

## **PROFESSIONAL SERVICES AGREEMENT**

This PROFESSIONAL SERVICES AGREEMENT is made and entered into between the Board of County Commissioners of LEE COUNTY, a political subdivision of the STATE OF FLORIDA hereinafter referred to as the "COUNTY", and ECS Florida, LLC hereinafter referred to as the "CONSULTANT".

### **WITNESSETH**

WHEREAS, the COUNTY desires to obtain the professional services of said CONSULTANT to provide and perform professional services as further described hereinafter concerning the Project to be referred to and identified as: Professional Testing Services; and

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

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

WHEREAS, the selection and engagement of the CONSULTANT has been made by the COUNTY in accordance with the provisions of the Consultants' Competitive Negotiation Act, Chapter 287.055, Florida Statutes, and in accordance with applicable Lee County Administrative Codes.

NOW, THEREFORE, in consideration of the mutual covenants, terms and provisions contained herein, the parties agree as follows:

### **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 attached EXHIBIT "A", entitled "SCOPE OF PROFESSIONAL SERVICES".

### **ARTICLE 2.00 - DEFINITIONS**

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

#### **2.01 COUNTY**

The term COUNTY refers to the Board of County Commissioners of Lee County, a charter County and political subdivision of the State of Florida, and any official or employee duly authorized to act on the COUNTY'S behalf relative to this Agreement.

#### **2.02 CONSULTANT**

The term CONSULTANT refers to the individual or firm offering professional services that, by execution of this Agreement, is legally obligated, responsible, and liable for providing and performing any and all of the services, work and materials, including services and/or work of sub-consultants and subcontractors,

required under the covenants, terms and provisions contained in this Agreement.

#### 2.03 PROFESSIONAL SERVICES

The term PROFESSIONAL SERVICES refers to all of the services, work, materials and related professional, technical and administrative activities to be provided and performed by the CONSULTANT and its employees, including all sub-consultants and subcontractors engaged by the CONSULTANT, to complete the services required pursuant to the covenants, terms and provisions of this Agreement.

#### 2.04 SUB-CONSULTANT

The term SUB-CONSULTANT refers to any individual or firm offering professional services that is engaged by the CONSULTANT to assist in providing and performing the professional services, work and materials for which the CONSULTANT is contractually obligated, responsible and liable to provide and perform under this Agreement. The COUNTY may not be deemed a party to, responsible or liable for, or assume any obligation whatsoever with respect to any Agreement between the CONSULTANT and any SUB-CONSULTANT.

#### 2.05 SUBCONTRACTOR

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

#### 2.06 PROJECT

The term PROJECT refers 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 refers to the professional services set forth and required pursuant to this Agreement as described in further detail in the attached EXHIBIT "A".

#### 2.08 ADDITIONAL SERVICES

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

#### 2.09 CHANGE ORDER

The term CHANGE ORDER refers to a written document, CHANGE ORDER AGREEMENT, executed by both parties to this Agreement setting forth and authorizing changes to the agreed upon Scope of Professional Services and Tasks, Compensation and Method of Payment, Time and Schedule of Performance, or Project Guidelines and Criteria as such were set forth and agreed to in the initial AGREEMENT, SUPPLEMENTAL TASK AUTHORIZATIONS, or previous CHANGE ORDERS issued thereto. The CHANGE ORDER document, which must be executed on a Lee County standard form, will 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.

CHANGE ORDERS will be identified as follows: (1) Owner changes: These will be additional services. (2) Changes due to design errors or omissions: Design services for these will be at no cost to the County. Change orders resulting from gross negligence on the part of the CONSULTANT team may be required to be paid for by CONSULTANT in full, including equipment. (3) Changes due to differing site conditions: These will be additional services. The CONSULTANT will review all contract requests for change orders and make recommendations to the County. The CONSULTANT will periodically meet to review Change Orders to determine the nature of the change orders and the proper disposition thereof. The CONSULTANT will not be held liable for costs of that portion of any CHANGE ORDER that the County would have borne in the absence of any error or omission or otherwise results in the "betterment" of the project.

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 that may result from or be caused by the Change Order, and shall be understood and agreed to include a fair, equitable and adequate adjustment to cover the CONSULTANT'S general administrative and overhead costs and profit.

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

Should errors, omissions or conflicts in the drawings, specification or other Contract Documents prepared by or through the CONSULTANT be discovered, the CONSULTANT will prepare and submit to the County, within five (5) calendar days unless otherwise authorized by the County, such amendments or supplementary documents to address the errors, omissions or conflicts, and provide consultation as may be required, for which the CONSULTANT will make no additional charges to the County.

#### 2.10 SUPPLEMENTAL TASK AUTHORIZATION

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

#### 2.11 DEPARTMENT DIRECTOR

The term DEPARTMENT DIRECTOR refers to the Director of the Department requesting the service, employed by the Lee County Board of County Commissioners to serve and act on the COUNTY'S behalf, as it relates to this Project. The Chairman of the Board of County Commissioners, or designated representative, shall act on behalf of the COUNTY to execute any and all CHANGE ORDERS or SUPPLEMENTAL TASK AUTHORIZATIONS approved by the COUNTY and issued to the CONSULTANT pursuant to this Agreement. The DEPARTMENT DIRECTOR, within the authority conferred by the Board of County

Commissioners, acting as the COUNTY'S designated representative, shall issue written notification to the CONSULTANT of any and all changes approved by the COUNTY in the CONSULTANT'S: (1) compensation; (2) time and/or schedule of service delivery; (3) scope of services; or, (4) other changes relative to BASIC SERVICES and ADDITIONAL SERVICES pursuant to this Agreement, including CHANGE ORDERS or SUPPLEMENTAL TASK AUTHORIZATIONS pertaining thereto. The DEPARTMENT DIRECTOR is responsible for acting on the COUNTY'S behalf to administer, coordinate, interpret and otherwise manage the contractual provisions and requirements set forth in this Agreement, including approved CHANGE ORDERS or SUPPLEMENTAL TASK AUTHORIZATIONS.

#### 2.12 PROJECT MANAGER

The term PROJECT MANAGER refers to the person employed or retained by the COUNTY and designated, in writing, to serve and act on the COUNTY'S behalf to provide direct contact and communication between the COUNTY and CONSULTANT with respect to providing information, assistance, guidance, coordination, review, approval and acceptance of the professional services, work and materials to be provided and performed by the CONSULTANT pursuant to this Agreement and duly approved SUPPLEMENTAL TASK AUTHORIZATIONS and CHANGE ORDERS. The PROJECT MANAGER is not authorized to and may 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 whatsoever 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; or, (3) The amount of compensation the COUNTY is obligated or committed to pay the CONSULTANT. The PROJECT MANAGER will 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 expenses, if such costs were previously agreed to by the COUNTY, as provided for in this Agreement, CHANGE ORDERS or SUPPLEMENTAL TASK AUTHORIZATIONS.

#### 2.13 LUMP SUM FEES

Lump Sum Fees, 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-consultants and/or subcontractors, out-of-pocket expenses and costs, professional service fees and any other costs or expenses which may pertain to the services and/or work to be performed, provided and/or furnished by the Consultant as may be required and/or necessary to complete each and every task set forth in the Scope of Professional Services, Exhibit "A", or as may be set in subsequent Supplemental Task Authorizations, and/or Change Orders agreed to in writing by both parties to this Agreement.

#### 2.14 NOT-TO-EXCEED FEES

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

For the actual necessary, required and expended non-personnel reimbursable expenses and costs, if such costs were previously agreed to by the COUNTY, multiplied by the applicable "Basis of Charges" for each item as set forth in Attachment No. 2 to Exhibit "B", as attached, and any approved Change Orders

or Supplemental Task Authorizations; and

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

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

With the understanding and agreement that the CONSULTANT'S invoices and all payments to be made for all Not-to-Exceed amounts will be subject to the review, acceptance and approval of the COUNTY; and with the understanding and agreement that when the CONSULTANT'S compensation is established on a Not-to-Exceed basis for a specific Task or Sub-Task, the total amount of compensation to be paid the CONSULTANT to cover all personnel costs, non-personnel reimbursable expenses and costs, when previously agreed to by the COUNTY, and Sub-Consultant and SubContractor costs for any such specific Tasks or Sub-Tasks shall not exceed the amount of the total Not-to-Exceed compensation established and agreed to for each specific Task or Sub-Task. In the event the amount of compensation for any Task or Sub-Task 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 or Sub-Task.

### **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 include, but are not limited to, the following:

#### **3.01 LICENSES**

The CONSULTANT agrees to obtain and maintain throughout the period this Agreement is in effect all such licenses as are required to do business in the State of Florida and in Lee County, Florida, including, but 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 that, under Florida Statutes, requires a license, certificate of authorization or other form of legal entitlement to practice such services, to employ and/or retain only qualified personnel to be in responsible charge of all BASIC SERVICES and ADDITIONAL SERVICES to be provided pursuant to this Agreement.

(2) CONSULTANT'S PROJECT DIRECTOR

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

(3) REMOVAL OF PERSONNEL

The CONSULTANT agrees, within thirty (30) calendar days of receipt of a written request from the COUNTY, to promptly remove and replace the CONSULTANT'S Project Director, or any other personnel employed or retained by the CONSULTANT, or personnel of the sub-consultants or subcontractors engaged by the CONSULTANT to provide and/or perform services and/or work pursuant to the requirements of this Agreement, who the COUNTY shall request, in writing, be removed, which request may be made by the COUNTY with or without cause. However, if day thirty (30) falls on a Saturday, Sunday, or Lee County recognized holiday, the deadline shall fall to the next Monday or non-Lee County recognized holiday.

(4) BACKGROUND SCREENING OF PERSONNEL

The CONSULTANT shall comply with the Consultant Background Screening Affidavit attached hereto and incorporated herein as Exhibit I.

3.03 TIMELY ACCOMPLISHMENT OF SERVICES

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

3.04 STANDARDS OF PROFESSIONAL SERVICE

The work and/or services to be provided and/or performed by the CONSULTANT and by any Sub-Consultants and/or Subcontractors engaged by the CONSULTANT as set forth in the Scope of Professional Services, Exhibit "A", shall be done in accordance with the generally accepted standards of professional practice and in accordance with the laws, rules, regulations, ordinances, codes, policies, standards or other guidelines issued by those governmental agencies which have jurisdiction over all or a portion of this project and which are in effect at the time the COUNTY approves this Agreement, or which may subsequently be changed or revised. Any subsequent change or revision to such laws, rules, regulations, ordinances, codes,

policies, standards or other guidelines which requires the CONSULTANT to provide and/or perform work and/or services which are significantly different from that set forth in the Scope of Professional Services, Exhibit "A", shall serve as a basis for the COUNTY to consider the development and issuance of a Change Order to provide for a change to, or Additional Services to the services set forth in the Agreement.

### 3.05 CORRECTION OF ERRORS, OMISSIONS OR OTHER DEFICIENCIES

#### (1) RESPONSIBILITY TO CORRECT

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

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

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

### 3.06 LIABILITY

#### (1) CONSULTANT TO HOLD COUNTY HARMLESS

Consistent with the provisions of FS s. 725.08, CONSULTANT agrees to indemnify and hold harmless the COUNTY, its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the CONSULTANT and other persons employed or utilized by the CONSULTANT, including, but not limited to sub-consultants, sub-contractors and materialmen, in the performance of this contract, including any Change Orders or Supplemental Task Authorizations. CONSULTANT and COUNTY agree that the monetary limitation on the indemnification provided under this contract is limited to the full amount of the contract award (i.e. Compensation to be paid Consultant as set forth in the attached Exhibit B), including any sums added or subtracted from the contract award through Change Orders or Supplemental Task Authorizations. Consistent with FS s.



768.28, COUNTY agrees that CONSULTANT will not be liable for damages arising out of the negligence of the COUNTY, its officers or employees.

### 3.07 NOT TO DIVULGE CERTAIN INFORMATION

CONSULTANT agrees, during the term of this Agreement, not to divulge, furnish or make available to any third person, firm, or organization, without COUNTY'S prior written consent, or unless incident to the proper performance of CONSULTANT'S obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by CONSULTANT or any sub-consultants or subcontractors pursuant to this Agreement. CONSULTANT shall require all of its employees, sub-consultants and subcontractors 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 COUNTY, any property damage arising out of, or caused by, the willful or negligent acts of the CONSULTANT, or of its sub-consultants and/or subcontractors. This CONSULTANT'S obligation under this sub-article does not apply to property damage caused by any other Consultant or Contractor engaged directly by the COUNTY.

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

### 3.09 RESPONSIBILITY FOR ESTIMATES

(1) In the event the services required pursuant to this Agreement include the CONSULTANT preparing and submitting cost estimates to the COUNTY, the CONSULTANT, by exercise of their experience, effort, knowledge and judgment, shall develop such cost estimates as are set forth in, or as may be required under the Agreement. Any opinions or estimates of probable construction costs to be provided under this Agreement by the CONSULTANT are to be made or reviewed on the basis of CONSULTANT'S experience and qualifications and represent the CONSULTANT'S judgment as an experienced and qualified professional, familiar generally with the construction industry. The COUNTY agrees that the CONSULTANT has no control over the cost of labor, materials, equipment or services furnished by others or control over competitive bidding or market conditions, nor the Contractor's methods of determining prices. Therefore, CONSULTANT cannot and does not guarantee that proposals, bids or actual final construction costs will not vary from the opinions or estimates prepared or reviewed by the CONSULTANT. COUNTY may choose to employ an independent cost estimator in order to achieve greater assurance of actual construction costs.

### 3.10 PERMITS

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



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

### 3.11 ADDITIONAL SERVICES

Should the COUNTY request the CONSULTANT to provide and perform professional services for this project which are not set forth in EXHIBIT "A", the CONSULTANT agrees to provide and perform such ADDITIONAL SERVICES as may be agreed to in writing by both parties to this Agreement. Such ADDITIONAL SERVICES shall constitute a continuation of the professional services covered under this Agreement and shall be provided and performed in accordance with the covenants, terms, and provisions set forth in this Agreement thereto.

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

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

### 3.12 TRUTH-IN-NEGOTIATIONS CERTIFICATE

The COUNTY may request the CONSULTANT to execute a Truth-in-Negotiations Certificate ("Certificate"), in a form attached as EXHIBIT "F". The Certificate shall state that wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time this Agreement is executed. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the COUNTY determines the contract price was increased due to inaccurate, incomplete or non-current wage rates or other factual unit costs.

### 3.13 COMPLETION OF TASKS

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

Orders authorized thereto as stated above."

## **ARTICLE 4.00 - OBLIGATIONS OF THE COUNTY**

### **4.01 DESIGNATION OF PROJECT MANAGER**

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

### **4.02 AVAILABILITY OF COUNTY INFORMATION**

#### **(1) PROJECT GUIDELINES AND CRITERIA**

Guidelines to the CONSULTANT regarding requirements the COUNTY has established or suggests relative to the Project including, but not limited to such items as: goals, objectives, constraints, and any special financial, budgeting, space, site, operational, equipment, technical, construction, time and scheduling criteria are set forth in attached EXHIBIT "E", entitled "PROJECT GUIDELINES AND CRITERIA".

#### **(2) COUNTY TO PROVIDE PERTINENT REFERENCE MATERIAL**

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

### **4.03 AVAILABILITY OF COUNTY'S DESIGNATED REPRESENTATIVES**

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

### **4.04 ACCESS TO COUNTY PROPERTY**

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

## **ARTICLE 5.00 - COMPENSATION AND METHOD OF PAYMENT**

### **5.01 BASIC SERVICES**

The COUNTY will pay the CONSULTANT for all requested and authorized BASIC SERVICES rendered hereunder by the CONSULTANT and completed in accordance with the requirements, provisions, and/or terms of this Agreement and accepted by the COUNTY in accordance with the provisions for compensation and payment of said BASIC SERVICES as set forth and prescribed in attached EXHIBIT "B", or on the basis of such changes to the established compensation as may be mutually agreed to by both parties to this Agreement and evidenced by a written and duly approved Change Order.

### **5.02 ADDITIONAL SERVICES**

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

### **5.03 METHOD OF PAYMENT**

#### **(1) MONTHLY STATEMENTS**

The CONSULTANT is entitled to submit no more than one invoice statement to the COUNTY each calendar month covering services rendered during the preceding calendar month. The CONSULTANT'S invoice statements must be itemized to correspond to the basis of compensation as set forth in the Agreement, CHANGE ORDERS, or SUPPLEMENTAL TASK AUTHORIZATIONS. The CONSULTANT'S invoice statements must contain a breakdown of charges, description of services and work provided and/or performed, and where appropriate, supportive documentation of charges consistent with the basis of compensation set forth in the Agreement, CHANGE ORDERS, and/or SUPPLEMENTAL TASK AUTHORIZATIONS.

#### **(2) PAYMENT FOR SERVICES PERFORMED**

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

- (A) The COUNTY shall pay the CONSULTANT on the basis of services completed for tasks set forth in Exhibits "A" and "B", as evidenced by work products such as reports, drawings, specifications, etc., submitted by the CONSULTANT and accepted by the COUNTY. No payments shall be made for CONSULTANT'S Work-in-Progress until service items for which payment amounts have been established and set forth in this Agreement have been completed by the CONSULTANT and accepted by the COUNTY. Whenever an invoice statement covers services for which no work product is required to be furnished by the CONSULTANT to the COUNTY, the COUNTY reserves the right to retain five percent (5%) of the amount invoiced until such service requirements are fully completed.
- (B) The COUNTY shall pay the CONSULTANT for services performed for tasks set forth in Exhibits "A" and "B" on the basis of an invoice statement covering CONSULTANT'S Work-in-Progress expressed as a percentage of the total cost of the service and/or work

required for each task invoiced in this manner. All such Work-in-Progress percentages are subject to the review and approval of the COUNTY. The decision of the COUNTY shall be final as to the Work-in-Progress percentages paid. Payment by the COUNTY for tasks on a Work-in-Progress percentage basis shall not be deemed or interpreted in any way to constitute an approval or acceptance by the COUNTY of any such service or Work-in-Progress. The CONSULTANT shall be responsible for correcting, re-doing, modifying or otherwise completing the services and work required for each task before receiving final, full payment whether or not previous Work-in-Progress payments have been made. All tasks to be paid for on a Work-in-Progress percentage basis shall be agreed to by both parties to the Agreement and each task to be paid in this manner shall be identified in Exhibit "B" with the notation (WIPP). Only tasks so identified will be paid on a Work-in-Progress percentage basis. The COUNTY reserves the right to retain five percent (5%) of the amount invoiced until such service requirements are fully completed.

### (3) PAYMENT SCHEDULE

Payment will be made upon receipt of a proper invoice and in compliance with FL § Chapter 218, otherwise known as the "Florida Prompt Payment Act," and, pursuant to the Lee County Board of County Commissioners payment policies as described herein. Should the COUNTY object or take exception to the amount of any CONSULTANT'S invoice statement, the COUNTY shall notify the CONSULTANT of such objection or exception within the payment period set forth hereinbefore. If such objection or exception remains unresolved at the end of the payment period, the COUNTY shall withhold the disputed amount and make payment to the CONSULTANT of the amount not in dispute. Payment of any disputed amount, or adjustments thereto, shall be made within forty-five (45) calendar days of the date such disputed amount is resolved by mutual agreement of the parties to this Agreement. However, if day forty-five (45) falls on a Saturday, Sunday, or Lee County recognized holiday, the deadline shall fall to the next Monday or non-Lee County recognized holiday.

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

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

#### 5.05 PAYMENT WHEN SERVICES ARE SUSPENDED

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

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

In the event the services required pursuant to this Agreement are terminated, eliminated, cancelled, or

decreased due to: (1) termination; (2) suspension in whole or in part; and, (3) and/or are modified by the subsequent issuance of SUPPLEMENTAL TASK AUTHORIZATIONS and/or CHANGE ORDERS, 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 award of this Solicitation to the CONSULTANT by the Lee County Board of County Commissioners, and after the CONSULTANT has complied with the insurance requirements set forth hereinafter, the COUNTY shall issue the CONSULTANT a WRITTEN NOTICE TO PROCEED. Following the issuance of such NOTICE TO PROCEED the CONSULTANT shall be authorized to commence work and the CONSULTANT thereafter shall commence work promptly and shall carry on all such services and work as may be required in a timely and diligent manner to completion.

### **6.02 TIME OF PERFORMANCE**

The CONSULTANT agrees to complete the services required pursuant to this Agreement within the time periods for completion of the various phases and/or tasks of the project services set forth and described in this Agreement, as set forth in attached EXHIBIT "C", entitled "TIME AND SCHEDULE OF PERFORMANCE."

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

### **6.03 CONSULTANT WORK SCHEDULE**

The CONSULTANT is required to prepare and submit to the COUNTY, on a monthly basis commencing with the issuance of the NOTICE TO PROCEED, a CONSULTANT'S WORK SCHEDULE. The WORK SCHEDULE must 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 as set forth in EXHIBIT "C" 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 must be updated and submitted by the CONSULTANT to the COUNTY on a monthly basis.

### **6.04 FAILURE TO PERFORM IN A TIMELY MANNER**

Should the CONSULTANT fail to commence, provide, perform and/or complete any of the services and work required pursuant to this Agreement in a timely and diligent manner, the COUNTY may consider

such failure as justifiable cause to terminate this Agreement. As an alternative to termination, the COUNTY at its option, may, upon written notice to the CONSULTANT, withhold any or all payments due and owing to the CONSULTANT, not to exceed the amount of the compensation for the work in dispute, until such time as the CONSULTANT resumes performance of his obligations in such a manner as to get back on schedule in accordance with the time and schedule of performance requirements set forth in this Agreement, or any CHANGE ORDERS or SUPPLEMENTAL TASK AUTHORIZATIONS issued thereto.

#### **ARTICLE 7.00 - SECURING AGREEMENT**

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

#### **ARTICLE 8.00 - CONFLICT OF INTEREST**

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

If CONSULTANT, for itself and on behalf of its subconsultants, is about to engage in representing another client, which it in good faith believes could result in a conflict of interest with the work being performed by CONSULTANT or such sub-consultant under this Agreement, then it will promptly bring such potential conflict of interest to the COUNTY'S attention, in writing. The COUNTY will advise the CONSULTANT, in writing, within ten (10) calendar days as to the period of time required by the COUNTY to determine if such a conflict of interest exists. However, if day ten (10) falls on a Saturday, Sunday, or Lee County recognized holiday, the deadline shall fall to the next Monday or non-Lee County recognized holiday. If the COUNTY determines that there is a conflict of interest, CONSULTANT or such sub-consultant shall decline the representation upon written notice by the COUNTY.

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

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

#### **ARTICLE 9.00 - ASSIGNMENT, TRANSFER AND SUBCONTRACTS**

The provisions of this Agreement shall inure to the benefit of and be binding upon the respective

successors and assignees of the parties hereto. A party to this Agreement shall not sell, transfer, assign, license, franchise, restructure, alter, or change its corporate structure or otherwise part with possession or mortgage, charge or encumber any right or obligation under this Agreement without the proposed assignee and/or party restructuring, altering or changing its corporate structure agreeing in writing with the non-assigning party to observe and perform the terms, conditions and restrictions on the part of the assigning party to this Agreement, whether express or implied, as if the proposed assignee and/or party restructuring, altering or changing its corporate structure was an original contracting party to this Agreement. Notwithstanding the foregoing provision, the CONSULTANT may assign its rights if given written authorization by the County. Nor shall the CONSULTANT subcontract any of its service obligations hereunder to third parties, except as otherwise authorized in this Agreement thereto, without prior written approval of the COUNTY. The CONSULTANT shall have the right, subject to the COUNTY'S prior written approval, to employ other persons and/or firms to serve as sub-consultants and/or subcontractors to CONSULTANT in connection with CONSULTANT providing and performing services and work pursuant to the requirements of this Agreement. The COUNTY shall have the right and be entitled to withhold such approval. Such approval shall not be unreasonably withheld.

In providing and performing the services and work required pursuant to this Agreement, CONSULTANT intends to engage the assistance of the sub-consultants and/or subcontractors set forth in attached EXHIBIT "D", entitled "CONSULTANT'S ASSOCIATED SUB-CONSULTANTS AND SUBCONTRACTORS".

#### **ARTICLE 10.00 - APPLICABLE LAW**

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

#### **ARTICLE 11.00 - COVENANTS AGAINST DISCRIMINATION**

##### **11.01 FOR PROJECTS WITH FUNDS APPROPRIATED FROM GENERAL LEE COUNTY REVENUES**

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

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

The CONSULTANT for itself, its successors in interest, and assigns as part of the consideration thereof, does hereby covenant and agree that in the furnishing of services to COUNTY hereunder, no person on the grounds of race, color, national origin, handicap, or sex shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination. The CONSULTANT shall make every effort to comply with any Disadvantaged Business Enterprise goals which have been established for this project. CONSULTANTS who are uncertain of their obligations



regarding Disadvantaged Business Enterprises for this project must obtain a copy of all relevant federal or state guidelines from the Lee County Department of Equal Opportunity. The failure of the CONSULTANT to adhere to relevant guidelines shall subject the CONSULTANT to any sanctions which may be imposed upon the COUNTY.

#### **ARTICLE 12.00 - WAIVER OF BREACH**

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

#### **ARTICLE 13.00 - INSURANCE**

##### **13.01 INSURANCE COVERAGE TO BE OBTAINED**

- (1) The CONSULTANT shall obtain and maintain such insurance as will protect him from: (1) claims under workers' compensation laws, disability benefit laws, or other similar employee benefit laws; (2) claims for damages because of bodily injury, occupational sickness or disease or death of his employees including claims insured by usual personal injury liability coverage; (3) claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees including claims insured by usual personal injury liability coverage; and, (4) from claims for injury to or destruction of tangible property including loss of use resulting therefrom; any or all of which claims may arise out of, or result from, the services, work and operations carried out pursuant to and under the requirements of this Agreement, whether such services, work and operations be by the CONSULTANT, its employees, or by any sub-consultants, subcontractors, or anyone employed by or under the supervision of any of them, or for whose acts any of them may be legally liable.
- (2) The insurance protection set forth hereinabove shall be obtained and written for not less than the limits of liability specified hereinafter, or as required by law, whichever is greater.
- (3) The CONSULTANT, throughout the time this Agreement is in effect, shall require and ensure that any and all of its Sub-Consultants and/or Subcontractors obtain, have, and maintain the insurance coverage's required by law to be provided.
- (4) The CONSULTANT shall obtain, have and maintain during the entire period of this Agreement all such insurance policies as are set forth and required herein.
- (5) In the event that the CONSULTANT engages Sub-Consultants or Sub-Contractors to assist the CONSULTANT in providing or performing services or work pursuant to the requirements of this Agreement, the insurance coverage's required under Article 13.03 to be provided by the CONSULTANT shall cover all of the services or work to be provided or performed by all of the Sub-Consultants or Subcontractors engaged by the CONSULTANT. However, in the event the services or work of Sub-Consultants or Sub-Contractors engaged by the CONSULTANT is not covered by the CONSULTANT'S INSURANCE POLICY(s), it shall be the responsibility of the CONSULTANT to ensure that all Sub-Consultants or Sub-Contractors have fully complied with the COUNTY insurance requirements for: (1) Worker's Compensation; (2) Commercial General Liability; (3) Commercial Automobile Liability; or, (4) Professional Liability as required and set forth in Agreement Article 13.00.

The services or work to be provided or performed by the following Sub-Consultants or Sub-Contractors identified in Agreement Exhibit "D" are exempted and excluded from the Professional Liability insurance

coverage requirements set forth in this Agreement:

<u>Service and/or work to be Provided and/or Performed</u>	<u>Indicate Name of Individual or Firm</u>
--	--

None

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

#### 13.02 CONSULTANT REQUIRED TO FILE INSURANCE CERTIFICATE(S)

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

Insurance and for Workers' Compensation Insurance); and

- (E) A statement indicating any services or work included in or required under Agreement Exhibit "A" Scope of Professional Services that is specifically excluded or exempted from coverage under the provisions, terms, conditions or endorsements of the CONSULTANT'S insurance policy. A statement which indicates any and all deductible amounts applicable to each type of insurance coverage required. In the absence of any such statements, the COUNTY will proceed with the understanding, stipulation and condition that there are no deductible amounts, or exclusions or exemptions to the insurance coverage provided.
- (6) Each Certificate of Insurance shall be issued by an insurance agent and/or agency duly authorized to do so by and on behalf of the insurance company affording the insurance coverage indicated on each Certificate of Insurance.
- (7) If the initial or any subsequently issued Certificate of Insurance expires prior to the completion of the work or termination of this Agreement, the CONSULTANT shall furnish to the COUNTY renewal or replacement Certificate of Insurance, or Certified Binder, not later than fifteen (15) calendar days after the date of their expiration. However, if day fifteen (15) falls on a Saturday, Sunday, or Lee County recognized holiday, the deadline shall fall to the next Monday or non-Lee County recognized holiday. Failure of the CONSULTANT to provide the COUNTY with such renewal certificates shall be considered justification for the COUNTY to terminate this Agreement.
- (8) If any of the insurance coverages required by this Agreement shall reach the date of expiration indicated on the approved Certificates of Insurance without the COUNTY having received satisfactory evidence of renewal or replacement, the CONSULTANT shall automatically and without further notice stop performing all previously authorized services and work. During any time period that the CONSULTANT'S services or work is suspended for failure to comply with the insurance requirements set forth in the Agreement, the CONSULTANT shall not be entitled to any additional compensation or time to provide and perform the required services or work and the COUNTY shall not be required to make payment on any invoices submitted by the CONSULTANT. Upon receipt and approval of renewal or replacement Certificates of Insurance, payment for any such invoices shall be made promptly by the COUNTY.

### 13.03 - INSURANCE COVERAGES REQUIRED

The CONSULTANT shall obtain and maintain the insurance coverages in the type, amounts and in conformance with the minimum requirements provided by Exhibit "G" Insurance.

### **ARTICLE 14.00 - DUTIES AND OBLIGATIONS IMPOSED ON THE CONSULTANT**

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

### **ARTICLE 15.00 - REPRESENTATION OF THE COUNTY**

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

CHANGE ORDER issued hereunder.

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

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

#### **ARTICLE 16.00 - OWNERSHIP OF DOCUMENTS**

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

Upon completion or termination of this Agreement, or upon the issuance by the COUNTY of a written Change Order deleting all or portions of the scope of services or task(s) to be provided or performed by the CONSULTANT, all of the above documents, to the extent requested in writing by the COUNTY, shall be delivered by the CONSULTANT to the COUNTY within seven (7) calendar days of the COUNTY making such a request. In the event the COUNTY gives the CONSULTANT a written Notice of Termination of all or part of the services or work required, or upon the issuance to the CONSULTANT by the COUNTY of a written Change Order deleting all or part of the services or work required, the CONSULTANT shall deliver to the COUNTY the requested documents as set forth hereinabove, with the mutual understanding and commitment by the COUNTY that compensation earned or owing to the CONSULTANT for services or work provided or performed by the CONSULTANT prior to the effective date of any such termination or deletion will be paid to the CONSULTANT within thirty (30) calendar days of the date of issuance of the Notice of Termination or Change Order. If either of these time periods end on a Saturday, Sunday, or Lee County recognized holiday, the deadline for that individual period shall fall to the next Monday or non-Lee County recognized holiday.

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

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

#### **ARTICLE 17.00 - MAINTENANCE OF RECORDS**

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

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

CONSULTANT specifically acknowledges its obligations to comply with §119.0701, F.S., with regard to public records, and shall:

- 1) keep and maintain public records that ordinarily and necessarily would be required by the COUNTY in order to perform the services required under this Agreement;
- 2) upon request from the County, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 Florida Statutes or as otherwise provided by law;
- 3) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law; and
- 4) meet all requirements for retaining public records and transfer, at no cost to the COUNTY, all public records in possession of CONSULTANT upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the COUNTY in a format that is compatible with the information technology system of the COUNTY.

**IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 239-533-2221, 2115 SECOND STREET, FORT MYERS, FL 33901, [PRRCustodian@leegov.com](mailto:PRRCustodian@leegov.com) ; <http://www.leegov.com/publicrecords>.**

#### **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".
- (2) EXHIBIT "B" entitled "Compensation and Method of Payment".

- (3) EXHIBIT "C" entitled "Time and Schedule of Performance".
- (4) EXHIBIT "D" entitled "Consultant's Associated Sub-Consultants and Subcontractors".
- (5) EXHIBIT "E" entitled "Project Guidelines and Criteria".
- (6) EXHIBIT "F" entitled "Truth in Negotiation Certificate".
- (7) EXHIBIT "G" entitled "Insurance". (Containing copies of applicable Certificates of Insurance)
- (8) EXHIBIT "H" entitled "Amendment to Articles".
- (9) EXHIBIT "I" entitled "Consultant Background Screening Affidavit".

## **ARTICLE 20.00 - NOTICES AND ADDRESS OF RECORD**

### **20.01 NOTICES BY CONSULTANT TO COUNTY**

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

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

### **20.02 NOTICES BY COUNTY TO CONSULTANT**

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

Name: ECS Florida, LLC  
Address: 13850 Treeline Avenue, Suite 4,  
City, State Zip: Fort Myers, FL 33913  
Phone and Fax No.: 813-352-1607 / 813-623-9979  
ATTENTION: David Bearce, PE, SI  
Email: DBearce@ecslimited.com

### **20.03 CHANGE OF ADDRESS OF RECORD**

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

## **ARTICLE 21.00 - TERMINATION**

This Agreement may be terminated by the COUNTY at its convenience, or due to the fault of the CONSULTANT, by the COUNTY giving thirty (30) calendar 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 COUNTY'S designated representatives; if it otherwise violates any provisions of this Agreement; or for any other just cause, the COUNTY may, without prejudice to any other right or remedy, and after giving the CONSULTANT a thirty (30) calendar day written notice, terminate this Agreement.

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

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

#### 21.01 CONSULTANT TO DELIVER MATERIAL

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

#### ARTICLE 22.00 - AMENDMENTS

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

#### ARTICLE 23.00 - MODIFICATIONS

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

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



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

**ARTICLE 24.00 – SEVERABILITY**

If any word, phrase, sentence, part, subsection, or other portion of this Agreement, or any application thereof, to any person, or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, subsection, other portion, or the proscribed application thereof, shall be severable, and the remaining portions of this Agreement, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force, and effect.

**ARTICLE 25.00 – VENUE**

Venue for any administrative and/or legal action arising under this Agreement shall be in Lee County, Florida.

**ARTICLE 26.00 – NO THIRD PARTY BENEFICIARIES**

Both parties explicitly agree, and this Agreement states that no third party beneficiary status or interest is conferred to, or inferred to, any other person or entity.

**ARTICLE 27.00 – AUTHORITY TO PIGGYBACK**

During the Term of this Agreement, CONSULTANT agrees to extend the same terms, covenants and conditions available to the COUNTY under this Agreement to other public agencies that have authority to purchase from another public agency's competitively solicited contract. Each public agency that intends to make purchases under this Agreement must deal directly with the CONSULTANT in all matters related to the purchase(s), including ordering, acceptance and invoicing, and such public agencies are exclusively responsible for the payment of all purchases.

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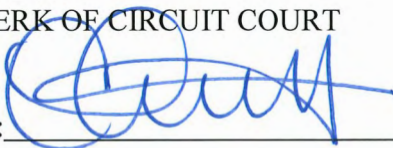
**ARTICLE 28.00 - ACCEPTANCE**

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 the day and year last written below. The effective date for this Agreement shall be December 4, 2022.


ATTEST:

CLERK OF CIRCUIT COURT

BY: 

**CHRIS JAGODZINSKI**  
DEPUTY CLERK

COUNTY: LEE COUNTY, FLORIDA  
BOARD OF COUNTY COMMISSIONERS

BY:   
Chair

DATE: 3/16/2023

APPROVED as to Form for the Reliance of Lee County  
Only

BY:   
County Attorney's Office

ECS Florida, LLC

BY:   
Authorized Signature

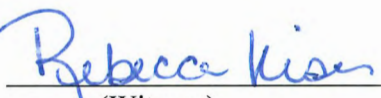
Joe Champion  
Authorized Signature Printed Name

President  
Authorized Signature Title

DATE: 2-6-2023

ATTEST:



  
(Witness)

CORPORATE SEAL:



## EXHIBIT A

### SCOPE OF PROFESSIONAL SERVICES

#### for CN220304DWJ - PROFESSIONAL TESTING SERVICES

### 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.

- 1.1. The professional services to be provided include field and laboratory tests, material evaluation and related reports involving soils and construction materials such as Portland cement concrete, asphaltic concrete, etc., at various construction sites in Lee County for projects undertaken by various County departments.
- 1.2. All tests and services shall be performed in accordance with established professional standards for such tests and services. In the case of contracted construction projects, all such tests and services shall be conducted in full accordance with the requirements set forth in the applicable construction contract documents.
- 1.3. The following are standard abbreviations for this agreement:
  - 1.3.1. ASTM - American Society for Testing and Materials
  - 1.3.2. FDOT - Florida Department of Transportation
  - 1.3.3. FM - Florida Methods as outlined in the "Manual of Florida Sampling and Testing Methods: of the FDOT
  - 1.3.4. LBR - Lime Rock Bearing Ratio
  - 1.3.5.  $D_{50}$  - Median diameter of samples
  - 1.3.6. AASHTO - American Association of State Highway and Transportation Officials
  - 1.3.7. OSHA - Occupational Safety and Health Administration

#### 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".

#### **2. TASK 1 - FIELD INVESTIGATION (ROADWAY):**

- 2.1. The geotechnical investigation for roadways shall be conducted according to the Florida Department of Transportation current Soils and Foundations Procedures Manual, the Federal Highway Administration's Checklist and Guidelines for Review of Geotechnical Reports and Preliminary Plans and Specifications, related directives, referenced standards and specifications, and/or as directed in writing by the COUNTY's designated Project Manager.
- 2.2. Mobilization of all equipment required for the operation of an individual field drilling or penetrometer rig under the following conditions:
  - 2.2.1. Site accessible to truck-mounted drilling equipment.
  - 2.2.2. Site only accessible to all-terrain vehicle and/or extensive clearing required.

- 2.2.3. Testing to take place over water requiring use of a barge.
- 2.2.4. Auger borings or soundings including water table readings.
- 2.2.5. Standard Penetration Test (SPT) borings per ASTM 141586 including water table readings, sealing, and grouting of bore holes in accordance with state and local laws:
  - 0' to 25' depth
  - 26' to 50' depth
  - 51' to 75' depth
  - 76' to 100' depth
  - 101' to 125' depth
- 2.2.6. Cone Penetrometer Test (CPT) borings per ASTM D 3441 including water table readings.
- 2.2.7. Field Vane Shear Tests per ASTM D 2573.
- 2.2.8. Dilatometry test.
- 2.2.9. Thin-walled tube samples per ASTM D 1587.
- 2.2.10. Rock cores (NS double barrel).
- 2.2.11. Permits for test borings or other work items.
- 2.2.12. Field Permeability Tests.
- 2.2.13. Double ring infiltration tests per ASTM D 3385.
- 2.2.14. Percolation tests.
- 2.2.15. Muck probing (two-man crew with equipment).
- 2.2.16. Pavement cores in asphaltic concrete.
- 2.2.17. Pavement cores in Portland cement concrete.
- 2.2.18. Provide survey services to locate and determine position and elevations of field-testing locations (three-man crew with equipment).
- 2.2.19. Engineering support required in conjunction with determination of piezometric head of artesian aquifers if encountered.
- 2.2.20. Obtaining environmental corrosion samples of soil and water testing.
- 2.2.21. Obtain samples to determine <sup>D</sup>50.
- 2.2.22. Install monitoring wells at COUNTY's direction.
- 2.2.23. Install or remove casings.
- 2.2.24. Miscellaneous drilling services not covered elsewhere.
- 2.2.25. Maintenance of Traffic.
- 2.2.26. Plan of Operation and required signage.

2.2.27. Flag Person.

2.2.28. Plugging/sealing of existing water wells in accordance with state and local laws.

2.2.29. Providing all necessary labor and equipment.

2.2.30. Providing cement and all other necessary materials and incidentals.

2.3. Preparation of Engineering Report containing soil boring data, test reports, soil classifications, recommendations as may be appropriate or as directed by the COUNTY.

2.4. Collect a sample of water from mid-depth of a water body either in a silt plume (construction-related or other) or upstream of a construction site (for background turbidity evaluation). Determine its turbidity in Nephelometric Turbidity Units (NTU's) as specified by the EPA for the NPDES and NPDWR monitoring programs, prepare a report including any of all the following (specific to project):

2.4.1. Construction Permit number, date and time of sampling and analysis, sampling test equipment used and procedures, location of sampling sites (including a small map if necessary), background NTU's (if required), site weather conditions, air temperature, wind speed and direction, current direction, tide stage (ebb, flood or slack), depth of water at sample site and depth of sample (to nearest 0.1'), type of construction in the area and written observations of other site conditions of environmental concern (such as turbidity plumes unrelated to the project or manatee sightings). This task includes the provision of a boat and the required equipment to take and analyze the samples. The report must be signed and sealed by a currently registered Professional Engineer. Results include comparison of findings with established limits and shall be telephoned or faxed to the County as soon as available. Samples must be analyzed within 24 hours of taking. Up to 3 copies of an original, sealed written report must be received by the County within 5 working days. Payment for each authorized visit to the site under this task includes the taking (including provision of boat) and analysis of two samples, including transportation of technician and of the samples, and the reports.

2.5. Same responsibilities as in Task 4.34.1. Payment is to be per sample.

### **3. TASK 2 - LABORATORY TESTING (ROADWAY):**

3.1. The laboratory testing shall be carried out according to the designated procedures or directives. The laboratory testing for roadway may include:

3.2. Grain size analyses conducted according to FM 1-T88 and related standards.

3.3. Atterberg limits conducted according to FM 1-T89 and FM 1-T90 and related standards.

3.4. Moisture content tests conducted according to FM 1-T265 and related standards.

3.5. Organic content by loss on ignition tests conducted according to FM 1-T267 and related standards.

3.6. Amount of material in soils finer than the U.S. No. 200 Sieve.

3.7. Specific gravity tests conducted according to FM 1-T100 and related standards.

3.8. LBR tests conducted according to FM 5-515 and related standards using a minimum of four (4) molds (including Modified Proctor).

- 3.9. Consolidation tests conducted according to FM 1-T216 and directions from the COUNTY's designated Project Manager.
- 3.10. Triaxial compression tests conducted according to FM 1-T234 and directions from the COUNTY's designated Project Manager.
- 3.11. Unconfined compression tests conducted according to ASTM D 2166 and directions from the COUNTY's designated Project Manager.
- 3.12. Corrosion classifications tests conducted according to COUNTY directives and the following:
- 3.13. pH tests conducted according to ASTM D 1293 (water) and ASTM G51 (soil).
- 3.14. Resistivity tests conducted according to ASTM D 1125 (water) and ASTM G 57 (soil).
- 3.15. Chloride content tests conducted according to ASTM D 512.
- 3.16. Sulphate content tests conducted according to ASTM D 4130.
- 3.17. pH tests conducted according to ASTM E 70.
- 3.18. Sieve analyses (3) for <sup>D</sup>50 determinations conducted according to FM 1-T88.

#### **4. TASK 3 - CONSTRUCTION QUALITY CONTROL**

- 4.1. The CONSULTANT shall perform activities during the pre-construction and/or construction phases as required by the COUNTY. All activities shall be coordinated with the COUNTY's designated representatives. Activities may include:
- 4.2. Analysis of pile driving dynamics based on data supplied by the CONTRACTOR employing the wave equation analysis. The computer program used shall be approved in advance by the COUNTY. The CONSULTANT shall provide graphs of the following: 1) ultimate soil resistance as a function of the number of blows per foot and 2) maximum pile tensile and compression stresses as a function of blows per foot.
- 4.3. Conducting and reporting pile drilled shaft load test (up to 200 tons) by standard methods as approved by the COUNTY (ASTM 1143 & ASTM 3385).
- 4.4. Conducting and reporting pile/drilled shaft load test (up to 200 tons) by quick-load methods as approved by the COUNTY (ASTM 1143 & ASTM 3385).
- 4.5. Performing pile driving analysis utilizing dynamic measurement devices as approved by the COUNTY.
- 4.6. Analysis and reporting of pile load test data.
- 4.7. Monitoring of settlement platform installation.
- 4.8. Monitoring, performing analysis and reporting settlement platform data.
- 4.9. Installation of piezometers.
- 4.10. Monitoring, analyzing, and reporting of piezometers data.

- 4.11. Installation of slope inclinometer casing.
- 4.12. Monitoring, analyzing, and reporting of slope inclinometer data.
- 4.13. Monitoring of geotextile/geogrid installation.
- 4.14. Monitoring of sand drain/wick drain installation.
- 4.15. Monitoring of other specialized geotechnical methods and/or equipment during construction phase.
- 4.16. Service as technical expert in the investigation and analysis of unforeseen geotechnical problems during the construction phase.

**5. TASK 4 - BITUMINOUS:**

- 5.1. The CONSULTANT shall provide upon written authorization qualified assistance to the COUNTY in the inspection, sampling, testing, and reporting of data for bituminous construction materials. All activities will conform to the FDOT Standard Specifications for Road and Bridge Construction, the Project Special Provisions, Standard Indices, and the referenced standards. The services include:
  - 5.1.1. Straightedge measurements on completed surface courses.
  - 5.1.2. Coring, markings and retention of asphaltic concrete pavement samples and determination of thickness, type and condition of pavement.
  - 5.1.3. Sampling of bituminous material according to FM 1-T040.
  - 5.1.4. Sampling of bituminous paving mixtures according to FM 1-T168.
  - 5.1.5. Deliverance of marked core samples and bituminous samples to the location directed by the COUNTY.
  - 5.1.6. Inspection of bituminous concrete production plants to issue compliance with approved specifications, standard operating procedures and/or quality control plans.

**6. TASK 5 - AGGREGATE AND BASE MATERIAL SOURCES:**

- 6.1. The CONSULTANT shall provide upon written authorization, qualified assistance to the COUNTY in the inspection, sampling, testing, and reporting of data for aggregate and base material sources. All activities shall conform to the FDOT Standard Specifications for Road and Bridge Construction, Standard Indices, the FDOT Standard Operating Procedure for Evaluation, Approval, and Control of Mineral Aggregate Sources, the FDOT Standard Operating Procedure of Quality Assurance on Mineral Aggregate Sources, and the referenced standards. The services include:
  - 6.1.1. Inspection of quality control procedures according to the Standard Operating Procedure at fine aggregate, coarse aggregate, and base material sources.
  - 6.1.2. Taking samples according to FM 1-T002 at fine aggregate, coarse aggregate, and base material sources.



- 6.1.3. Classification of soils according to AASHTO M 145 using applicable related standards.
- 6.1.4. Moisture-density relation tests according to FM 5-521 (Modified Proctor Test).
- 6.1.5. Moisture-density relation tests according to FM 5-525 (Standard Proctor Test).
- 6.1.6. Carbonate content and organic matter in lime rock tests according to FM 5-514.
- 6.1.7. Organic impurities in sands (colorimetric) according to FM 1-T021.
- 6.1.8. Resistance to abrasion by use of Los Angeles Machine according to FM 1-T096.

**7. TASK 6 - ROADWAY EMBANKMENT AND BACKFILL MATERIALS:**

- 7.1. The CONSULTANT shall provide upon written authorization, qualified assistance to the COUNTY in the inspection, sampling, testing, and reporting of data for roadway embankment and backfill materials. All activities shall conform to the FDOT Standard Specifications for Road and Bridge Construction, the Project Special Provisions, Standard Indices, the FDOT Field Sampling and Testing Guide and the referenced standards. The services shall include:
  - 7.1.1. Inspection of embankment fill materials.
  - 7.1.2. Inspection of subgrade and stabilized subgrade materials.
  - 7.1.3. Inspection of base and stabilized base materials.
  - 7.1.4. Sampling of materials in Sections 6.01, 6.02 and 6.03 according to FM 1-T002 and FM 5-504, as applicable.
  - 7.1.5. Determination of in-place density by nuclear method according to FM 1-T238.
  - 7.1.6. In-place density when full-time technician is on project site.

**8. TASK 7 - PORTLAND CEMENT CONCRETE (PLANT):**

- 8.1. The CONSULTANT shall provide upon written authorization, qualified assistance to the COUNTY in the inspection, sampling, testing, and reporting data for Portland cement concrete plant. All activities shall conform to the FDOT Standard Specifications for Road and Bridge Construction, the Project Special Provisions, the FDOT Field Sampling and Testing Guide, Standard Indices, FDOT Standard Operating Procedures, and the referenced standards. The services shall include:
- 8.2. Inspection of cement concrete production plants to ensure compliance with approved specifications, standard operating procedures and/or quality control plans.

**9. TASK 8 - PORTLAND CEMENT CONCRETE (PROJECT SITE):**

- 9.1. The CONSULTANT shall provide upon written authorization, qualified assistance to the COUNTY in the inspection, sampling, testing, and reporting of data for portland cement concrete (project site). All activities shall conform to the FDOT Standard Specification for

Road and Bridge Construction, the Project Special Provisions, the FDOT Standard Operating Procedure, and the referenced standards. The services shall include:

- 9.2. Sampling of aggregate according to FM 1-T002.
- 9.3. Sampling and testing of water for use in cement concrete according to FM 1-T026 and FM 5-506.
- 9.4. Sampling of cement.
- 9.5. Sampling of fly ash according to FM 3-C311.
- 9.6. Sampling of fresh cement concrete according to FM 1-T141.
- 9.7. Sampling of fresh concrete from revolving drum truck mixers or agitators according to FM 5-501.
- 9.8. Making and curing concrete test specimens according to FM 1-T023.
- 9.9. Obtaining drilled cores of concrete according to FM 1-T024.
- 9.10. Slump test of cement concrete according to FM 1-T-119.
- 9.11. Air content test of freshly mixed concrete according to FM 1-T196.
- 9.12. Weight per cubic foot, yield, and air content (gravimetric) tests of concrete according to FM 1-T121.
- 9.13. Temperature measurement of concrete.
- 9.14. Compressive strength tests of cylindrical concrete specimens according to FM 1-T022 including labor.
- 9.15. Standard concrete cylinder preparation, curing and testing.
- 9.16. Concrete Beam Tests (set of 3)
- 9.17. Compressive strength of molded masonry mortar cylinders and cubes (ASTM C780.A7).
- 9.18. Sampling and testing grout (ASTM C1019).
- 9.19. Sampling and testing concrete masonry units (ASTM C140).
- 9.20. Compressive strength and measurement of dimensions.
- 9.21. Absorption.
- 9.22. Compressive strength of masonry prisms (ASTME 447).

#### **10. TASK 9 - PRECAST OR PRESTRESSED CONCRETE PRODUCTS:**

- 10.1. The CONSULTANT shall provide upon written authorization, qualified assistance to the COUNTY in the inspection, sampling, testing and reporting of data for precast concrete products. All activities shall conform to the FDOT Standard Specifications for Road and

Bridge Construction, the Project Special Provision, Standard Indices, approved shop drawings, the FDOT Standard Operating Procedure for the inspection of precast drainage structures and referenced standards. The service shall include:

- 10.2. Inspection of precast or prestressed concrete products operations to ensure compliance with the Quality Control Plan and/or Standard Operating Procedure.
- 10.3. Inspection of three edge bearing acceptance tests in accordance with FM 3-C497.
- 10.4. Making and curing concrete test specimens according to FM 1-T023.
- 10.5. Inspection of the obtaining of drilled cores or sawed beams of concrete according to FM 1-T024.
- 10.6. Testing drilled cores or sawed beams of concrete according to FM 1-T024, FM 1-T026, FM 1-T148 and FM1-T231.
- 10.7. Testing concrete pipe sections according to FM 3-C497.
- 10.8. Compressive strength tests of cylindrical concrete specimens according to FM 1-T022.
- 10.9. Sampling of aggregate according to FM 1-T002.
- 10.10. Specific gravity and absorption tests for fine aggregate according to FM 1-T084.
- 10.11. Specific gravity and absorption tests for coarse aggregate according to FM 1-T085.
- 10.12. Performance of absorption test on drilled cores according to FM 3-C497.
- 10.12.1. Inspection and stamping of precast or prestressed concrete products complying with all relevant standards.
- 10.13. Provide a minimum of 600 s.f. field office at the precast yard including all equipment, material, and utilities.
- 10.14. Set up and removal of field office.
- 10.15. Maintain field office for duration of activity.

#### **11. TASK 10 - MISCELLANEOUS MATERIALS:**

- 11.1. The CONSULTANT shall provide upon written authorization, qualified assistance to the COUNTY in the inspection, sampling, testing, and reporting of data for miscellaneous materials. All activities shall conform to the FDOT Standard Specifications for Road and Bridge Construction, the Project Special Provisions, Standard Indices, approved shop drawings, Standard Operating Procedures, and referenced standards. The services shall consist of providing qualified personnel for inspection of materials and manufacture of miscellaneous products for COUNTY use to ensure compliance with COUNTY specifications, standards, and procedures. The services shall include:

#### **11.2. TIMBER PRODUCTS:**

- 11.2.1. Tests and inspections will be performed according to Southern Pine Inspection Board Standards.

- 11.2.2. Inspection for cracks, splits, knots and size before treatment and application of hammer as required.
- 11.2.3. Inspection for penetration and retention of treating solution.
- 11.2.4. Verification of assay and penetration and retention of treating solution.
- 11.2.5. Application of hammer mark to acceptable units.
- 11.2.6. Collection and verification of certification of assay reports and tank readings.
- 11.2.7. Obtaining pertinent project numbers.

**11.3. CORRUGATED METAL PIPE:**

- 11.3.1. Inspection of manufacturing procedure.
- 11.3.2. Inspection of rivet spacing.
- 11.3.3. Inspection of depth of corrugation.
- 11.3.4. Inspection of asphalt coating thickness.
- 11.3.5. Inspection of gauge thickness and internal diameter.
- 11.3.6. Verification of certification of chemical analyses.
- 11.3.7. Obtaining copies of all analyses and certifications.
- 11.3.8. Ascertaining the pertinent project number.

**11.4. SIGNS:**

- 11.4.1. Inspection of all materials.
- 11.4.2. Inspection of fabrication process.
- 11.4.3. Inspection of welds.
- 11.4.4. Verification of material certifications.
- 11.4.5. Inspection of signs for compliance with approved shop drawings and the Manual on Uniform Traffic Control Devices.

**11.5. MISCELLANEOUS SERVICES AND TESTS:**

- 11.5.1. The COUNTY may, from time to time, require additional miscellaneous tests and/or services. Such services shall be determined on a case-by-case basis as to scope, number and test standard.

**12. TASK 11 - LABORATORY TESTING OF CONSTRUCTION MATERIALS:**

- 12.1. The CONSULTANT shall provide upon written authorization qualified assistance to the COUNTY in the testing and reporting of data for laboratory testing of construction

materials. All testing must conform to the referenced specification or standard unless approved in advance by the COUNTY. The services shall provide:

- 12.1.1. Determination of amount of aggregate material finer than 0.075 mm.
- 12.1.2. Unit weight and voids in aggregate (FM 1-T019).
- 12.1.3. Organic impurities in sand for concrete (FM 1-T021).
- 12.1.4. Sieve analysis of fine and coarse aggregates (FM 1-T027).
- 12.1.5. Mechanical analysis of extracted aggregate and quantitative extraction of bitumen from bituminous paving mixtures (FM 1-T030 and FM 1-T164).
- 12.1.6. Specific gravity and absorption of fine aggregate (FM 1-T084).
- 12.1.7. Specific gravity and absorption of coarse aggregate (FM 1-T085).
- 12.1.8. Los Angeles abrasion test (FM 1-T096).
- 12.1.9. Soundness of aggregate (FM 1-T104).
- 12.1.10. Reducing field samples of aggregate testing size (FM 1-T248).
- 12.1.11. Total moisture content of aggregate by drying (FM 1-T248).
- 12.1.12. Carbonates and organic matter in lime rock (FM 5-514).
- 12.1.13. Degradation of lime rock screenings (FM 5-512).
- 12.1.14. Resistance to plastic flow of bituminous mixtures using Marshall apparatus (FM 1-T245).
- 12.1.15. Resistance to plastic flow of field produced mixtures using Marshall apparatus (FM 1-T245).
- 12.1.16. Bulk specific gravity of compacted bituminous mixtures (FM 1-T166).
- 12.1.17. Compressive strength of cylindrical concrete specimens (FM 1-T022).
- 12.1.18. Dry preparation of disturbed soil and aggregate samples for test (FM 1-T087).
- 12.1.19. Particle size analysis of soils (FM 1-T088).
- 12.1.20. Liquid limit of soils (FM 1-T089).
- 12.1.21. Plastic limit and plasticity index of soils (FM 1-T090).
- 12.1.22. Specific gravity of soils (FM 1-T100).
- 12.1.23. Wet preparation of disturbed soil sample for test (FM 1-T146).
- 12.1.24. Permeability of granular soils (constant-head) (FM 1-T215).
- 12.1.25. Consolidation of soils (FM 1-T216).

- 12.1.26. Triaxial compression tests (FM 1-T234).
- 12.1.27. Moisture content of soils (FM 1-T265).
- 12.1.28. Determination of organic content by ignition loss (FM 1-T267).
- 12.1.29. Coefficient of permeability (falling head) (FM 5-513).
- 12.1.30. Moisture-density relations using 10 lb. hammer and 18 in. drop (FM 5-521).
- 12.1.31. Moisture-density relations using 5.5 lb. hammer and 12 in. drop (FM 5-525).
- 12.1.32. Electrical conductivity and resistivity of water (FM 3-D1125).
- 12.1.33. pH of water (ASTM D 1293).
- 12.1.34. Chloride ion in soils (ASTM D 512).
- 12.1.35. Sulfates in soils (ASTM D 4130).

### **13. TASK 12 - ASBESTOS TESTING AND SURVEYS**

- 13.1. The CONSULTANT shall provide upon written authorization qualified assistance to the COUNTY in the inspection, sampling, testing and reporting of data for suspected asbestos containing materials. Testing and survey activities shall conform to EPA and State of Florida standards where applicable and shall be performed by a EPA Certified Facility Inspector or Management Planner, or Florida Registered Asbestos Consultant. The Laboratory Accreditation Program (NVLAP). When requested, survey reports addressing temporary fiber control measures and ultimate remediation procedures shall be signed and sealed by a Florida Registered Asbestos Consultant. Testing and survey activities may include:
  - 13.1.1. Meeting with County personnel to determine project scope, schedule, time constraints and other requirements; research of existing records and plans; and facility survey activities including visual inspection to identify areas of suspected asbestos containing materials, assessment of their physical condition, and materials sampling from homogeneous materials.
  - 13.1.2. Bulk sample analysis of suspected asbestos containing materials by EPA Method 600/R-93/116.
  - 13.1.3. Report preparation including findings regarding the type, estimated percentage, general location and approximate quantities of asbestos present, and recommendations for temporary fiber control measures and ultimate remediation procedures, if requested.
  - 13.1.4. The County reserves the right to request a quote from the awarded contractors/CONSULTANTS for an abatement/remediation of the asbestos found on-site and detailed in the resulting report.
  - 13.1.5. Proof of the appropriate licensing to abate/remediate asbestos will be required prior to the issuance of a purchase order to perform this work.

#### **14. TASK 13 - RADON HAZARD**

- 14.1. The CONSULTANT shall provide upon written authorization qualified assistance to the COUNTY in the inspection, sampling, testing, and reporting of data for radon hazard in accordance with EPA and State of Florida Health and Rehabilitative Services. All measurements shall be taken by a Florida Certified Measurement Specialist. All devices shall be EPA listed and laboratory analysis performed by an EPA proficient laboratory.
- 14.2. Meeting with County personnel to determine project scope, schedule, time constraints and other requirements; research of existing records and plans; and facility survey activities including visual inspection to identify areas of suspected radon hazard, assessment of their physical condition, and materials sampling.
- 14.3. Sample analysis will be in accordance with USEPA and State of Florida, Health and Rehabilitative Services.
- 14.4. Report preparation regarding radon content will be in picocuries per liter and recommendations for remediation procedures, if requested.

#### **15. TASK 14 - LEAD HAZARD** (potential exists in several major categories)

- 15.1. The CONSULTANT shall provide upon written authorization qualified assistance to the COUNTY in the inspection, sampling, testing, and reporting of data for lead hazard in accordance with EPA and State of Florida Health and Rehabilitative Services.
- 15.2. Meeting with County personnel to determine project scope, schedule, time constraints and other requirements, research of existing records and plans, and survey activities including visual inspection to identify areas of suspect lead containing materials, assessment of their physical condition, and materials sampling from homogenous materials.
- 15.3. Laboratory analysis of suspect lead containing materials.
- 15.4. Laboratory analysis of lead in drinking water.
- 15.5. Report preparation including findings about the general location of lead containing materials.
  - 15.5.1.1. Lead Risk Assessment (done at time of lead inspection), to include detailed correction requirements (Control Plan and Lab costs included in cost); Lead Abatement using lead safe work practices.
  - 15.5.1.2. Lead Clearance (to include all lab cost).
  - 15.5.1.3. The County reserves the right to request a quote from the awarded contractors/CONSULTANTS for an abatement/remediation of the lead found on-site and detailed in the resulting report.
- 15.6. Proof of the appropriate certification to abate/remediate lead will be required prior to the issuance of a purchase order to perform this work.

#### **16. Department of Human Services Housing Services – ONLY**

- 16.1. The Lee County Department of Human Services (DHS) administers housing programs for eligible households in Lee County. Work done on housing units constructed before 1978



requires compliance with U.S. Department of Housing and Urban Development requirements. Location and property information will be provided as affected units are identified. Houses are generally less than 2,000 square feet and will be located throughout Lee County. DHS is seeking line-item pricing from qualified vendors for the following services:

- 16.1.1.1. Inspection. An inspection to determine the presence of lead must be completed prior to any DHS work commencing.
- 16.1.1.2. Lead Assessment. Either at the same inspection visit or in a subsequent visit, a full assessment must be completed using an XRF machine. Upon completion, the assessment must result in a detailed report of occurrence of lead and corrective actions, remediation, and/or abatement of lead.
- 16.1.1.3. Lead Clearance. The clearance testing and reporting must be done after any discovered lead has been corrected, remediated, and/or abated by a qualified contractor. Upon completion, the clearance test must result in a report indicating the level of lead found during the clearance test.
- 16.1.1.4. Lead Abatement. Abatement of lead in residential structures shall be determined after the completion of the Lead Assessment. DHS will utilize the recommendations for corrective actions, remediation, and/or abatement of lead resulting from the Lead Assessment to create and distribute a scope of work to the abatement contractor. Upon completion of the abatement work, a Lead Clearance test will be conducted. If the structure does not pass the clearance test, the Lead Abatement contractor must correct the faulty area, clean, and prepare the area for retesting. The cost of a second or any subsequent clearance test will be the responsibility of the Lead Abatement contractor. Contractors responding to the Lead Abatement alternate item must provide certification of qualification to abate lead to be considered in this solicitation.

## **17. TASK 15 - INDOOR AIR QUALITY**

- 17.1. The CONSULTANT shall provide upon written authorization qualified assistance to the COUNTY in the inspection, sampling, testing, and reporting of data for indoor air quality consisting of a broad spectrum of potential problem sources. All activities shall conform to all current and existing OSHA regulations.
  - 17.1.1.1. Initial Assessment and Consultation. Items under this task would include a visual survey of the facility, interview of building occupants, search of records and historical data, preliminary assessment and recommendations for further evaluations.
  - 17.1.1.2. Detailed Evaluation Sampling and Testing. Based on the results obtained during Task 15.01, perform a detailed evaluation of the indoor air quality including air sampling and laboratory analyses, HVAC system checks and balance, toxicity related evaluations and preparation of a detailed report summarizing observations, findings and work items required under this task, fees will be developed and negotiated with the County on a project-by-project basis.

## **18. TASK 16 - THRESHOLD INSPECTIONS**

- 18.1. CONSULTANT shall perform Threshold Inspections pursuant to Florida Building Codes, Florida Statute, and any other applicable code or regulation. Inspections shall be performed by a certified Special Inspector.

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## EXHIBIT B

### COMPENSATION AND METHOD OF PAYMENT

#### For CN220304DWJ - PROFESSIONAL TESTING SERVICES

##### 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 5.03(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.)
	To be negotiated through each supplemental Task Authorization issued.			
TOTAL (Unless list is continued on next page)				

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 5.02 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 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, reimbursement of out-of-pocket, non-personnel expenses and costs may be negotiated at the COUNTY's discretion. Should these reimbursable expenses be agreed to, they shall be set forth in ATTACHMENT NO. 1 and shall be made on a NOT TO EXCEED (N.T.E.) amount basis. No fees or mark-ups shall be authorized for reimbursable expenses.



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

EXHIBIT C

### TIME AND SCHEDULE OF PERFORMANCE

**For CN220304DWJ - PROFESSIONAL TESTING SERVICES**

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 5.00 of this Agreement.

[illegible]

EXHIBIT D

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

**For CN220304DWJ - PROFESSIONAL TESTING SERVICES**

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)		
		Yes	No No	Type
Drilling	Naples Well Drilling 5790 Waxmyrtle Way Naples FL 34109			



## EXHIBIT E

### PROJECT GUIDELINES AND CRITERIA

#### **CN220304DWJ - PROFESSIONAL TESTING SERVICES**

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

##### Item No. 1

This is a "Master" contract, which is not for any specific project. Work will be negotiated, authorized, scheduled, funded, and accounted for by the issuance of Supplemental Task Authorizations, by the requesting department, division, or government entity.

##### Item No. 2

Any governmental entity may utilize the provisions of this contract for their specific needs.

##### Item No. 3

Work may be assigned at any time during the term of the contract including any renewals, if any.

##### Item No. 4

No amount of work is guaranteed upon the execution of a Professional Services Agreement.

##### Item No. 5

Hourly rates and all other negotiated expenses will remain in effect throughout the duration of the contract.

##### Item No. 6

This contract does not entitle any firm to exclusive rights to County contracts. The County reserves the right to perform any or all work in-house, or by any means it so desires.

##### Item No. 7

In reference to Attachment No. 2 to Exhibit B of the Professional Service Agreement, vehicle travel mileage is considered incidental to the work and not an extra expense. Also, man-hours spent in travel time to and from work or the job site(s), are not compensable.

##### Item No. 8

County reserves the right to add or delete, at any time, any or all tasks or services associated with this agreement.

##### ITEM NO. 9

**DRUG FREE WORKPLACE:** Any business that certifies during the solicitation/evaluation process that it has implemented a drug-free workplace program shall comply with the requirements of Florida Statutes 287.087 during the term of this contract.

##### Item No. 10

**IMMIGRATION LAWS:** Lee County will not intentionally award County contracts to any Consultant who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324 a(e), Section 274A(e) of the Immigration and Nationality Act ("INA).

Lee County shall consider the employment by any Consultant of unauthorized aliens a violation of Section 274A(e) of the INA. Such violation by the recipient of the employment provisions contained in Section 274A(e) of the INA shall be grounds for unilateral cancellation of the contract by Lee County.

EXHIBIT F

TRUTH IN NEGOTIATION CERTIFICATE

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

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

1. This Certificate shall be attached to and constitute an integral part of the above said Professional Services Agreement as provided in Article 3.12.
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 County and the undersigned is fully advised of the legal effect and obligations imposed upon him by the execution of this instrument under oath.

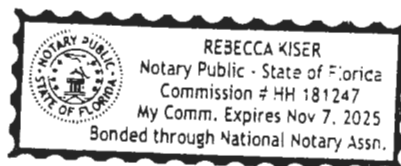
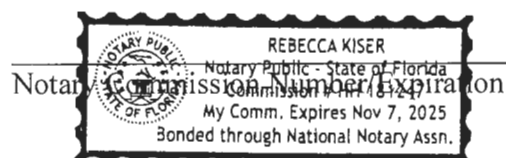
Executed on behalf of the Party to the Professional Services Agreement referred to as the CONSULTANT, doing business as:

ECS Florida, LLC  
Joe Champion  
BY: Joe Champion  
TITLE: President

The foregoing instrument was signed and acknowledged before me by means of ☐ physical presence or ☒ online notarization, this 6th day of February, 2023, by Joe Champion who has produced NIA as (Print or Type Name) (Type of Identification and Number) identification.

Rebecca Kiser  
Notary Public Signature

Rebecca Kiser  
Printed Name of Notary Public



## EXHIBIT G

### INSURANCE

#### For CN220304DWJ - PROFESSIONAL TESTING SERVICES



#### **Lee County Insurance Requirements including Professional Liability**

**Minimum Insurance Requirements:** *Risk Management in no way represents that the insurance required is sufficient or adequate to protect the vendors' interest or liabilities. The following are the required minimums the vendor must maintain throughout the duration of this contract. The County reserves the right to request additional documentation regarding insurance provided*

- a. **Commercial General Liability** - Coverage shall apply to premises and/or operations, products and completed operations, independent contractors, contractual liability exposures with minimum limits of:

\$1,000,000 per occurrence  
\$2,000,000 general aggregate  
\$1,000,000 products and completed operations  
\$1,000,000 personal and advertising injury

- b. **Business Auto Liability** - The following Automobile Liability will be required and coverage shall apply to all owned, hired and non-owned vehicles use with minimum limits of:

\$1,000,000 combined single limit (CSL)

- c. **Workers' Compensation** - Statutory benefits as defined by FS 440 encompassing all operations contemplated by this contract or agreement to apply to all owners, officers, and employees regardless of the number of employees. Workers Compensation exemptions may be accepted with written proof of the State of Florida's approval of such exemption. Employers' liability will have minimum limits of:

\$500,000 per accident  
\$500,000 disease limit  
\$500,000 disease – policy limit

- d. **Errors and Omissions** - Coverage shall include professional liability insurance, to cover claims arising out of negligent acts, errors or omissions of professional advice, privacy and network security insurance covering for losses arising from disclosure of confidential information, or other professional services.

\$1,000,000 per occurrence

*\*The required minimum limit of liability shown in a. and b. may be provided in the form of "Excess Insurance" or "Commercial Umbrella Policies." In which case, a "Following Form Endorsement" will be required on the "Excess Insurance Policy" or "Commercial Umbrella Policy."*



**Verification of Coverage:**

1. Coverage shall be in place prior to the commencement of any work and throughout the duration of the contract. A certificate of insurance will be provided to the Risk Manager for review and approval. The certificate shall provide for the following:

- a. **The certificate holder shall read as follows:**

**Lee County Board of County Commissioners  
P.O. Box 398  
Fort Myers, Florida 33902**

- b. ***"Lee County, a political subdivision and Charter County of the State of Florida, its agents, employees, and public officials" will be named as an "Additional Insured" on the General Liability policy, including Products and Completed Operations coverage.***

**Special Requirements:**

1. An appropriate "Indemnification" clause shall be made a provision of the contract.
2. It is the responsibility of the general contractor to insure that all subcontractors comply with all insurance requirements.

## EXHIBIT H

### AMENDMENT TO ARTICLES

#### For CN220304DWJ - PROFESSIONAL TESTING SERVICES

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

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

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

#### AMENDMENT NO.

ARTICLE No.\_\_\_\_ is hereby amended as follows:

None.

EXHIBIT I

CONSULTANT BACKGROUND SCREENING AFFIDAVIT



**CONSULTANT BACKGROUND  
SCREENING AFFIDAVIT**

Florida Statutes Chapter 435 governs required background screenings for any employees, contractors, subcontractors, or agents of the Consultant who will have contact with any vulnerable person, as defined by statute, or who otherwise are required to undergo a Level 1 or Level 2 background screening in accordance with Florida law.

The Consultant is responsible for ensuring that such required background screenings are conducted in accordance with Florida Statutes Chapter 435. Documentation of such completed background screenings must be maintained for a period of no less than five (5) years and are subject to audit by Lee County at any time during such five (5) year period.

**Under penalty of perjury, I declare that I have read and understand the requirements stated above, and that all required background screenings shall be conducted in accordance with this affidavit.** I further understand that there may be additional local, state, and federal regulations that may require background screening, and that the Consultant will be solely responsible for complying with such legal requirements. Furthermore, the Consultant shall indemnify and hold Lee County harmless from any and all claims or actions resulting from failure to comply with this affidavit.

Date: 02/06/2023

Joe Champion  
Signature

STATE OF FL  
COUNTY OF Duval

President / Joe Champion  
Name/Title

The foregoing instrument was sworn to (or affirmed) and subscribed before me by means of ☒ physical presence or ☐ online notarization, this 6th day of February 2023, by the above-named person and in their stated capacity, and is either personally known to me or who has produced the following type of identification: \_\_\_\_\_

Type of Identification

[Stamp/seal required]

Rebecca Kiser  
Signature, Notary Public

