSULTANTS and SUB-CONTRACTORS engaged by the CONSULTANT, multiplied by such hourly rates and unit costs as are agreed to by the CITY and the CONSULTANT, and as are set forth as part of the above referenced Agreement and any SUPPLEMENTAL AGREEMENTS or CHANGE ORDERS authorized thereto; and

With the understanding and agreement that the CITY 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, including payrolls, attached thereto to show evidence satisfactory to the CITY 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 (including independent audit, if desired), acceptance and approval of the CITY; 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 SUB-CONTRACTOR 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), unless otherwise directed by the CITY'S PROJECT MANAGER, through an approved CHANGE ORDER.

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 the City of Fort Myers, Florida, including, but 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 MANAGER

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 MANAGER. The CONSULTANT'S PROJECT MANAGER 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 and Amendment(s) thereto. The CONSULTANT'S PROJECT MANAGER shall have the full authority to bind and obligate the CONSULTANT on any matter arising under this Agreement and its Amendment(s) unless substitute arrangements have been furnished to the CITY in writing. The CONSULTANT agrees that the PROJECT MANAGER 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 MANAGER shall be subject to the prior approval and acceptance of the CITY.

(3) REMOVAL OF PERSONNEL

The CONSULTANT agrees, within thirty (30) calendar days of receipt of a written request from the CITY, to promptly remove and replace the CONSULTANT'S PROJECT MANAGER, or any other personnel employed or retained by the CONSULTANT, or personnel of the SUB-CONSULTANT(S) or SUB-CONTRACTOR(S) engaged by the CONSULTANT to provide and/or perform services and/or work pursuant to the requirements of this Agreement, who the CITY shall request, in writing, be removed, which request may be made by the CITY with or without cause. However, notwithstanding the above, nothing herein shall interfere with the CONSULTANT'S right to terminate its employees or employees' right to terminate their employment with the CONSULTANT.

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 CITY. Time is of the essence for all of the duties and obligations contained in this Agreement and any Amendment(s) thereto. The CITY 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 Agreement so that all BASIC SERVICES and ADDITIONAL SERVICES will be provided, performed and completed in a timely and diligent manner throughout. Failure to complete the work as contained in Exhibit "A" Scope of Services, Exhibit "C" Time and Schedule of Performance, shall be a consideration in determination of CONSULTANT responsibility in future request for contract services.

3.04 STANDARDS OF PROFESSIONAL SERVICES

The work and/or services to be provided and/or performed by the CONSULTANT and by any SUB-CONSULTANT(S) and/or SUB-CONTRACTOR(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 applicable 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 CITY approves this Agreement, or which may subsequently be changed or revised. Any subsequent change or revision to such laws, rules, regulations, ordinances, codes, 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 CITY 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, and where applicable, additional compensation.

3.05 CORRECTION OF ERRORS, OMISSIONS OR OTHER DEFICIENCIES

(1) RESPONSIBILITY TO CORRECT

In accordance with the generally accepted standards of the engineering profession, 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 the CONSULTANT or by any SUB-CONSULTANT(S) and/or SUB-CONTRACTOR(S) retained or engaged by the CONSULTANT pursuant to this Agreement. The CONSULTANT shall, without additional compensation, correct, revise, or have corrected or revised any errors, omissions and 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 the CONSULTANT or any SUB-CONSULTANT(S) or SUB-CONTRACTOR(S) engaged by the CONSULTANT.

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

Neither review, approval, or acceptance by the CITY 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 SUB-CONTRACTOR(S) engaged by the CONSULTANT, shall not 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 SUB-CONTRACTORS engaged by the CONSULTANT to provide and perform services in connection with this Agreement. Neither the CITY'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 CITY'S rights under this Agreement, or any cause of action it may have arising out of the performance of this Agreement.

In the performance of the services to be provided in accordance with EXHIBIT "A" and as set forth in subsequent WORK ORDERS, SUPPLEMENTAL AGREEMENTS and CHANGE ORDERS, CONSULTANT may be required to rely upon data, studies, surveys, designs, specifications, calculations, estimates, reports, memoranda, other documents and instruments, and/or other services, work and materials performed and subsequently provided or furnished to the CONSULTANT by the CITY or others on behalf of the CITY. CONSULTANT shall rely and utilize this information without independent review or verification as to its accuracy and completeness unless otherwise provided for in EXHIBIT "A" and subsequent WORK ORDERS, SUPPLEMENTAL AGREEMENTS, and CHANGE ORDERS.

3.06 LIABILITY

(1) CONSULTANT TO HOLD CITY HARMLESS

The CONSULTANT, in consideration of Ten Dollars (\$10.00), the receipt and sufficiency of which is acknowledged through the signing of this document, shall protect, defend, indemnify and hold the CITY OF FORT MYERS and its officers, employees and agents harmless from and against any and all losses, penalties, damages, professional fees, including attorney fees and all costs of litigation and judgments arising out of any willful misconduct or negligent act, error or omission of the CONSULTANT, its SUB-CONSULTANT(S), SUB-CONTRACTOR(S), agents or employees, arising out of or incidental to the performance of this contract or work performed there under, including any claim(s) brought against the CITY, its officers or employees by any employee of the named CONSULTANT, any SUB-CONSULTANT, SUB-CONTRACTOR, or anyone directly or indirectly employed by any of them.

The CONSULTANT shall not be liable to, nor be required to indemnify the CITY for any portions of damages arising out of any error, omission, and/or the sole negligence of the CITY, its employees, agents, or representatives.

The CONSULTANT'S obligation under this provision shall not be limited in any way by the agreed upon contract price as shown in this contract or the CONSULTANT'S limit of, or lack of, sufficient insurance protection.

Ten Dollars (\$10.00) above and beyond the money received on the contract price is considered as payment of this obligation by the CITY. (Reference: Section 725.06 F.S.).

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 CITY'S prior written consent, or unless incident to the proper performance of CONSULTANT'S obligations hereunder, or in the courts 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 SUB-CONTRACTOR(S) pursuant to this Agreement. CONSULTANT shall require all of its employees, SUB-CONSULTANT(S) and SUB-CONTRACTOR(S) to comply with the provisions of this paragraph.

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 CITY, any property damage arising out of, or caused by, the willful misconduct or negligent acts of the CONSULTANT, or of its SUB-CONSULTANTS and/or SUB-CONTRACTORS. This CONSULTANT'S obligation under this sub-article does not apply to property damage caused in whole or in part by any other CONSULTANT or CONTRACTOR engaged directly by the CITY.

The CITY 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 CITY 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 CITY, cost estimates, the CONSULTANT, by exercise of his experience, effort, knowledge and judgment, shall develop such cost estimates as are set forth herein, 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. Because CONSULTANT has no control over the cost of labor and materials or over competitive bidding or market conditions, CONSULTANT cannot and does not guarantee that bids or negotiated prices will not vary from any opinion of probable costs prepared by CONSULTANT. 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 CITY'S acceptance of the estimate(s).
- (2) The cost estimates of CONSULTANT or SUB-CONSULTANT(S) engaged by CONSULTANT, 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) Estimates for Construction Projects

(A) 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 is considered to be accurate within plus or minus ten percent of the cost of the construction of the project. The accuracy and reliability of a CONSTRUCTION COST ESTIMATE is vital to the CITY'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 Special Assessment Districts.

Notwithstanding anything above to the contrary, in that event that all responsive and responsible bids exceed the final opinions of probable construction costs prepared by CONSULTANT by more than ten percent (10%), the CONSULTANT and CITY shall: (1) agree in writing to increase such opinion of probable costs; or (2) authorize negotiating or rebidding of such work within a reasonable time; or (3) cooperatively review the overall scope of the project, the established guidelines and criteria of the project, the final plans and specifications of the project, and other construction documents and identify and mutually agree in writing to modify applicable parts of said scope, guidelines and criteria, plans and specifications, or other construction documents accordingly to effect the CITY obtaining a lowest priced bid which does not exceed the above mentioned CONSULTANT'S final opinion of probable construction costs by more than ten percent (10%). If required, compensation for the CONSULTANT'S services specific to action (1), (2), or (3) above shall be included in the compensation amount agreed upon for the final design of the Project. The obligation to provide such services, if required, will be the limit of the CONSULTANT'S responsibility in this regard and CONSULTANT shall be entitled to payment for all other services in accordance with this Agreement and will not otherwise be liable for damages attributable to the lowest proposal or bid exceeding the final opinion of probable construction costs. Any such modifications made by the CONSULTANT shall not conflict with the functional or operational requirements established by the CITY for the project and set forth in the Agreement or SUPPLEMENTAL AGREEMENT(S) or CHANGE ORDER(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.

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 CITY until the date bids or price proposals are received by the CITY, 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.

3.10 PERMITS

The CONSULTANT will be responsible for preparing all required applications and other supportive information necessary to assist the CITY in submitting for and 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 CITY and made payable to the respective governmental body upon the CONSULTANT furnishing the CITY satisfactory documentation of such fees. The CONSULTANT will be similarly responsible for preparing all required applications and other supportive information necessary to assist the CITY in submitting for and obtaining any renewals and/or extensions of reviews, approvals or permits that may be required while this Agreement is in effect. The CITY shall, at the CONSULTANT'S request, assist in obtaining required signatures and provide the CONSULTANT with all information known to be available to the CITY so as to assist the CONSULTANT in the preparation and the CITY'S subsequent submittal of any original, renewal or extension of required reviews, approvals or permits.

3.11 ADDITIONAL SERVICES

Should the CITY 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 and Amendment(s) thereto.

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

Each such "SUPPLEMENTAL AGREEMENT" 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 CITY 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 CITY determines the contract price was increased due to inaccurate, incomplete or noncurrent wage rates of 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 SUPPLEMENTAL AGREEMENTS, CHANGE ORDERS and WORK ORDERS authorized. The compensation to be paid the CONSULTANT, as set forth in Agreement EXHIBIT "B" entitled "COMPENSATION AND METHOD OF PAYMENT" and SUPPLEMENTAL AGREEMENTS, CHANGE ORDERS and WORK ORDERS authorized thereto, shall be understood and agreed to adequately and completely compensate the CONSULTANT for providing or 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 SUPPLEMENTAL AGREEMENTS, CHANGE ORDERS and WORK ORDERS authorized thereto as stated above."

3.14 AFFIRMATIVE ACTION BY CONSULTANT WHEN ENGAGING SUB-CONSULTANTS

City of Fort Myers Ordinance No. 3126 sets a goal of FIFTEEN (15%) 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 sub-contractors pursuant to this Agreement, to spend FIFTEEN (15%) percent of the amount of compensation established in this Agreement and in subsequent SUPPLEMENTAL AGREEMENTS, CHANGE ORDERS and WORK ORDERS authorized thereto for the engagement of the services of certified Minority Business Enterprise SUB-CONSULTANTS or SUB-CONTRACTORS.

In furtherance of this statutory goal, the CITY 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 SUB-CONTRACTORS 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 CITY in meeting this statutory goal must be documented in detail, records of SUB-CONSULTANTS or SUB-CONTRACTORS contacted maintained, including negotiation efforts, and written Agreements maintained for services or work awarded to SUB-CONSULTANTS or SUB-CONTRACTORS.

The CONSULTANT, upon receipt of a written request by the CITY, shall within ten (10) calendar days thereafter, submit to the CITY 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 City of Fort Myers Purchasing Department, or the Minority Business Enterprise Program Coordinator, for information and assistance regarding the CITY'S Minority Business Enterprise certification program and listing of certified Minority Business Enterprises.

3.15 ALL DRAWINGS

All drawings for the CITY shall be submitted in a format that is completely compatible to the CITY's AUTOCAD and ESRI ArcGIS software version subject to review and approval by City.

3.16 ALL REPORTS

All reports and written documents will be provided on a standard 3.5" diskette or via e-mail. Each document will be produced and delivered in Windows 95/NT and Office 97 compatible software, including MS Word, MS Excel, and MS Access. All photos, exhibits, graphs, tables, etc. contained within any report or document will be provided separately in their original file format, along with appropriate documentation, to allow for conversion to HTML. All images shall be in

GIF or JPEG format or as requested and approved by the City.

3.17 Y2K COMPLIANCE

Any computer service, computer hardware, or computer chips within any equipment that is used or installed by the CONSULTANT for the CITY, must be compliant for the year 2000 change over.

ARTICLE 4.00 - OBLIGATIONS OF THE CITY

4.01 DESIGNATION OF PROJECT MANAGER

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

4.02 AVAILABILITY OF CITY INFORMATION

(1) PROJECT GUIDELINES AND CRITERIA

Guidelines to the CONSULTANT regarding requirements the CITY 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.

(2) CITY TO PROVIDE PERTINENT REFERENCE MATERIAL

At the CONSULTANT'S request, the CITY agrees to provide to the CONSULTANT, at no cost to the CONSULTANT, all pertinent information known to be available to the CITY 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 CITY such as sub-surface investigations, laboratory tests, inspections of natural and man-made materials, property appraisals, studies, designs and reports.

4.03 AVAILABILITY OF CITY'S DESIGNATED REPRESENTATIVES

The CITY agrees that the CONTRACT ADMINISTRATOR 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 CITY further agrees to respond within a reasonable period of time to written requests submitted by the CONSULTANT.

4.04 ACCESS TO CITY PROPERTY

The CITY agrees, with reasonable prior written notice given by the CONSULTANT, to provide the CONSULTANT with access within a reasonable period of time to CITY 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 CITY operations, or the operations carried on by others under a lease, or other contractual arrangement with the CITY, 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 workdays and/or work hours.

4.05 PLAN REVIEWS

Plan reviews by City staff is only for conformance with the design concept of the project and for compliance with the information given in the contract documents, and shall not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions or programs incident thereto. The review does not relieve the CONSULTANT from responsibility for errors or omissions or from responsibility for having the design comply with the provisions of all codes having jurisdiction.

ARTICLE 5.00 - COMPENSATION AND METHOD OF PAYMENT

5.01 BASIC SERVICES

The CITY 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 or its Amendment(s) and accepted by the CITY 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 "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 SUPPLEMENTAL AGREEMENT or CHANGE ORDER executed by both parties.

5.02 ADDITIONAL SERVICES

The CITY shall pay the CONSULTANT for all such ADDITIONAL SERVICES as have been requested and authorized by the CITY 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 or its Amendments, and accepted by the CITY 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 SUPPLEMENTAL AGREEMENT or CHANGE ORDER executed by both parties.

5.03 METHOD OF PAYMENT- All payments are contingent upon annual appropriation of funds.

(1) **MONTHLY STATEMENTS**

The CONSULTANT shall be entitled to submit not more than one invoice statement to the CITY 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 SUPPLEMENTAL AGREEMENT(S), CHANGE ORDER(S), and/or WORK ORDER(S) there under. 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 SUPPLEMENTAL AGREEMENT(S), CHANGE ORDER(S), and/or WORK ORDER(S) there under.

(2) **PAYMENT FOR SERVICES PERFORMED**

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

- (A) The CITY 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. The City shall pay the Consultant for all additional services as have been requested and authorized by the City and agreed to in writing by both parties to this agreement and according to the terms for compensation and payment of said additional services as set forth in Exhibit B. The Consultant shall be entitled to submit not more than one invoice statement to the City each calendar month covering services rendered and completed 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) or supplemental task authorization(s). 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) or supplemental task authorization(s).
- (B) The CITY 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. A copy of all material shall be submitted with pay estimate. All such Work-in-Progress percentages are subject to the review and approval of the CITY. The decision of the CITY shall be final as to the Work-in-Progress percentages paid. Payment by the CITY 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 CITY of any such service or Work-in-Progress. The CONSULTANT shall be responsible for correcting, redoing, 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 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 CITY reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.
- (3) PAYMENT SCHEDULE
The CITY 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, including percentage of completion per item. Should the CITY object or take exception to the amount of any CONSULTANT'S invoice statement, the CITY shall notify the CONSULTANT of such objection or exception within ten (10) calendar days. If such objection or exception remains unresolved at the end of said ten (10) calendar day period, the CITY 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 CITY

In the event of termination of this Agreement at the convenience of the CITY, not at the fault of the CONSULTANT, the CITY shall compensate the CONSULTANT only for: (1) all services performed prior to the effective date of termination, including the overhead and profit allocable to the services performed; (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 CITY of project drawings, plans, data, and other project documents.

5.05 PAYMENT WHEN SERVICES ARE SUSPENDED

In the event the CITY 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 CITY shall compensate the CONSULTANT only for the services performed prior to the effective date of suspension, including the overhead and profit allocable to the services performed, 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 FEE 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 Amendment(s), SUPPLEMENTAL AGREEMENT(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 CITY 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 and its Amendment(s), 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 CITY, 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 CITY will begin determination with the CONSULTANT to length of extension and legitimacy of cause.

6.03 CONSULTANT WORK SCHEDULE

The CONSULTANT shall be required, as a condition of this Agreement, to prepare and submit to the CITY, on a monthly basis, commencing with the issuance of the NOTICE TO PROCEED, a CONSULTANT'S WORK SCHEDULE. Said SCHEDULE shall be updated at each pay request. 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 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", 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 CITY on a monthly basis.

6.04 FAILURE TO PERFORM IN A TIMELY MANNER

Notwithstanding anything to the contrary in Paragraph 6.02 above, 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 CITY may consider such failure as justifiable cause to terminate this Agreement. As an alternative to termination, the CITY 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 the Agreement, or any WORK ORDER(S), SUPPLEMENTAL AGREEMENT(S), CHANGE ORDER(S) or Amendment(s) issued thereto. CONSULTANT shall not be responsible for failure to perform in a timely manner due to causes outside CONSULTANT'S reasonable control.

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 to the best of its knowledge and belief, 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 SUB-CONSULTANTS, 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 CITY'S attention, in writing. The CITY will then advise the CONSULTANT, in writing, within ten (10) calendar days as to the period of time required by the CITY to determine if such a conflict of interest exists. If the CITY determines that there is a conflict of interest, CONSULTANT or such sub-consultant shall decline the representation upon written notice by the CITY.

If the CITY determines that there is no such conflict of interest, then the CITY shall give its written consent to such representation. If CONSULTANT or SUB-CONSULTANT accepts such a representation without obtaining the CITY'S prior written consent, and if the CITY 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 SUB-CONSULTANT agrees to promptly terminate such representation. CONSULTANT shall require each of such SUB-CONSULTANTS to comply with the provision of this Section.

Should the CONSULTANT fail to advise or notify the CITY, 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 CITY may consider such failure as justifiable cause to terminate this Agreement.

ARTICLE 9.00 - ASSIGNMENT, TRANSFER AND SUB-CONTRACTS

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 sub-contract any of its service obligations hereunder to third parties, except as otherwise authorized in this Agreement or Amendment(s) thereto, without prior written approval of the CITY. The CONSULTANT shall have the right, subject to the CITY'S prior written approval, to employ other persons and/or firms to serve as SUB-CONSULTANTS and/or SUB-CONTRACTORS to CONSULTANT in connection with CONSULTANT providing and performing services and work pursuant to the requirements of this Agreement. The CITY shall have the right and be entitled to withhold such approval. Such approval shall not be unreasonably withheld.

In the event that the CONSULTANT 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 SUB-CONTRACTOR(S) set forth in EXHIBIT "D", entitled "CONSULTANT'S ASSOCIATED SUB-CONSULTANTS AND SUB-CONTRACTORS", which EXHIBIT "D" is attached hereto and made a part of this Agreement.

ARTICLE 10 - 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.

ARTICLE 11 - COVENANTS AGAINST DISCRIMINATION

11.01 FOR PROJECTS WITH FUNDS APPROPRIATED FROM GENERAL CITY 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 CITY 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 the City'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 the City of Fort Myers' Affirmative Action Plan from the City of Fort Myers Personnel Department.

11.02 FOR PROJECTS WITH FUNDS APPROPRIATED EITHER IN PART OR WHOLLY FROM FEDERAL, STATE SOURCES OR OTHER 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 CITY 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 M/WBE goals, which have been established for this project. CONSULTANTS who are uncertain of their obligations regarding M/WBE for this project must obtain a copy of all relevant federal, state or other grantor's guidelines from the City of Fort Myers Purchasing Department or Disadvantaged Business Enterprise Program Coordinator. The failure of the CONSULTANT to adhere to relevant guidelines shall subject the CONSULTANT to any sanctions, which may be imposed upon the CITY.

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 there from; 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), SUB-CONTRACTOR(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 shall require, throughout the time this Agreement is in effect, that any and all of its SUB-CONSULTANTS and/or SUB-CONTRACTORS obtains and maintains until the completion of that SUB-CONSULTANT'S and/or SUB-CONTRACTOR'S work, such of the insurance coverage described in Article 13.01, as are required by law, be provided on behalf of their employees and others.
- (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) The insurance coverage to be obtained by the CONSULTANT, as set forth in Agreement Article 13.03 for: (1) Worker's Compensation; (2) Commercial General Liability; (3) Commercial Automobile Liability; or (4) Professional Liability is understood and agreed to cover any and all of the services or work set forth in EXHIBIT "A" of this Agreement, or in any and all subsequently executed CHANGE ORDER(S), SUPPLEMENTAL AGREEMENT(S), WORK ASSIGNMENT(S), or WORK ORDER(S). In the event the

CITY, subsequent to the execution of this Agreement, should execute and issue a written CHANGE ORDER, SUPPLEMENTAL AGREEMENT, WORK ASSIGNMENT, or WORK ORDER authorizing the CONSULTANT to provide or perform services or work in addition to those set forth in EXHIBIT "A" of this Agreement, and for which the amount of the compensation to be paid the CONSULTANT is set forth in EXHIBIT "B" of this Agreement, it is understood and agreed by both parties to this Agreement that the CITY reserves, and has the right if deemed necessary, to change the amount of any of the insurance coverages required, so as to include and cover any and all ADDITIONAL SERVICES or work required to be provided or performed pursuant to all such CHANGE ORDERS, SUPPLEMENTAL AGREEMENTS, Work Assignments, or WORK ORDERS. If the total amount of insurance coverage established in, and required by, a CHANGE ORDER, SUPPLEMENTAL AGREEMENT, Work Assignment, or WORK ORDER exceeds the amount of insurance coverage carried by the CONSULTANT, then the CONSULTANT shall be required and expected to acquire such additional insurance, and the compensation established for the CHANGE ORDER, SUPPLEMENTAL AGREEMENT, Work Assignment or WORK ORDER shall include consideration of any additional premium cost incurred by the CONSULTANT to obtain such additional insurance coverage.

- (6) The purchasing of any insurance on the behalf of the CITY shall not waive any defense under Sovereign immunity.

13.02 CONSULTANT REQUIRED TO FILE INSURANCE CERTIFICATE(S)

- (1) The CONSULTANT, before the Agreement is approved and executed by the CITY, shall submit to the CITY all such insurance certificates and related documentation as is required under this Agreement. Before the CITY shall provide the CONSULTANT with written Notice to Proceed, and before the CONSULTANT shall commence any service or work pursuant to the requirements of this Agreement, the CONSULTANT shall obtain and maintain insurance coverages of the types, and to the limits specified hereinafter, and the CONSULTANT shall file with the CITY certificates of all such insurance coverages. All such Certificates of Insurance are subject to review and approval by the CITY with respect to compliance with the insurance requirements set forth in the Agreement.
- (2) All such insurance certificates shall be in a form and underwritten by an insurance company(s) acceptable to the CITY and licensed in the State of Florida.
- (3) Each Certificate of Insurance submitted to the CITY shall be an original and shall be executed by an authorized representative of the insurance company affording coverage.
- (4) 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 City of Fort Myers, 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 the City of Fort Myers pursuant to one or more written PROFESSIONAL SERVICES AGREEMENTS, or written SUPPLEMENTAL AGREEMENTS 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, 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 stated expiration date thereof, the issuing company will endeavor to mail 10 days written notice to the named Certificate Holder."

- (G) An identifying statement indicating the identification of any services or work that is included in, or required under, the SCOPE OF PROFESSIONAL SERVICES set forth in EXHIBIT "A" 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 of deductible amount(s), or coverage statement of exclusions or exemptions, the CITY 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.

- (5) 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.
- (6) If the initial, or any subsequently issued Certificate of Insurance expires prior to completion of the work or termination of this Agreement, the CONSULTANT shall furnish to the CITY renewal or replacement Certificate(s) of Insurance not later than ten (10) calendar days prior to the date of their expiration. Failure of the CONSULTANT to provide the CITY with such renewal certificate(s) shall be considered justification for the CITY to terminate this Agreement.
- (7) It is vitally important that all insurance coverage(s) required under this Agreement be in effect throughout the entire period of this Agreement. If any of the insurance coverage(s)

required by this Agreement should reach the date of expiration indicated on the Certificate(s) of Insurance on record with the CITY, without the CITY having received satisfactory evidence in the form of a Certified Binder or a Certificate of Insurance, that the required insurance coverage(s) has either been renewed or replaced, then the CONSULTANT, unless notified in writing by the CITY to continue, shall therefore automatically and without further notice from the CITY, stop performing all previously authorized services and work until such date as the CITY shall receive and approve satisfactory documentation that the expired insurance coverage(s) has been renewed or replaced. During any time period that the CONSULTANT shall fail to comply with the insurance requirements set forth in the Agreement, the CITY shall not be required to make, nor shall it make payment on any invoices submitted by the CONSULTANT. Payment for any such invoices shall be made promptly by the CITY after the CITY receives and approves the renewal or replacement Certificates of Insurance. During any time period that the CONSULTANT'S services or work is suspended, as provided above, for failure to comply with the insurance requirements set forth in the Agreement, the CONSULTANT shall not be entitled, as a result of such suspension, to any additional compensation or time to provide and perform the required services or work.

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 **\$500,000** for each accident which limit is greater.
- (B) Notice of Cancellation and/or Restriction - The policy must be endorsed to provide the CITY with ten (10) 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, or its equivalent, and must include the following:

- (A) Minimum limits of **\$1,000,000** per occurrence combined single limit; **\$1,000,000** aggregate. This shall include premises and/or Operations, Independent CONTRACTORS, and SUB-CONTRACTORS and/or Completed Operations, Broad Form Property Damage, XCU Coverage, and a Contractual Liability Endorsement.
- (B) Contractual coverage applicable to this specific Agreement including any hold harmless and/or such indemnification agreement excluding professional acts.
- (C) Such additional requirements as are set forth in Article 13.01 and 13.02 hereinabove.

(3) **COMMERCIAL AUTOMOBILE LIABILITY**

Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial Automobile Liability Policy filed by the Insurance Services Office, **or its equivalent**, and must include the following:

- (A) Minimum limits of **\$1,000,000** combined single limit liability.
- (B) Coverage shall include owned vehicles, hired, leased, non-owned vehicles, employee non-ownership.
- (C) Such additional requirements as are set forth in Articles 13.01 and 13.02 hereinabove.

(4) **PROFESSIONAL LIABILITY**

Coverage must include the following:

- (A) A minimum combined single 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 CITY 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 CITY 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 CITY

The CONSULTANT in providing and performing the services and work required pursuant to this Agreement, and Amendments thereto, shall only represent the CITY in the manner and to the extent specifically set forth in writing in this Agreement or Amendments thereto, and as provided in any written WORK ORDER(S), SUPPLEMENTAL AGREEMENT(S), and CHANGE ORDER(S) issued there under.

In the event the CONSULTANT'S services or work involves construction contract administrative support services, the CONSULTANT is not authorized to act on the CITY'S behalf, and shall not act on the CITY'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 Amendment thereto.

The CITY 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 CITY 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 CITY, shall be delivered by the CONSULTANT to the CITY within seven (7) calendar days of the CITY making such a request. In the event the CITY 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 CITY of a written CHANGE ORDER deleting all, or part of, the services or work required, the CONSULTANT shall deliver to the CITY the requested documents as set forth hereinabove, with the mutual understanding and commitment by the CITY 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. 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 CITY 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 CITY.

Any use by the CITY of said documents, and data and information contained therein, obtained by the CITY under the provisions of this Agreement, for any purpose not within the scope of this Agreement, shall be at the risk of the CITY, and without liability to the CONSULTANT. The CITY shall be liable, and agrees to be liable for, and shall indemnify, defend and hold the CONSULTANT harmless for any and all claims, suits, judgements or damages, losses and expenses including court costs, expert witness and professional consultation services, and attorneys' fees arising out of the CITY'S use of such documents in a manner contrary to the provisions set forth hereinabove. The CITY 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.

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 fifteen (15) years from the date of termination of its respective applicable project.

The CITY 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 CITY deems necessary, during the period

of this Agreement, and during the period of fifteen (15) years thereafter; provided, however, such activity shall be conducted only during normal business hours and at the expense of the CITY, and provided further that to the extent provided by law the CITY shall retain all such records confidential.

The CITY shall have access to any and all books and records necessary to validate contractual compliance, accuracy of disbursement/receipt documentation, and accuracy of other information provided to the CITY. All documentation shall be requested in writing by the CITY and shall be made available at the CITY offices: 2200 Second Street, Fort Myers, Florida 33901 within 30 days of request. Failure to provide documents as requested will result in a daily penalty of \$100.

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 supersede, 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, 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 25, 2005
- (2) EXHIBIT "B" entitled "COMPENSATION AND METHOD OF PAYMENT" dated April 25, 2005
- (3) EXHIBIT "C" entitled "TIME AND SCHEDULE OF PERFORMANCE" dated April 25, 2005
- (4) EXHIBIT "D" entitled "CONSULTANT'S ASSOCIATED SUB-CONSULTANT(S) AND SUB-CONTRACTOR(S)" dated April 25, 2005
- (5) EXHIBIT "E" entitled "PROJECT GUIDELINES AND CRITERIA" dated April 25, 2005
- (6) EXHIBIT "F" entitled "TRUTH IN NEGOTIATION CERTIFICATE" dated April 25, 2005
- (7) EXHIBIT "G" entitled "MINORITY BUSINESS ENTERPRISE"
- (8) EXHIBIT "H" entitled "SWORN STATEMENT UNDER SECTION 287.133(3)(A), FLORIDA STATUTES ON PUBLIC ENTITY CRIMES"
- (9) EXHIBIT "I" entitled "Certificate of Insurance" (Containing copies of applicable Certificates of Insurance and applicable Endorsements)

ARTICLE 20.00 - NOTICES AND ADDRESS OF RECORD

20.01 NOTICES BY CONSULTANT TO CITY

All notices required and/or made pursuant to this Agreement, to be given by the CONSULTANT to the CITY, shall be in writing and shall be given by the United States Postal Service Department

first class mail service, postage prepaid, addressed to the following CITY address of record and sent to the attention of the CITY'S PROJECT MANAGER:

City of Fort Myers
Post Office Drawer 2217
Fort Myers, Florida 33902-2217
Attn: Derek Burr _____
PROJECT MANAGER

City of Fort Myers
Post Office Drawer 2217
Fort Myers, Florida 33902-2217
Attn: Marie Adams _____
CITY CLERK

20.02 NOTICES BY CITY TO CONSULTANT

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

Applied Research Associates, Inc
5000 NW 27th Court, Suite E
Gainesville, FL 32606
Telephone #: 352-336-5366
Fax #: 352-381-0022
E-Mail: mhammons@ara.com
ATTENTION: Michael. I. Hammons
Project Director

20.03 CHANGE OR 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 CITY at its convenience, or due to the fault of the CONSULTANT, by the CITY giving thirty (30) days 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 CITY'S designated representatives; if it otherwise violates any provisions of this Agreement; or for any other just cause, the CITY 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 CITY'S contractual right to terminate this Agreement in its entirety, as set forth above, the CITY 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 SUPPLEMENTAL AGREEMENT or CHANGE ORDER AGREEMENT. The CITY 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 CITY 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 CITY 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 CITY of its acceptance.

21.01 CONSULTANT TO DELIVER MATERIAL

Upon termination, the CONSULTANT shall deliver to the CITY all papers, drawings, models, and other material in which the CITY 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 CITY.

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 the execution by both parties of an Amendment Agreement. The Mayor of the City of Fort Myers shall act on behalf of the CITY in executing such Amendment Agreement(s). The CONSULTANT named hereinabove as a party to this Agreement, as an individual, or if a corporation, shall act in executing such Amendment Agreement(s). In the event of any conflicts between the requirements, provisions and/or terms of the Agreement, and any written Amendment Agreement(s), the requirements, provisions and/or terms of the latest executed Amendment Agreement 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 Amendment(s), or SUPPLEMENTAL AGREEMENT(S), or WORK ORDER(S), or CHANGE ORDER(S). In the event of any conflicts between the requirements, provisions, and/or terms of this Agreement and any written Amendment(s), SUPPLEMENTAL AGREEMENT(S), WORK ORDER(S), and/or CHANGE ORDER(S), the latest executed Amendment(s), SUPPLEMENTAL AGREEMENT(S), WORK ORDER(S), and/or CHANGE ORDER(S) shall take precedence.

In the event the CITY 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 CITY'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 - PROHIBITION AGAINST CONTINGENT FEES

The CONSULTANT (architect or registered land surveyor or professional engineer, as applicable) warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the consultant to solicit or secure this agreement, and that he has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONSULTANT, any fee, commission, percentage, gift, or other consideration contingent upon, or resulting from, the award or making of this Agreement.

ARTICLE 25.00 – NO GUARANTEE OF WORK

All items listed as "to be determined" will be negotiated to the sole satisfaction of the CITY's designated Project Manager prior to starting any assignment. There is no guarantee that any work will be assigned and authorized under this contract.

ARTICLE 26.00 – 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.

CITY OF FORT MYERS, FLORIDA
A Municipal Corporation

ATTEST:

BY: *Jim Humphrey*
Jim Humphrey, Mayor
DATE: June 8, 2005

Marie Adams
Marie Adams, CMC
City Clerk

APPROVED AS TO FORM:
Grant W. Alley
Grant W. Alley
City Attorney

CONSULTANT FIRM NAME: APPLIED RESEARCH ASSOCIATES, INC.

Yan Liu
(Witness) Yan Liu
Debbie Tiffan
(Witness) Debbie Tiffan

BY: *Curt A. Beckemeyer*
(Authorized Signature For Firm)
Curt A. Beckemeyer, P.E.
(Printed Name)
Vice President
(Title)

CORPORATE SEAL:

DATE: May 16, 2005

**EXHIBIT A – SCOPE OF SERVICES
TO PROFESSIONAL SERVICES AGREEMENT**

EXHIBIT A – SCOPE OF SERVICES

SCOPE OF SERVICES

BASIC SERVICES

Section 1. GENERAL SCOPE STATEMENT

The CONSULTANT shall provide and perform the following PROFESSIONAL SERVICES which shall constitute the GENERAL SCOPE of the SERVICES under the covenants, terms, and provisions of this PROFESSIONAL SERVICES AGREEMENT:

Task 1: Kick-Off Meeting

The CONSULTANT will conduct a 1-day kick-off meeting to clarify the proposed work activities, coordinate the data collection efforts, and finalize the proposed work plan for the project. The meeting will be conducted at the City's offices and should involve representatives of each City department that is participating in the asset management data collection project.

Task 2: Project Planning and Mobilization

The CONSULTANT will perform the following activities:

- With assistance from the City's staff, the CONSULTANT will compile any changes in roadway information since the original system implementation in 2002. This information includes construction history (layer type, thickness, and construction date), traffic, roadway classification, subgrade conditions, street dimensions, ROW width, and other pertinent information. The data will be acquired from sources made available by the City (e.g., digital files, construction plans, reports). The CONSULTANT will compile the information into an appropriate format (either Microsoft Access® or Microsoft Excel® depending on the source data) that will be ultimately uploaded into the PAVEMENTview Plus pavement management software.
- The CONSULTANT will work with City's GIS staff to update the pavement management sectioning to reflect the latest roadway information. The CONSULTANT will update the PAVEMENTview Plus database as necessary during this step. Changes to this database will be sent to the City in text format with CartêGraph import filters. The CONSULTANT will provide assistance to the City with the upload as required.
- The CONSULTANT will develop a survey routing plan based on the amount and make up of streets included in survey. The routing plan will optimize the survey efficiency and minimize the cost to the City.
- The CONSULTANT will mobilize the digital survey equipment and staff to Fort Myers.

Task 3: Collect Digital Images of Roadway Surfaces and Roadway Assets

The CONSULTANT will conduct an automated survey using a vehicle equipped with digital pavement and right-of-way cameras and a set of lasers mounted on the front bumper. The CONSULTANT's digital survey vehicle will simultaneously record the surface condition, rutting, and roughness of the pavement surface. It will also record images of roadside signs, traffic signals, sidewalks, in-pavement manholes, guardrails, pavement markings, fencing, and other roadside assets while traveling at prevailing traffic speeds. The City will provide no traffic control.

Task 4: Update Pavement Management Database

The CONSULTANT will use the digital images obtained in Task 3 to determine pavement distress using the survey guides and protocols accomplished in the original system implementation in

2002. Pavement condition data will be taken directly from the images for loading into the database.

The CONSULTANT will upload the updated roadway information and the new condition data into the PAVEMENTview Plus databases.

The CONSULTANT will work closely with the City to update the engineering analysis parameters in the PAVEMENTview Plus pavement management software so that they accurately incorporate the latest condition data for the arterial and collector roads, the most recent roadway information (construction history, traffic), and the City's current maintenance and rehabilitation practices. Specifically, the CONSULTANT will perform the following services:

- The CONSULTANT will update the pavement performance models based on the new pavement condition data collected for the arterial and collector roads. The performance modeling will use the pavement "family class" approach, where a "family class" is defined as a group of pavements with similar composition and use. The final models will be stored in the PAVEMENTview Plus pavement management software.
- The CONSULTANT will update the decision-making models that reflect the current Maintenance, Repair, and Rehabilitation (MR&R) practices employed by the City. Included in this activity will be an update to the cost data stored in the pavement management system database and the addition of any new pavement rehabilitation methods.
- The CONSULTANT will work with the City to define the different budgeting scenarios and priorities that Fort Myers wants to use in its MR&R programming analyses.
- The CONSULTANT will update the City's multi-year MR&R program using the simulation capabilities of PAVEMENTview Plus.
- The CONSULTANT will prepare a summary report to be delivered at the completion of the project. The report will document the system update process and results. Appendixes will also be included that contain pavement management system-generated reports and maps showing information on inventory, pavement condition, performance models, maintenance and rehabilitation decision criteria, budget scenarios, and MR&R multi-year repair plans.

Task 5: Process Digital Images to Inventory Roadway Assets

The CONSULTANT will process the digital images to inventory roadway assets selected by the City of Fort Myers. The CONSULTANT will configure CartêGraph for the following asset types to be inventoried with the digital survey vehicle:

- Roadside and overhead signage
- Roadway lighting
- In-pavement water valves

The CONSULTANT will inventory the selected assets using digital workstations and the Geo-3D Trident Analyst software. The CONSULTANT will upload the asset inventory data to the Fort Myers database. The CONSULTANT will add the appropriate fields to the database that do not already exist in the system. The CONSULTANT will work with the City to design new data entry and viewing "forms" for each asset type. Finally, the CONSULTANT will assist the City with the design of new reports that can be printed out or included in reports to the City's decision makers.

Task 6: Supplemental and Quality Control Surveys

The CONSULTANT will collect inventory data and attributes for assets outside of the view of the digital survey vehicle by conducting supplemental surveys. The CONSULTANT will deploy field surveyors with a handheld computer with an integrated global positioning system (GPS) unit that

can be used to locate and record attributes of a particular asset. The surveyor will also carry a digital camera to take a digital image of the asset.

Task 7: Submit Final Deliverables

The CONSULTANT will prepare and submit a final written report that summarizes the data collection and processing efforts performed in this project. Additionally, we will compile and submit the following deliverables to Fort Myers:

- Copy of the digital images on removable hard drives.
- Copy of final CartêGraph database delivered to the City.
- Copies of any new or modified GIS files or databases.
- Final project report.

Final deliverables for hard drives and all other computer hardware shall be approved by City of Fort Myers MIS Director and representative of Lee County IT to be compatible with city and county systems.

**EXHIBIT B – COMPENSATION AND METHOD OF PAYMENT
TO PROFESSIONAL SERVICES AGREEMENT**

EXHIBIT B – COMPENSATION AND METHOD OF PAYMENT

Section 1. BASIC SERVICES/TASK(S)

The CITY shall compensate the CONSULTANT for providing and performing the Task(s) set forth and enumerated in EXHIBIT "A", entitled "SCOPE OF SERVICES", as follows:

Note: A Lump Sum (L.S.) or Not-to-Exceed (N.T.E.) amount of compensation to be paid the CONSULTANT should be established and set forth below for each task or sub-task described and authorized in Exhibit "A".

Section 1. BASIC SERVICES/TASKS

Task	Unit	Fixed or Unit Cost	Fixed Cost	Unit Cost Per Lane Mile*	Unit Cost per Asset*	Estimated Number	Estimated Cost
Task 1: Kickoff Meeting	Job	Fixed	\$4,262.99			1	\$4,262.99
Task 2: Planning and Mobilization	Job	Fixed	\$4,905.58			1	\$4,905.58
Task 3: Collect Digital Images	Mile	Unit		\$138.47		228	\$31,572.06
Task 4: Pavement Management	Mile	Unit		\$83.60		228	\$19,060.88
Task 5: Inventory Assets							
Develop Asset Database (Signs)	Job	Fixed	\$13,508.21			1	\$13,508.21
Develop Asset Database (Lights)	Job	Fixed	\$12,173.06			1	\$12,173.06
Develop Asset Database (Other)	Job	Fixed	\$19,394.78			1	\$19,394.78
Inventory Assets	Asset	Unit			\$1.35	38,000	\$51,116.11
Task 6: Supplemental Surveys	Asset	Unit			\$0.22	38,000	\$8,422.44
Task 7: Final Deliverables	Job	Fixed	\$16,871.18			1	\$16,871.18
						Total	\$181,287.28

* See Exhibit E

Section 2. ADDITIONAL SERVICES

The CITY shall compensate the CONSULTANT for such ADDITIONAL SERVICES as are requested and authorized in writing for such amounts, or on such a basis, as may be mutually agreed to in writing by both parties to this Agreement. The basis and/or amount of compensation to be paid the CONSULTANT for ADDITIONAL SERVICES requested and authorized in writing by the CITY shall be as set forth in Article 3.11 of this Agreement.

Should it be mutually agreed to base compensation for ADDITIONAL SERVICES on an hourly rate charge basis for each involved professional and technical employee's wage rate classification, the applicable hourly rates to be charged are as set forth and contained in ATTACHMENT NO. 1 hereto, entitled "CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE".

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 2 hereto, entitled "NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS".

**ATTACHMENT NO. 1 TO EXHIBIT B
TO PROFESSIONAL SERVICES AGREEMENT**

ATTACHMENT NO. 1 TO EXHIBIT B

CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE ***

CONSULTANT OR SUB-CONSULTANT NAME Applied Research Associates, Inc.
(A separate Attachment No. 1 should be included for each Sub-Consultant)

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct* Payroll Average Hourly Rate	(3) Multiplier**	(4) Hourly Rate to be Charged (Column 2x3)
Principal Engineer	\$50.00	3.0	\$150.00
Senior Engineer	\$35.00	3.0	\$105.00
Staff Engineer	\$25.00	3.0	\$ 75.00
Technician	\$15.00	3.0	\$ 45.00

*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. 1 TO EXHIBIT B

CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE ***

CONSULTANT OR SUB-CONSULTANT NAME AIM Engineering and Surveying, Inc.
 (A separate Attachment No. 1 should be included for each Sub-Consultant)

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct* Payroll Average Hourly Rate	(3) Multiplier**	(4) Hourly Rate to be Charged (Column 2x3)
Senior Inspector	23.97	3.024	72.49
Inspector	19.29	3.024	58.33

- *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. 1 TO EXHIBIT B

CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE ***

CONSULTANT OR SUB-CONSULTANT NAME: **ALLIED ENGINEERING & TESTING, INC.**

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

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct* Payroll Average Hourly Rate	(3) Multiplier**	(4) Hourly Rate to be Charged (Column 2x3)
Project Engineer, P.E./Project Mgr.	\$41.77	3.0	\$125.31
Staff Engineer, E.I.	\$21.63	3.0	\$64.89
Technical Services Manager	\$21.63	3.0	\$64.89
Engineering Tech III (5-9 years exp.)	\$15.00	3.0	\$45.00
Engineering Tech II (1-4 years exp.)	\$14.00	3.0	\$42.00
Engineering Tech I (1 year exp.)	\$12.00	3.0	\$36.00
Technical Draftsperson	\$14.75	3.0	\$44.25
Technical Secretary	\$15.75	3.0	\$47.25
Water Well Contractor/Drill Crew Chief	\$24.05	3.0	\$72.15
Threshold Inspector	\$24.23	3.0	\$72.69
Threshold Engineer	\$35.00	3.0	\$105.00
Certified Welding Inspector	\$24.23	3.0	\$72.69
Asphalt B.P. Inspector (FDOT Inspector)	\$25.00	3.0	\$75.00
Concrete B.P. Inspector (FDOT Inspector)	\$25.00	3.0	\$75.00
Drilling Crew	\$27.50	3.0	\$82.50

*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
TO PROFESSIONAL SERVICES AGREEMENT**

ATTACHMENT NO. 2 TO EXHIBIT B

NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS

CONSULTANT OR SUB-CONSULTANT NAME APPLIED RESEARCH ASSOCIATES, INC.
(A separate Attachment No. 2 should be included for each SUB-CONSULTANT)

ITEM	BASIS OF CHARGE
Telephone (Long Distance)	Actual Cost
Other Communications	Actual Cost
Postage	Actual Cost
Shipping Material	Actual Cost
Commercial Air Travel	Actual Cost (Coach)
Rental Car/Van/Truck	N.T.E. \$60/day
Personal Automobile & Truck Travel	\$0.405/Mile
Digital Survey Vehicle Travel	\$1.00/Mile
Lodging (Per Person)	N.T.E. \$95.00/night
Meals (Breakfast)	N.T.E. \$10.00
(Lunch)	N.T.E. \$12.00
(Dinner)	N.T.E. \$20.00
Reproduction (Photocopy)	\$0.20/page
Printing	Actual Cost
Binding	Actual Cost
Photographic Supplies & Services	Actual Cost
Computers	\$2.50/hour
Data Analysis Workstations	\$5.00/hour
Administrative Service Fee – Applicable only when specifically authorized in writing by the CITY, for administering the procurement of special additional services, equipment, etc. not covered under the costs and/or changes established in the Agreement.	10%

NOTE: N.T.E. indicates Not-To-Exceed

ATTACHMENT NO. 2 TO EXHIBIT B

NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS

CONSULTANT OR SUB-CONSULTANT NAME: AIM Engineering and Surveying, Inc.
 (A separate Attachment No. 2 should be included for each SUB-CONSULTANT)

ITEM	BASIS OF CHARGE
Telephone (Long Distance)	Actual Cost
Other Communications	Actual Cost
Postage	Actual Cost
Shipping Material	Actual Cost
Commercial Air Travel	Actual Cost (Coach)
Automobile & Truck Travel	N.T.E. - \$0.365/Mile
Lodging (Per Person)	N.T.E. \$95.00/Night
Meals (Breakfast)	N.T.E. \$ 10.00
(Lunch)	N.T.E. \$ 12.00
(Dinner)	N.T.E. \$20.00
Reproduction (Photocopy)	\$ 0.20/Page
Reproduction (Blue/White Prints)	\$ 0.20/Sq. Ft.
Printing	Actual Cost
Binding	Actual Cost
Mylar Sheets	\$1.10/Sq. Ft.
Photographic Supplies & Services	Actual Cost
Computers	Standard Billing Rate
Administrative Service Fee – Applicable only when specifically authorized in writing by the CITY, for administering the procurement of special additional services, equipment, etc. not covered under the costs and/or changes established in the Agreement.	10%

NOTE: N.T.E. indicates Not-To-Exceed

ATTACHMENT NO. 2 TO EXHIBIT B

NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS

CONSULTANT OR SUB-CONSULTANT NAME: **ALLIED ENGINEERING & TESTING, INC.**
 (A separate Attachment No. 2 should be included for each SUB-CONSULTANT)

ITEM	BASIS OF CHARGE
Telephone (Long Distance)	Actual Cost
Other Communications	Actual Cost
Postage	Actual Cost
Shipping Material	Actual Cost
Commercial Air Travel	Actual Cost
Automobile & Truck Travel	N.T.E. \$0.365/Mile
Lodging (Per Person)	N.T.E. \$95.00/Night
Meals (Breakfast)	N.T.E. \$ 10.00
(Lunch)	N.T.E. \$ 12.00
(Dinner)	N.T.E. \$20.00
Reproduction (Photocopy)	\$ 0.20/Page
Reproduction (Blue/White Prints)	\$ 0.20/Sq. Ft.
Printing	Actual Cost
Binding	Actual Cost
Mylar Sheets	\$1.10/Sq. Ft.
Photographic Supplies & Services	Actual Cost
Computers	Standard Billing Rate
Administrative Service Fee – Applicable only when specifically authorized in writing by the CITY, for administering the procurement of special additional services, equipment, etc. not covered under the costs and/or changes established in the Agreement.	10%

NOTE: N.T.E. indicates Not-To-Exceed

**EXHIBIT C – TIME AND SCHEDULE OF PERFORMANCE
TO PROFESSIONAL SERVICES AGREEMENT**

EXHIBIT C – TIME AND SCHEDULE OF PERFORMANCE

TIME AND SCHEDULE OF PERFORMANCE

This EXHIBIT C establishes times of completion for the various phases and tasks required to provide and perform the services and work set forth in EXHIBIT "A" of this Agreement. The times and schedule of performance set forth hereinafter is established pursuant to Article 6.00 of this Agreement.

Phase and/or Task Reference as Enumerated in EXHIBIT "A"	Name or Title of Phase and/or Task	Number of Calendar Days For Completion of Each Phase and/or Task	Cumulative Number of Calendar Days For Completion From Date of Notice to Proceed
1	Kick-off Meeting	14	14
2	Project Planning and Mobilization	31	45
3	Collect Digital Images of Roadway Surfaces and Roadway Assets	45	90
4	Update Pavement Management Database	28	118
5	Process Digital Images to Inventory Roadway Assets	42	160
6	Supplemental and /QC Surveys	14	174
7	Submit Final Deliverables	28	202

EXHIBIT D – CONSULTANT’S ASSOCIATED SUB-CONSULTANTS AND SUB-CONTRACTORS TO PROFESSIONAL SERVICES AGREEMENT

EXHIBIT D – CONSULTANT’S ASSOCIATED SUB-CONSULTANTS AND SUB-CONTRACTORS

CONSULTANT’S ASSOCIATED SUB-CONSULTANT(S) AND SUB-CONTRACTOR(S)

CONSULTANT has identified the following SUB-CONSULTANT(S) and/or SUB-CONTRACTOR(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 Business Enterprise. (If Yes, Indicate Type)			SUB-CONSULTANT Services are Exempted from Prime Consultant's Insurance Coverage	
		Yes	No	Type	Yes	No
Supplemental Surveys	AIM Engineering & Surveying, Inc. 5300 Lee Boulevard Lehigh Acres, FL 33971		No			
Supplemental Surveys	Allied Engineering and Testing, Inc 5850 Corporation Circle Ft. Myers, FL 33905	Yes		MBE/WBE		

**EXHIBIT E – PROJECT GUIDELINES AND CRITERIA
TO PROFESSIONAL SERVICES AGREEMENT**

EXHIBIT E – PROJECT GUIDELINES AND CRITERIA

PROJECT GUIDELINES AND CRITERIA

The CITY 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

The unit costs of the professional services negotiated in this proposal are dependent upon the quantities of roadway surveyed and assets inventoried based on Applied Research Associates professional experience completing similar projects. The unit costs assume that at least 2500 lane miles of roadway will be surveyed and at least 350,000 assets will be inventoried in total by both the City of Fort Myers and Lee County. Applied Research Associates, Inc., reserves the right to renegotiate the unit costs in the event that either the county or the city fail to enter into an agreement for these services concurrently; however, the City of Fort Myers and Lee County government reserve the right to renegotiate and/or resolicit and contract these services from another Consultant.

Item No. 2

In addition to the Tasks set forth in Exhibit A, Lee County plans to include optional Tasks 8 and 9 in its Scope of Services. The City of Fort Myers also has the option of the CONSULTANT providing these services.

Task 8: Provide Geo-3D Trident Analyst Software

The CONSULTANT will provide the Geo-3D Trident Analyst software and training for the County staff. The software will include the basic software license and key with "tokens" to locate up to 35,000 assets. Additional tokens can be purchased by the County directly from Geo-3D. The CONSULTANT will train the County employees to inventory and attribute assets using this software and the raw data delivered as a part of Task 7.

Task 9: Data Updates and Maintenance

The CONSULTANT will assist the in the acquisition of demonstration units of ruggedized field-portable Tablet PCs from various suppliers for evaluation. The CONSULTANT will develop an ArcPad application for updating the SIGNview database. This also includes developing a process for transferring data between the field tablet PC and CarteGraph database to the satisfaction of the client. The CONSULTANT will create a training program for the use of the hardware and software. The CONSULTANT will acquire the units selected and install and provide on-site training for field and office personnel.

**EXHIBIT F – TRUTH IN NEGOTIATION CERTIFICATE
TO PROFESSIONAL SERVICES AGREEMENT**

EXHIBIT F – TRUTH IN NEGOTIATION CERTIFICATE

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 City of Fort Myers

Before me, the undersigned authority personally appeared, who having personal knowledge as to the facts and statement 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 3.12.
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 CITY 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:

Curt A. Beckemeyer

BY: _____ Curt A. Beckemeyer, P.E.
(Name/Signature)
TITLE: _____ Vice President

The foregoing instrument was acknowledged and executed before me by the above signed on this _____ 16th day of _____ May _____, 2005.

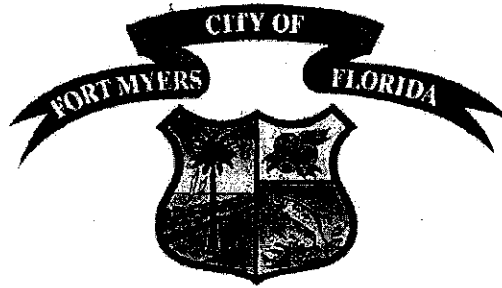
Notary Seal

Debra L. Tiffan
Notary Public, State of ~~Florida~~ at Large
ILLINOIS

My commission expires: 4-6-08



**EXHIBIT G – MINORITY BUSINESS ENTERPRISE
TO PROFESSIONAL SERVICES AGREEMENT
EXHIBIT G – MINORITY BUSINESS ENTERPRISE**



**EXHIBIT G
CITY OF FORT MYERS
Minority Business Enterprise**

Contact:

City of Fort Myers Purchasing Division
P.O. Box 2443
Fort Myers, Florida
Laurie A. Victory, CPPB
Phone: 239-332-6625
Fax: 239-332-0593

**EXHIBIT G – MINORITY BUSINESS ENTERPRISE
TO PROFESSIONAL SERVICES AGREEMENT**



TEAM WORK CAN MAKE A DIFFERENCE

TABLE OF CONTENTS

Section 1	<u>CITY OF FORT MYERS MBE ORDINANCE</u>	
1.1	MBE Ordinance	1 - 10
1.2	MBE Utilization & Good Faith Effort Forms	11 - 17
Section 2	<u>MBE LIST</u>	
1.1	State of Florida List of Certified MBE's located in Lee County	

**EXHIBIT G – MINORITY BUSINESS ENTERPRISE
TO PROFESSIONAL SERVICES AGREEMENT**

ORDINANCE NO. 3126

AN ORDINANCE

To Be Entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FORT MYERS, FLORIDA; AMENDING THE CITY CODE, CHAPTER 8, LICENSES AND BUSINESS REGULATIONS, ARTICLE IV. DISADVANTAGED BUSINESS ENTERPRISE PROGRAM BY CREATING MINORITY BUSINESS ENTERPRISE PROGRAM; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS: The City of Fort Myers Disadvantaged Business Enterprise Program is being abolished and the Minority Business Enterprise Program is being created; and

WHEREAS: The City of Fort Myers seeks to improve opportunities to businesses owned and operated by minorities as designated by the State of Florida; and

WHEREAS: The City of Fort Myers seeks to add benefits to the program for mobilization dollars; and

WHEREAS: The City of Fort Myers seeks to establish additional thresholds for Minority Business Enterprises in the procurement of goods and services that will aid Minority Business Enterprises in obtaining contracts for procurement of those goods and services

BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF FORT MYERS, FLORIDA, that:

SECTION 1. The City Code, Chapter 8, Licenses and Business Regulations, is amended by deleting Article IV. Disadvantaged Business Enterprise Program and creating Article IV Minority Business Enterprise Program to read as follows:

ARTICLE IV. MINORITY BUSINESS ENTERPRISE PROGRAM

Sec. 8-196. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Business location shall mean a permanent office or other site where a local business conducts, engages in or carries on all or a portion of its business; has personnel, equipment and materials within the boundaries of the county sufficient to constitute a present ability to perform the service and/or provide the goods. Business stationery and business cards must make a specific reference to a county address. A post office box or a location at a postal service center shall not constitute a business location.

Construction means the erection, rehabilitation, alteration, conversion, extension, demolition or repair of improvements to real property, including facilities providing utility service and includes the supervision, inspection and other on-site functions incidental to construction.

**EXHIBIT G - MINORITY BUSINESS ENTERPRISE
TO PROFESSIONAL SERVICES AGREEMENT**

Contract means a binding agreement by which the city is committed to expend or does expend its funds or other resources for or in connection with any of the following purposes:

- (1) Construction of any public improvements;
- (2) Purchase of any goods or services;
- (3) Procurement of professional services.

Contractor means a separate and distinguishable business entity participating or seeking to participate in the performance of a contract.

County business shall mean any person, firm, partnership, company or corporation which is duly licensed and authorized to engage in the particular business for which a proposal is submitted, and whose principle place of business, in the sole opinion of the city, is located within the boundaries of the county.

Goods mean any tangible personal property other than services or real property.

Minority business enterprise means a business certified by the State of Florida Office of Supplier Diversity and a registered city vendor, where primary place of business is within the county, as demonstrated by an active county occupational license and/or city occupational license, as required.

Professional services means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying or mapping as defined by Florida Statutes or those performed by any architect, professional engineer, landscape architect, or registered surveyor or mapper in connection with his or her professional employment or practice.

Purchasing manager shall serve as the principal public purchasing official for the city and shall be responsible for the procurement of supplies, services and construction in accordance with the city Purchasing Policy and Procedures Manual.

Services mean the furnishing primarily of labor, time and/or effort, including construction contracts, if licensed as required.

Sec. 8-197. Program created.

There is created a minority business enterprise program to assist and protect the interests of minority businesses in order to promote and encourage full and open competition in the city, and to enhance opportunities for individuals to successfully compete in a free market as independent business owners in the city. The program shall apply to all contracts and shall include the taking of steps to increase the participation of minority business enterprises.

Sec. 8-198. Administration.

(a) The purchasing division shall administer this chapter by utilizing those businesses within the county on the State of Florida Office of Diversity list of Certified Minority Businesses for participation in city contracts.

(b) The purchasing division shall provide appropriate assistance and direction to minority business enterprises so as to maximize their participation in contracts awarded by the city.

(c) Minority business enterprise utilization.

(1) This sub-section is applicable to procurement of construction contracts (City Code, Sec. 8-199) and professional services (City Code, Sec 8-201); minority business enterprise utilization is not applicable for procurement of goods and services (City Code, Sec 8-200).

(2) Bidders shall meet or exceed or demonstrate that they could not meet, despite their good faith efforts, the contract goals set by the city. Certain minority business enterprise participation information shall be submitted with the

**EXHIBIT G – MINORITY BUSINESS ENTERPRISE
TO PROFESSIONAL SERVICES AGREEMENT**

bid proposals as required. Award of the bid shall be conditioned upon submission of the minority business enterprise participation information with bid proposals and upon satisfaction of the contract goals or, if the goals are not met, upon demonstration that sufficient good faith efforts were made to meet the goals.

- (3) Bidders are encouraged to perform the following:
 - a. Attend pre-bid conferences to address minority business enterprise compliance questions.
 - b. Thoroughly review the minority business enterprise program regulations and accompanying forms early in the bidding preparation process to adequately comply and have questions timely addressed.
 - c. Contact the purchasing division regarding questions.
 - d. Comply with the forms to be submitted with bids to avoid non-responsiveness ruling.
 - e. Complete all forms fully and accurately.
- (4) The city shall provide a list of qualified minority business enterprises that are state certified within the county with distribution of the bid package on bid issuance date. If additional minority business enterprise names are added during the bid solicitation term, an addendum may be issued. However, if an addendum is not issued, the originally distributed minority business enterprise list shall be utilized. Bidders are required to include documentation and utilization forms as part of their submittal package as follows:
 - a. General contractor or professional information.
 - b. Schedule of minority business enterprise participation.
 - c. Failure to submit completed utilization forms may result in a general contractor's bid being deemed non-responsive and the bid being rejected. If no minority business enterprise participation is proposed, it should be so stated on the forms as required.
 - d. The city reserves the right to request copies of proposals submitted by a minority business enterprise to the contractor or professional. Copies of said proposals shall be sent by facsimile or hand delivered to the purchasing division within twenty-four (24) hours after the request is made. If the proposals are not delivered within the twenty-four (24) hour period, the contractor or professional may be deemed non-responsive.
- (5) Good faith effort documentation. Sufficient information to demonstrate that the contractor or professional made a good faith effort to meet the goal should be submitted with the bid. Contractors or professionals must use the good faith effort format and forms provided by the city in soliciting minority business enterprise participation and submit these forms, completed in full with their submittal.
- (6) In evaluating the good faith effort of a contractor or professional, the city requires the following:
 - a. Documented notice from the contractor or professional by facsimile transmittal, certified mail, return receipt requested, or hand delivered, with receipt, to certified minority business enterprise participants, that perform the type of work, which the contractor or professional intends to subcontract. The contractor or professional shall indicate in the notice to minority business enterprise the following:

**EXHIBIT G – MINORITY BUSINESS ENTERPRISE
TO PROFESSIONAL SERVICES AGREEMENT**

1. The specific work the contractor or professional intends to subcontract, including contract plans and specifications related to the specific sub-contract work requested;
 2. The contractor or professional shall include along with good faith effort forms a summation of all minority business enterprise quotations received and an explanation of why any minority business enterprise participant was not selected. If the minority business enterprise participant was not selected, the name of the sub-contractor and price submitted for that portion of the work shall be listed.
- b. The city will evaluate the good faith efforts of a contractor or professional by considering the following:
1. Whether a minority business enterprise is qualified to perform the portions of work selected by the contractor or professional.
 2. The ability of a contractor or professional to perform the work with its own work force will not excuse a contractor or professional from meeting the minority business enterprise goals.
 3. Whether the minority business enterprise goals were met by other bidders.
- (c) Failure to satisfy any of the above-referenced documentation requirements may result in bid submittals being deemed non-responsive. All documentation must be complete and included in the bid submittal. Good faith efforts to meet the minority business enterprise goals shall be documented. The appropriate form shall reflect whether a good faith effort was made or assistance was offered but not accepted by the minority business enterprise firm.
- (d) The contractor or professional shall provide an annual reporting system to document the percentage of contracts that have been awarded to minority business enterprises.

Sec. 8-199. Requirements of construction contracts.

- (a) *Goals generally.* The following requirements are adopted by the city for the purpose of increasing the level of minority business enterprise participation in city contracts. As a goal, the city should utilize minority business enterprises for fifteen (15) percent of the total dollars when contracting for construction contracts through prime contracts or sub-contracts
- (b) Nothing shall prohibit a higher percentage participation by minority business enterprises whereby minority business enterprises possess the qualifications to perform one hundred (100) percent of the contract.
- (c) In the event a minority business enterprise has been selected, but is not utilized on the awarded job, the general contractor is obligated to offer this trade area to another certified and licensed minority business enterprise before seeking a non-minority business enterprise subcontractor to perform the contracted work. If no other minority business enterprise is available or does not enter into a contract, the general contractor may use a non-minority business enterprise. A non-minority business enterprise contract shall not be executed between the general contractor and the non-minority business enterprise sub-contractor without full knowledge and approval of contracts administration division and the purchasing division.
- (d) The contracts administrator shall be responsible for monitoring the execution of the contract between the general contractor and all minority business enterprise subcontractors. Presentation of an approved, executed minority business enterprise contract is a prerequisite to execution of a contract between the city and the general contractor, within ten (10) days after award of contract.

**EXHIBIT G – MINORITY BUSINESS ENTERPRISE
TO PROFESSIONAL SERVICES AGREEMENT**

(e) Mobilization: The general contractor shall provide the minority business enterprise subcontractor with ten (10) percent of the minority business enterprise contract amount as funds for mobilization in advance of the commencement of construction. The total minority business enterprise mobilization funds will be indicated as a separate line item on the schedule of values. Contractors are required to pay minority business enterprise contractors within thirty (30) days of receipt of payment from the city.

(f) All bid utilization forms must include a break down between labor and material.

Sec. 8-200. Requirements for goods and services.

(a) The procurement of goods and services under this section is for minority business enterprises providing one hundred (100) percent of the goods and services.

(b) Procurement of goods and services. The purchasing division shall maintain a list of services provided by minority business enterprises located in the county that are on the State of Florida Office of Diversity list of Certified Minority Businesses for participation in city contracts that will be used when the city is purchasing goods and services under twenty-five thousand dollars (\$25,000.00) but more than the established small dollar threshold for the city. Those measures shall include a provision that every effort will be made by purchasing agents to contact all minority business enterprises within a particular commodity area for purchases under twenty-five thousand dollars (\$25,000.00) but more than the established small dollar threshold for the city. Awards of purchases under twenty-five thousand dollars (\$25,000.00) but more than the established small dollar threshold for the city will be made to the lowest responsible, responsive bidder unless a minority business enterprise is within seven (7) percent of the lowest non-minority business enterprise bid, then the award shall be made to the minority business enterprise submitting the lowest bid.

(c) Participation by minority business enterprise for purchases over twenty-five thousand dollars (\$25,000.00). The minority business enterprise participation measures provide that every effort will be made by purchasing agents to contact all minority business enterprises within a particular commodity area for purchases over twenty-five thousand dollars (\$25,000.00). Awards of purchases over twenty-five thousand dollars (\$25,000.00) will be made to the lowest responsible, responsive bidder unless a minority business enterprise is within six (6) percent or up to ten thousand dollars (\$10,000.00), whichever is less, of the lowest non-minority business enterprise bid, then the award shall be made to the minority business enterprise submitting the lowest bid.

Sec. 8-201. Requirements for professional services

(a) The city will provide contracting opportunities for professional services pursuant to Florida Statutes as amended, known as the "Consultant's Competitive Negotiation Act"; which requires that one element of consideration is minority business enterprise participation.

(b) The contracts administration division and the purchasing division shall make every effort to increase minority business enterprise participation within a particular profession during a solicitation for professional services.

(c) A point system shall be utilized to determine the recipient of the contract award. Businesses submitting proposals to provide professional services to the city

**EXHIBIT G – MINORITY BUSINESS ENTERPRISE
TO PROFESSIONAL SERVICES AGREEMENT**

will be eligible to receive points, not to exceed twelve (12) percent of the total number of possible points awarded, for minority business enterprise participation.

(d) It will be the responsibility of the firm submitting a proposal to furnish all the necessary information to the city in order to receive points for minority business enterprise participation.

Sec. 8-202. Sanctions.

Every contract awarded under this article shall contain language indicating that if any document submitted to the city by a contractor, subcontractor, bidder or individual to be certified and licensed as a minority business enterprise for the purpose of participating in any contract contains false, misleading or fraudulent information, or any person knowingly engaged in fraud, misrepresentation or in any attempt, direct or indirect, to evade the provisions of this article by providing false, misleading or fraudulent information, the purchasing manager shall debar for cause following the debarment or suspension procedures provided in the Purchasing Policies and Procedures Manual. Any contractor that does not use the minority business enterprise specified in the bid proposal shall be sanctioned. The sanctions on the contractor, subcontractor, bidder or individual may include any of the following:

- (1) Withholding of payment.
- (2) Termination, suspension or cancellation of the contract in whole or in part.
- (3) Denial to participate in any contracts awarded by the city for a period of not more than three (3) years.
- (4) If the purchasing manager; purchasing/minority business enterprise dispute committee and city council determines after written notice that a contractor and/or minority business enterprise has made misrepresentations regarding the utilization of minority business enterprises, or has colluded with another making such misrepresentations or material omissions; the contractor or minority business enterprise, as the case may be, shall be recommended to be disqualified from contracting or subcontracting on future contracts for a period of not more than three (3) years. Such persons or firms determined to have violated any sections of this article shall be subject to debarment for not more than three (3) years under the cities purchasing procedures. The city shall maintain a list of such disqualified entities, which shall be available for public inspection. In the event that a contractor submitting a bid is determined not to have been involved in any misrepresentation of status of a disqualified subcontractor included in the bid, the city may allow the contractor to discharge the disqualified subcontractor and identify and engage a qualified subcontractor as its replacement for inclusion in the bid. The consequences provided herein shall be in addition to any other criminal or civil liability to which such entities may be subject. The appeal process shall follow the Purchasing Policies and Procedures Manual.

Sec. 8-203--8-215. Reserved.

SECTION 2. SEVERABILITY. If any section, subsection, sentence, clause, phrase of this ordinance, or the particular application thereof shall be held invalid by any court, administrative agency, or other body with appropriate jurisdiction, the remaining section, subsection, sentences, clauses, or phrases under application shall not be affected thereby.

SECTION 3. This ordinance shall become effective immediately upon adoption.

**EXHIBIT G – MINORITY BUSINESS ENTERPRISE
TO PROFESSIONAL SERVICES AGREEMENT**

PASSED IN PUBLIC SESSION of the City Council of the City of Fort Myers, Florida, this 19th day of May, A.D., 2003.

Tammara Hall
Veronica S. Shoemaker
Ann M. Knight, Ed.D.
Michael Flanders
Randall P. Henderson, Jr.
Council Members

APPROVED this 19th day of May, A.D., 2003, at _____ o'clock p.m.

Jim Humphrey
Mayor

FILED in the Office of the City Clerk this 19th day of May, A.D., 2003.

Marie Adams, CMC
City Clerk

**EXHIBIT G – MINORITY BUSINESS ENTERPRISE
TO PROFESSIONAL SERVICES AGREEMENT**

(Revised 12/23/03)

City of Fort Myers
Participation of
Minority Business Enterprise
General Contractor Information

UTILIZATION FORM #1

1. Prime Contractor – Name of Firm

APPLIED RESEARCH ASSOCIATES, INC.

Complete Address: 5000 NW 27TH COURT, SUITE E
GAINESVILLE, FL 32606

Telephone Number: 352-336-5366

Fax Number: 352-381-0022

Authorized Representative: MICHAEL I. HAMMONS

2. Project Number:

3. Project Location Address:

4. Total Contract Dollar Amount: \$181,287.28

5. Minority Business Firm Total Dollar Amount \$8,422.44

6. Total Contract Percentage: 4.65 %

7. Total Mobilization Dollars: \$ 0

8. Additional Comments/Attachments:

**EXHIBIT G – MINORITY BUSINESS ENTERPRISE
TO PROFESSIONAL SERVICES AGREEMENT**

(Revised 12/23/03)

City of Fort Myers
Participation of
Minority Business Enterprise

UTILIZATION FORM #2

1. Minority Business Firm

Allied Engineering and Testing, Inc.

Complete Address:
5850 Corporation Circle
Ft. Myers, FL 33905

Telephone Number: 800-490-6833 ext. 29 Fax Number: 239-334-6614

Authorized Representative: Richard Rojas

2. Detailed Description of Work or Service to be Performed:

Deploy field surveyors with a handheld computer with an integrated GPS unit that can be used to locate and record attributes of a particular asset. The surveyor would also carry a digital camera to take images much like the digital survey vehicle takes them. Condition evaluation will be performed in the field by the inspectors.

3. Monetary Amount of Labor or Service: \$8,422.44

4. Monetary Amount of Materials: \$0

5. Project Commitment Date Projected: June 1, 2005

6. Project Completion Date Projected: December 31, 2005

7. Agreed Dollar Amount: \$0

8. Percentage of Total Contract: 10 %

9. Ten Percent (10%) Mobilization Cost \$0

**EXHIBIT H – FLORIDA STATUTES ON PUBLIC ENTITY CRIMES
TO PROFESSIONAL SERVICES AGREEMENT**

EXHIBIT H – FLORIDA STATUTES ON PUBLIC ENTITY CRIMES

**FLORIDA STATUTES ON
PUBLIC ENTITY CRIMES**

PUBLIC ENTITY CRIME:

AS REQUIRED BY FLORIDA STATE STATUTE 287.133, (2)(a), A PERSON OR AFFILIATE WHO HAS BEEN PLACED ON THE CONVICTED VENDOR LIST FOLLOWING A CONVICTION FOR A PUBLIC ENTITY CRIME MAY NOT SUBMIT A BID ON A CONTRACT TO PROVIDE ANY GOODS OR SERVICES TO A PUBLIC ENTITY, MAY NOT SUBMIT A BID ON A CONTRACT WITH A PUBLIC ENTITY FOR THE CONSTRUCTION OR REPAIR OF A PUBLIC BUILDING OR A PUBLIC WORK, MAY NOT SUBMIT BIDS ON LEASES OF REAL PROPERTY TO A PUBLIC ENTITY, MAY NOT BE AWARDED OR PERFORM WORK AS A CONTRACTOR, SUPPLIER, SUBCONTRACTOR, OR CONSULTANT UNDER A CONTRACT WITH ANY PUBLIC ENTITY, AND MAY NOT TRANSACT BUSINESS WITH ANY PUBLIC ENTITY IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN s.287.017 FOR CATEGORY TWO FOR A PERIOD OF 36 MONTHS FROM THE DATE OF BEING PLACED ON THE CONVICTED VENDOR LIST. ANY PERSON MUST NOTIFY THE CITY WITHIN 30 DAYS AFTER A CONVICTION OF A PUBLIC ENTITY CRIME APPLICABLE TO THAT PERSON OR TO AN AFFILIATE OF THAT PERSON.

**EXHIBIT I - CERTIFICATE OF INSURANCE
TO PROFESSIONAL SERVICES AGREEMENT**

EXHIBIT I - CERTIFICATE OF INSURANCE

ACORD, CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY) 03/18/2005
PRODUCER (505)265-8481 FAX (505)266-3500 Western Assurance 3701 Paseo Del Norte NE, Suite 200 PO Box 94600 Albuquerque, NM 87199-4600	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.	
INSURED Applied Research Associates Inc/ERES Cons. Inc Eckrose-Green Associates Inc. 4300 San Mateo Blvd NE, Suite A-220 Albuquerque, NM 87110	INSURERS AFFORDING COVERAGE	NAIC #
	INSURER A Continental Casualty - A	
	INSURER B Risk Specialists/Lexington Insurance - A+	
	INSURER C Transportation Insurance Company - A-	
	INSURER D National Fire Ins Co of Hartford - A-	
	INSURER E American Home Assurance Company - A	

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

INSURER	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUP <input checked="" type="checkbox"/> XCU Included	GL2076673223	06/15/2004	06/15/2005	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (PER OCCURRENCE) \$ 100,000 MED EXP (AN AND PERSON) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/PROP AGG \$ 2,000,000
	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> TRIP AUTOS <input checked="" type="checkbox"/> NON OWNED AUTOS <input checked="" type="checkbox"/> Rental/Hired auto	BUA2078257332	06/15/2004	06/15/2005	COMBINED SINGLE LIMIT (Per accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	CARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY EA ACC \$ ACC \$
C	EXCESS UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUP <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$	C2078257380	06/15/2004	06/15/2005	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$ \$
E	WORKERS COMPENSATION AND EMPLOYERS LIABILITY ANY PROPERTY PARTNER/EXECUTIVE OFFICER/ MEMBER EXCLUDED? If yes, specify under SPECIAL PROVISIONS below	3287824	01/31/2005	01/31/2006	WC STATE TOB - CENTS \$ WC STATE FE \$ E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - FNUCLY LIMIT \$ 1,000,000
B	OTHER Professional/Pollution Retro Date 10/23/1996 ERRORS & OMISSIONS - \$2M	0337677	03/31/2005	03/31/2006	\$2,000,000 each claim \$2,000,000 aggregate (Extended Reporting Included)

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

CERTIFICATE HOLDER

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Lurleene Beck-/CINDY

Lurleene Beck

ACORD 25 (2001/08)

©ACORD CORPORATION 1988