



John E. Manning  
District One

Cecil L. Pendergrass  
District Two

Larry Kiker  
District Three

Brian Hamman  
District Four

Frank Mann  
District Five

Roger Desjarlais  
County Manager

Richard Wm. Wesch  
County Attorney

Donna Marie Collins  
Hearing Examiner

(239) 533-5450

November 12, 2015

Mr. Robert Cushing  
Carollo Engineers Inc.  
401 N Cattlemen Road Suite 306  
Sarasota, FL 34232

**SUBJECT: CN150306 Utilities Water & Wastewater Engineer of Record**

ENCLOSURE (1): Executed Copy of Professional Services Agreement

Dear Mr. Cushing,

Enclosed is your executed copy of the Professional Services Agreement for the project known as "Utilities Water & Wastewater Engineer of Record".

The Contract No. is 7287 and must be on all invoices.

If you should have any questions, please contact our office at the above number.

Sincerely,  
PROCUREMENT MANAGEMENT

*Diana Khan*  
Diana Khan  
Procurement Manager

C: Jessica Munoz  
Kris Miller  
Project File

**PROFESSIONAL SERVICES AGREEMENT**

This PROFESSIONAL SERVICES AGREEMENT is made and entered into this 1st day of October, 2015, between the Board of County Commissioners of LEE COUNTY, a political subdivision of the STATE OF FLORIDA hereinafter referred to as the "COUNTY", and Carollo Engineers, Inc. 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: CN150306 – Lee County Utilities Water & Wastewater Engineer of Record, 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

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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

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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 working 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  
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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, 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

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Supplemental Task Authorizations; and

For the actual necessary, required and expended non-personnel reimbursable expenses and costs, multiplied by the applicable "Basis of Charges" for each item as set forth in Attachment No. 2 to Exhibit "B", 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, 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.

### 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

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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,

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

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

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(3) Cost Estimates

(A) ORDER OF MAGNITUDE ESTIMATE

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

(B) BUDGET ESTIMATE

Budget in this case applies to the COUNTY'S budget and not to the budget as a project controlled document. A budget is prepared with the use of flowsheets, layouts, and equipment details. This type of estimate shall be accurate within plus twenty-five percent (25.0%). If the bids, as described above, fail to meet this prescribed accuracy, the cost associated with the preparation and development of the BUDGET ESTIMATE shall be recoverable by the COUNTY.

(C) CONSTRUCTION COST ESTIMATE.

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

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

The CONSULTANT will, subject to the review and approval of the COUNTY, modify at its expense the specifications, design, drawings and related bidding and contract documents to the extent necessary to reduce the anticipated construction costs so that the re-solicitation of bids or price proposals will realize bids or price proposals being received that are within the range of accuracy established for the CONSTRUCTION COST ESTIMATE prepared by the

CONSULTANT. Any such modifications made by the CONSULTANT shall not conflict with the functional or operational requirements established by the COUNTY for the project and set forth in the Agreement or Change Order(s) or Supplemental Task Authorization(s) issued thereto, nor shall any such modifications conflict with established rules, regulations, requirements or professional standards pertaining to the design, specifications or drawings prepared by the CONSULTANT, nor shall such modifications adversely affect the safe use or operation of the constructed project.

In the event (1) the CONSULTANT'S modification of the design, specifications, drawings and related bidding and contract documents; and, (2) the re-solicitation of bids or price proposals do not result in bids or price proposals being received from a responsive and responsible bidder or proposer that are within the established percent accuracy of the CONSULTANT'S CONSTRUCTION COST ESTIMATE, the costs associated with the CONSULTANT'S preparation and development of the CONSTRUCTION COST ESTIMATE shall be recoverable by the COUNTY by an appropriate reduction in the CONSULTANT'S invoice requesting payment for services rendered.

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

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

### 3.10 PERMITS

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

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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."

Date: 10/25/13

### 3.14 AFFIRMATIVE ACTION BY CONSULTANT WHEN ENGAGING SUB-CONSULTANTS

The Florida Legislature advocates expenditures with minority business enterprises and encourages agencies to establish procedures and opportunity for 25% of the annual fiscal funds spent for professional services to be used for contracts with certified Minority Business Enterprises. Accordingly, the CONSULTANT is encouraged, when selecting or engaging the services of sub-consultants or subcontractors pursuant to this Agreement, to spend 25% of the amount of awarded compensation established in this Agreement, and in subsequent CHANGE ORDERS and SUPPLEMENTAL TASK AUTHORIZATIONS authorized thereto, for the engagement of the services of certified Minority Business Enterprise sub-consultants or subcontractors.

In furtherance of this statutory goal the COUNTY expects the CONSULTANT, when the services of sub-consultants and subcontractors are necessary, to identify those services that may be provided by a certified Minority Business entity and take affirmative action to obtain their services. For purposes of this Agreement, "affirmative action" means a good faith effort by the CONSULTANT to achieve the stated goal of engaging certified Minority Business Enterprise sub-consultants or subcontractors to provide or perform services and/or work pursuant to the SCOPE OF SERVICES required under this Agreement. The CONSULTANT is required to document efforts taken to engage the services of minority business enterprises and submit this information to the County upon request. Appropriate documentation includes detailed written records regarding the services the CONSULTANT deemed appropriate for subcontract to minority business enterprises, as well as successful and unsuccessful attempts to engage a certified Minority Business Enterprise for these services.

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

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

### ARTICLE 4.00 - OBLIGATIONS OF THE COUNTY

#### 4.01 DESIGNATION OF PROJECT MANAGER

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

#### 4.02 AVAILABILITY OF COUNTY INFORMATION

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

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

Date: 10/25/13

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

(3) PAYMENT SCHEDULE

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

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

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

5.05 PAYMENT WHEN SERVICES ARE SUSPENDED

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

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

In the event the services required pursuant to this Agreement are terminated, eliminated, cancelled, or decreased due to: (1) termination; (2) suspension in whole or in part; and, (3) and/or are modified by the subsequent issuance of SUPPLEMENTAL TASK 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 execution of this Agreement by both parties, and after the CONSULTANT has complied with the insurance requirements set forth hereinafter, the COUNTY shall issue the CONSULTANT a WRITTEN NOTICE TO PROCEED. Following the issuance of such NOTICE TO PROCEED the CONSULTANT shall be authorized to commence work and the CONSULTANT thereafter

Date: 10/25/13



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 "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.

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

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

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

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

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

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

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

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

Date: 10/25/13

**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 or use resulting therefrom; any or all of which claims may arise out of, or result from, the services, work and operations carried out pursuant to and under the requirements of this Agreement, whether such services, work and operations be by the CONSULTANT, its employees, or by any sub-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>
--	--

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

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 COUNTY'S RISK MANAGEMENT DIVISION all insurance certificates which are required under this Agreement for review and approval with respect to compliance with the insurance requirements. After approval by the RISK MANAGEMENT DIVISION, the COUNTY will execute this Agreement and issue a written Notice to Proceed. The CONSULTANT may then commence with any service or work pursuant to the requirements of this Agreement.
- (2) All such insurance certificates shall be in a form and underwritten by an insurance company(s) acceptable to the COUNTY and licensed in the State of Florida.
- (3) Each Certificate of Insurance submitted to the COUNTY shall be an original and shall be executed by an authorized representative of the insurance company affording coverage.
- (4) Each Certificate of Insurance shall be addressed to the Lee County Board of County Commissioners, Attention: Lee County 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 specific reference to this Agreement and the Project to which it pertains. (This requirement may be excepted for Professional Liability Insurance); or

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

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

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

- (F) 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. 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 following insurance coverages as provided hereinbefore, and in the type, amounts and in conformance with the following minimum requirements:

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(1) 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

(2) COMMERCIAL GENERAL LIABILITY

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

Coverage must include the following:

- (A) Contractual coverage applicable to this specific Agreement including any hold harmless and/or such indemnification agreement.
- (B) Such additional requirements as are set forth in Article 13.01 and 13.02 hereinabove.

(3) BUSINESS AUTOMOBILE LIABILITY

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

- (A) Minimum limits of \$ 1,000,000.00 combined single limit (CSL).
- (B) Coverage shall include owned vehicles, hired and leased, or non-owned vehicles.
- (C) Such additional requirements as are set forth in Articles 13.01

(4) ERRORS AND OMISSIONS

Coverage shall include professional liability insurance, to cover claims arising out of negligent acts, errors or omissions of professional advice or other professional services.

Coverage must include the following:

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

\*The required minimum limit of liability shown in (2) Commercial General Liability and (3) Business Automobile Liability, 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."

#### **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

Date: 10/25/13



CONSULTANT until the CONSULTANT has been paid for providing and performing the services and work required to produce such documents.

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

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

Any use by the COUNTY of said documents, and data and information contained therein, obtained by the COUNTY under the provisions of this Agreement for any purpose not within the scope of this Agreement shall be at the risk of the COUNTY, and without liability to the CONSULTANT. The COUNTY shall be liable and agrees to be liable for and shall indemnify, defend and hold the CONSULTANT harmless for any and all claims, suits, judgments or damages, losses and expenses including court costs, expert witness and professional consultation services, and attorneys' fees arising out of the COUNTY'S use of such documents in a manner contrary to the provisions set forth hereinabove. The COUNTY hereby acknowledges receipt of \$10.00 (ten and no hundreds dollars) and other good and valuable consideration from the CONSULTANT which has been paid as specific consideration for the indemnification provided herein.

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

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

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

#### **ARTICLE 18.00 - HEADINGS**

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

Date: 10/25/13

**ARTICLE 19.00 - ENTIRE AGREEMENT**

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

The following listed documents, which are referred to hereinbefore, 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".

**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: Jessica Munoz

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

## 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:

Carollo Engineers, Inc.  
401 N. Cattlemen Road, Suite 306  
Sarasota, FL 34232  
Phone: 941-371-9832/Fax: 941-3719873  
ATTENTION: Robert Cushing  
Email: [rcushing@carollo.com](mailto:rcushing@carollo.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) day 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.

Date: 10/25/13

## **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 - ACCEPTANCE**

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

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

ATTEST:  
CLERK OF CIRCUIT COURT  
Linda Doggett, Clerk

COUNTY: LEE COUNTY, FLORIDA  
BOARD OF COUNTY COMMISSIONERS

BY: Theresa King  
**DEPUTY CLERK**

BY: Brian Hamm  
Chair

DATE: 08-04-2015



APPROVED as to Form for the Reliance of Lee County Only

BY: [Signature]  
County Attorney's Office

ATTEST:

CAROLLO ENGINEERS, INC.  
Firm

BY: [Signature]  
Authorized Signature

[Signature]  
(Witness)

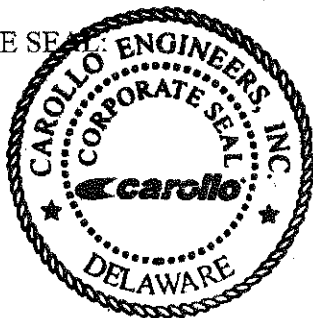
ERIC PETERS  
Authorized Signature Printed Name

Mary Ann Wandling  
(Witness)

VICE PRESIDENT  
Authorized Signature Title

DATE: 10/30/15

CORPORATE SEAL



Date: 10/25/13

SCOPE OF SERVICES

for CN150306 LEE COUNTY UTILITIES WATER & WASTEWATER ENGINEER OF RECORD

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.

Provide Professional engineering services for the project known as Lee County Utilities Water and Wastewater Engineer of Record. This project requires the consultant to provide Professional Engineering Services for physical inspection of facilities, review of operations for conformance to regulations, review of insurance requirements and rates and charges for compliance with Bond Covenants as necessary to prepare an annual report, and the preparation of the Annual Report with evaluation and recommendations. Also, the consultant may be required to provide other miscellaneous services for the Utility Department.

Section 2. TASKS

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

TASK 1.00 ANNUAL COMPREHENSIVE REPORT

The Annual Comprehensive Report will be a single document prepared to provide an overview of the Water and Wastewater systems and to evaluate the County's compliance with certain bond covenant provisions related to the duties of the Consulting Engineer for Fiscal Year (FY) 2014 – 2015 and FY 2015 – 2016 with, at the COUNTY'S sole discretion, an optional FY2016 – 2017 and, FY 2017 – 2018, beginning on October 1, each year.

TASK 1.01 - PHYSICAL INSPECTION

This task is essentially the annual field inspection of the water and wastewater facilities.. The physical condition of the system is determined. The Engineer will also discuss any concerns with staff, formulate an independent opinion, and then make recommendations concerning operational, maintenance, renewal, repair and replacement needs.

The following major components of the LCU utility system will be assessed:

- Water Supply – including wellfields and surface water intake structures
- Water Treatment Facilities
- Water Distribution Facilities – including storage tanks, booster pump stations, meters, valves, and fire hydrants
- Wastewater Lift Stations
- Wastewater Treatment Facilities

- Wastewater Gravity Systems – including manholes and available CCTV inspections
- Reclaimed Water Systems – including pump stations, storage tanks, and reuse sites

#### TASK 1.02 - COMPLIANCE WITH REGULATORY REQUIREMENTS

This task provides an opinion on the compliance or noncompliance of the system operations with various local, regional, state and federal regulatory requirements placed upon the County's utility system.

- A. List water and wastewater operations requirements.
- B. Compare system operations with requirements.
- C. Comment on compliance with operation permits.

#### TASK 1.03 - INSURANCE (WATER AND WASTEWATER SYSTEMS)

This task reviews and comments upon the type and level of insurance carried. Review includes property insurance only, not liability or opinions regarding insurance types and premiums.

- A. Identify items to be covered.
- B. Review existing coverage and identify gaps.
- C. Comment and recommend as appropriate.

#### TASK 1.04 - REVIEW OF COMPLIANCE WITH BOND COVENANTS

This task addresses compliance with the fiscal provisions of the bond resolution of the water and wastewater systems.

- A. Determine if rates and charges have been sufficient to provide for and pay operation and maintenance expenses and the required debt service with coverage. Make comments or recommendations concerning the need for future rate studies.
- B. Review the Renewal and Replacement Account payments.
- C. Review with the Director of Public Utilities and discuss the compliance of any sale of any components of the water and wastewater systems with the provisions of the bond resolution.
- D. Determine whether the sale of any additional pari passu bonds has met the requirements of the bond resolution.
- E. Review with the Director of Public Utilities and discuss the compliance of the County's utility system regarding the rendering of any free service of any nature.

#### TASK 1.05 – GENERAL UTILITY SYSTEM PERFORMANCE

The Engineer will review system performance data, including monthly operating reports for water and wastewater treatment facilities, pretreatment programs, flow, demand, and capacity data. The Engineer will:

- calculate and comment on water, wastewater and reuse capacity utilization
- review and compare the amount of unaccounted-for water in comparison to other utilities of similar size and distribution complexity

- review process operations and identify opportunities for treatment process improvements, optimizing capacity, improving safety, reducing energy and chemical costs, and streamlining operation/maintenance
- review and compare performance to our level of service standards and key performance indicators
- conduct a benchmarking analysis to track performance trends and compare performance with industry peers

#### TASK 1.06 - ANNUAL REPORT PREPARATION

This task presents the most important findings in a written report.

- Summarize major accomplishments in the water and wastewater system during the Fiscal Year.
- Summarize highlights of the annual fiscal and physical inspection of the water and wastewater systems.
- Provide an overview of the administration and management of the utility.
- Make recommendations as appropriate based upon findings gathered.

#### TASK 2.00 - MISCELLANEOUS SERVICES

Miscellaneous Services and work performed and/or provided by the Engineer may include the following:

- conduct technical engineering analyses, evaluations and reviews
- general consultation, and presentations of relevant issues concerning operation, maintenance or capital improvements of the water and wastewater systems
- peer review and value engineering of work prepared by others
- other periodic inspections and reports of specific facilities
- conduct and complete an Operation and Maintenance Performance Report for each wastewater treatment facility in support of its operating permit renewal

#### TASK 3.00 - DISASTER ASSISTANCE

The Engineer will provide support in times of a disaster such as a hurricane, where current in-house staffing levels may be insufficient to handle the emergency. In the event that a disaster strikes, the Engineer will provide or otherwise make available, appropriate members of their staff to assist LCU with disaster recovery efforts.

Services may include, but are not necessarily limited to, providing assistance in the following areas:

- Initial damage assessment
- Survey(s) of water and wastewater systems
- Recommendations for repair/replacement of damaged facilities
- Restoration of water production, water distribution and sewerage collection systems
- Coordination of recovery assistance with other agencies and governmental bodies
- Overall administration of disaster recovery efforts
- FEMA Damage Survey Reports

#### Schedule

A mutually agreed time of completion shall be established for each task assigned. It is desired to complete each annual report within 10 months after Fiscal Year end.



## Summary Description of LCU Facilities

### Water Distribution Systems

- 1417 miles of potable water mains, from 1.5" to 42" diameter

### Wastewater Collection Systems

- 310 miles of force mains, from 2" to 36" diameter
- 623 lift stations
- 637 miles of gravity sewer collection pipe, from 6" to 42" diameter

### Reuse Water Distribution Systems

- 49 miles of reuse mains, from 2" to 36" diameter

### Water Treatment Facilities

- Corkscrew WTP – 15 mgd, physical-chemical, lime softening treatment
- Greenmeadows WTP – 9 mgd, physical-chemical, enhanced lime softening treatment
- North Lee County WTP – 11.6 mgd, 2 stage reverse osmosis membrane treatment
- Olga WTP – 5 mgd, surface water, physical-chemical, lime softening treatment
- Pinewoods WTP – 5.3 mgd, nanofiltration membrane softening blended with reverse osmosis membrane treatment
- 4 wellfields with 62 surficial wells, 36 sandstone wells, 10 mid-hawthorn wells, 28 lower hawthorn wells
- 1 raw water river intake
- 8 ASR wells
- 2 DIWs
- 10 offsite finished water storage tanks and/or booster pump stations
- 33 miles of raw water mains, from 4" to 30" diameter

### Wastewater Treatment Facilities

- Fiesta Village AWWTP – 5 mgd, oxidation ditch treatment
- Ft. Myers Beach WWTP – 6 mgd, conventional activated sludge treatment
- Gateway WWTP – 3 mgd, extended aeration and oxidation ditch treatment
- High Point WWTP – 0.025 mgd, extended aeration treatment
- Pine Island WWTP – 0.492 mgd, activated sludge treatment
- Three Oaks WWTP – 6 mgd, oxidation ditch treatment
- 33 reuse customer sites
- 1 surface water discharge
- 2 DIWs

COMPENSATION AND METHOD OF PAYMENT

For \_\_\_\_\_

Section 1. BASIC SERVICES/TASK(S)

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

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

Task Number	Task Title	Amount of Compensation	Indicate Basis of Compensation LS or NTE	If Applicable Indicate (W.I.P.P.)
	To be negotiated through Supplemental Task Authorizations (STA) on task by task basis.			
TOTAL				

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 3.11 of this Agreement.

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

Section 3. REIMBURSABLE EXPENSES AND COSTS

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

ATTACHMENT NO. 1 TO EXHIBIT B

CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE \*\*\*

for

(Enter Project Name from Page 1 of the Agreement)

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

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct* Payroll Average Hourly Rate	(3) Multiplier**	(4) Hourly Rate To Be Charged (Column 2x3)

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

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

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

ATTACHMENT NO. 2 TO EXHIBIT B

NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS

for \_\_\_\_\_  
 (Enter Project Name from Page 1 of the Agreement)

CONSULTANT OR SUB-CONSULTANT NAME \_\_\_\_\_  
 (A separate Attachment No. 2 should be included for each Sub-Consultant)

ITEM	BASIS OF CHARGE
Telephone (Long Distance)	Actual Cost
Postage and Shipping	Actual Cost
Commercial Air Travel	Actual Cost (Coach)
Vehicle Travel Allowance (or)	\$0.575/Mile
Vehicle Rental/Gas	Actual Cost
Lodging (Per Person)	Actual Cost or NTE \$100.00
Meals:	
	Breakfast
	Lunch
	Dinner
In accordance with the GSA M&IE schedule for Travel utilizing the "Fort Myers, Florida" rates	\$ 9.00 \$13.00 \$24.00
Reproduction (Photocopy) 8 1/2" x 11"	\$0.15/Page
8 1/2" x 14"	\$0.20/Page
11" x 14"	\$0.35/Page
Reproduction (Blue/White Prints)	\$0.20/Sq. Ft.
Printing/Binding	Actual Cost
Mylar Sheets	Actual Cost
Photographic Supplies & Services	Actual Cost
Tolls	Actual Cost
*List other specific project related reimbursables (i.e. film/developing):	
<b>NOTE: Receipts or in-house logs are required for all non-personnel reimbursable expenses unless exempt (such as meals).</b>	
Administrative Services Fee – Applicable only when specifically authorized by the County, for administering the procurement of special additional services, equipment, reimbursables etc. not covered under the costs and/or changes established in the Agreement.	

NOTE: N.T.E. indicates Not-To-Exceed  
 CMO:033  
 01/01/2010

EXHIBIT C

TIME AND SCHEDULE OF PERFORMANCE

for

(Enter Project Name from Page 1 of the Agreement)

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

Phase and/or Task Reference As Enumerated in EXHIBIT "A"	NAME OR TITLE Of Phase and/Task	Number Of Calendar Days For Completion Of Each Phase And/or Task	Cumulative Number Of Calendar Days For Completion From Date of Notice to Proceed
	This agreement is valid for a period of two years (October 1, 2015 – September 30, 2017) with the options to renew for two additional one year period.		
	Time and Schedule of Performance for each project will be negotiated through each Supplemental Task Authorizations (STA)		

EXHIBIT D

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

for

(Enter Project Name From Page 1 of This Agreement)

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

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

Service and/or Work to be Provided or Performed	Name and Address of Individual or Firm	Disadvantaged, Minority or Women Business Enterprise. (If Yes, Indicate Type)			Sub-Consultant Services are Exempted from Prime Consultant's Insurance Coverage	
		Yes	No	Type	Yes	No

CMO:035  
09/25/01

EXHIBIT E

PROJECT GUIDELINES AND CRITERIA

ENTER PROJECT NUMBER AND NAME HERE \_\_\_\_\_

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 anytime during the two-year contract duration. This contract also contains an option to renew for one additional, one-year period, by mutual agreement between both parties.

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 associates with this agreement.

ITEM NO. 9

DRUG FREE WORKPLACE: Whenever two or more proposals, which are equal with respect to price, quality, and service, are received for the procurement of contractual services, a proposal



ITEM NO. 9 (Continued)

received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the evaluation/award process. In order to have a drug-free workplace, a business shall comply with the requirements of Florida Statutes 287.087.

ITEM NO. 10

**COOPERATIVE PURCHASING:** The Lee County Board of County Commissioners participates in cooperative purchasing agreements; it is hereby made a part of this proposal that the submission of any proposal in response to this request constitutes a proposal made under the same conditions, for the same contract price, to the other governmental entities.

Each governmental agency desiring to accept this proposal, and make an award thereof, shall do so independently of any other governmental agency. Each agency shall be responsible for its own purchases and each shall be liable only for services ordered and received by it, and no agency assumes any liability by virtue of this proposal.

ITEM NO. 11

**AUTHORITY TO PIGGYBACK:** It is hereby made a condition of this agreement that this agreement constitutes an agreement made under the same conditions, for the same price, and for the same effective period as this agreement, to any other governmental entity.

It is further understood that any governmental entity that electing to piggyback from this agreement with Lee County, will issue its own purchase orders, and will require separate billing

ITEM NO. 12

**COST PROPOSAL WORKSHEET:** To be used when performing work for Lee County.

Item No. 13

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

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

\_\_\_\_\_  
CAROLLO ENGINEERS, INC.

BY: Eric Peters

TITLE: VICE PRESIDENT

The foregoing instrument was signed and acknowledged before me this 30<sup>TH</sup> day of OCTOBER, 2015, by ERIC PETERS who has produced HIMSELF as \_\_\_\_\_ (Type of Identification and Number)

(Print or Type Name)

Mary Ann Wandling  
Notary Public Signature

MARY ANN WANDLING  
Printed Name of Notary Public

EE 173697 / 2-27-2016  
Notary Commission Number/Expiration



CMO:  
00/00/00

AMENDMENT TO ARTICLES

for

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.

CMO:  
09/25/01



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/13/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Risk Strategies Company 2040 Main Street, Suite 450 Irvine, CA 92614  www.risk-strategies.com	<b>CONTACT NAME:</b> Risk Strategies Company <b>PHONE (A/C No. Ext):</b> 949-242-9240 <b>E-MAIL ADDRESS:</b> syoung@risk-strategies.com	<b>FAX (A/C No.):</b> <b>NAIC #</b>
	<b>INSURER(S) AFFORDING COVERAGE</b>	<b>INSURER A:</b> Hanover Insurance Company <b>INSURER B:</b> <b>INSURER C:</b> Massachusetts Bay Insurance Company <b>INSURER D:</b> Continental Casualty Company <b>INSURER E:</b> <b>INSURER F:</b>
<b>INSURED</b> Carollo Engineers, Inc. 2700 Ygnacio Valley Road, #300 Walnut Creek CA 94598  CA DOI License No. 0F06675		

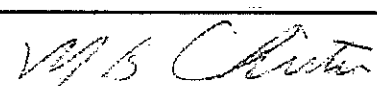
**COVERAGES**      **CERTIFICATE NUMBER:** 26913071      **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL SUBR (INSR) W/O/D	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Deductible \$0  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:		ZHF894489204	12/31/2014	12/31/2015	EACH OCCURRENCE \$ \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ \$1,000,000 MED EXP (Any one person) \$ \$25,000 PERSONAL & ADV INJURY \$ \$1,000,000 GENERAL AGGREGATE \$ \$2,000,000 PRODUCTS - COMP/OP AGG \$ \$2,000,000
C	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS		ADFA48696300	12/31/2014	12/31/2015	COMBINED SINGLE LIMIT (Ea accident) \$ \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Ded: Comp/Collision \$ \$1,000
	UMBRELLA LIAB EXCESS LIAB DED RETENTION \$					<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE EACH OCCURRENCE \$ AGGREGATE \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> N / A	WDF895749906	12/31/2014	12/31/2015	<input checked="" type="checkbox"/> PER STATUTE <input checked="" type="checkbox"/> OTH-ER Deductible: \$0 E.L. EACH ACCIDENT \$ \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$ \$1,000,000 E.L. DISEASE - POLICY LIMIT \$ \$1,000,000
D	Professional Liability Unlimited Prior Acts		AEH288354410	7/4/2015	7/4/2016	Each Claim: \$1,000,000 Aggregate: \$1,000,000 Deductible: \$400,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**

Projects as on file with the insured including but not limited to: CN150306 - Lee County Utilities Water & Wastewater Engineer of Record. Carollo Project #: Not yet assigned. Lee County Board of County Commissioners both are included as additional insureds with respects to General & Auto Liability and these policies are Primary & Non-Contributory.

<b>CERTIFICATE HOLDER</b>  Lee County Board of County Commissioners Attn: Lee County Procurement Management P.O. Box 398 Fort Myers FL 33902-0398	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE   Michael Christian
--	--

## Architects and Engineers

*The following policy language is from Commercial General Liability Coverage Forms*

The following are mandatory forms on the policy identified on the Certificate of Insurance:

### **421-0080(01 03) COMMERCIAL GENERAL LIABILITY SPECIAL BROADENING ENDORSEMENT**

#### **• Additional Insured by Contract, Agreement or Permit**

Under Section II-Who Is An Insured, Paragraph 4. is added as follows:

4. a. Any person or organization with whom you agreed, because of a written contract, written agreement or permit to provide insurance is an insured, but only with respect to:

- (1) "Your work" for the additional insured(s) at the location designated in the contract, agreement or permit; or
- (2) Premises you own, rent, lease or occupy.

This insurance applies on a primary basis if that is required by the written contract, written agreement or permit.

- b. This provision does not apply:

- (1) Unless the written contract or written agreement has been executed or permit has been issued prior to the "bodily injury", "property damage", "personal injury" or "advertising injury".

- (2) To any person or organization included as an insured by an endorsement issued by us and made part of this Coverage Part.

- (3) To any person or organization included as an insured under item 2 of this endorsement

- (4) To any lessor of equipment:

- (a) After the equipment lease expires; or

- (b) If the "bodily injury", "property damage", "personal injury" or "advertising injury" arises out of sole negligence of the lessor.

- (5) To any:

- (a) Owners or other interests from whom land has been leased which takes place after the lease for the land expires; or

- (b) Managers or lessors of premises if:

- (i) The occurrence takes place after you cease to be a tenant in that premises; or

- (ii) The "bodily injury", "property damage", "personal injury" or "advertising injury" arises out of structural

alterations, new construction or demolition operations performed by or on behalf of the manager or lessor.

#### **• Aggregate Limit Per Location**

- (1) Under Section III - Limits of Insurance the General Aggregate Limit applies separately to each of your "locations owned by or rented to you.

- (2) Under Section V - Definitions, definition 23. is added as follows:

23. "Location" means premises involving the same or connecting lots or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.

### **CG 2503(05 09) DESIGNATED CONSTRUCTION PROJECT(S) GENERAL AGGREGATE LIMIT**

#### **• Aggregate Limit of Insurance (Per Project)**

COMMERCIAL GENERAL LIABILITY COVERAGE PART

#### SCHEDULE

Designated Construction Projects:

Your projects away from premises owned by or rented to you

- A. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section II - Coverage A, and for all medical expenses caused by accidents under Section I - Coverage C, which can be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:

1. A separate Designated Construction Project General Aggregate Limit applies to each designated construction project, and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.

2. The Designated Construction Project General Aggregate Limit is the most we will pay for the sum of all damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under Coverage C regardless of the number of:

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- a. Insured's;
  - b. Claims made or "suits" brought; or
  - c. Persons or organizations making claims or bringing "suits".
3. Any payments made under Coverage A for damages or under Coverage C for medical expenses shall reduce the Designated Construction Project General Aggregate limit for that designated construction project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Construction Project General Aggregate Limit for any other designated construction project shown in the Schedule above.
4. The limits shown in the Declarations for Each Occurrence, Damage to Premises Rented to You and Medical Expense continue to apply. However, instead of being subject to the General Aggregate limit shown in the Declarations, such limits will be subject to the applicable Designated Construction Project General Aggregate Limit.
- B. For all sums which the Insured becomes legally obligated to pay as damages caused by "occurrences" under Section 1 - Coverage A, and for all medical expenses caused by accidents under Section II - Coverage C, which cannot be attributed only to ongoing operations at a single designated construction project show in the Schedule above:
- 1. Any payments made under Coverage A for damages or under Coverage C for medical expenses shall reduce the amount available under the General Aggregate limit or the Products-completed Operations Aggregate Limit, whichever is applicable; and
  - 2. Such payments shall not reduce any Designated Construction Project General Aggregate Limit.
- C. When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the products-completed operations hazard" will reduce the Products-completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Designated Construction Project General Aggregate Limit.
- D. If the applicable designated construction project has been abandoned, delayed, or abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or time tables, the project will still be deemed to be the same construction project.
- E. The provisions of Section III - Limits Of Insurance not otherwise modified by this endorsement shall continue to apply as stipulated.

**421-0452 (06 07) OTHER INSURANCE-PRIMARY AND NON-CONTRIBUTORY (ADDITIONAL INSURED)**

**• Additional Insured by Contract, Agreement or Permit Amended-Primary & Non-Contributory**

The following is added to Section IV - Commercial General Liability Conditions

**4. Other Insurance**

**a. Additional Insured's**

If you agree in a written contract, written agreement or permit that the insurance provided to any person or organization included as an Additional Insured under Section II - Who is An Insured, is primary and non-contributory, the following applies:

If other valid and collectable insurance is available to the Additional Insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

**1. Primary Insurance**

This insurance is primary to other insurance that is available to the Additional Insured which covers the Additional Insured as a Named Insured. We will not seek contribution from any other insurance available to the Additional Insured except:

- I. For the sole negligence of the Additional insured;
- II. When the Additional Insured is an Additional Insured under another primary liability policy; or
- III. When 2. below applies.

If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in 3. below.

**2. Excess Insurance**

This insurance is excess over:

**(1) Ally of the other insurance, whether primary, excess, contingent or on any other basis:**

- (a) That is fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
- (b) That is Fire insurance for premises rented to the Additional Insured or temporarily occupied by the Additional Insured with permission of the owner;
- (c) That is insurance purchased by the Additional Insured to cover the Additional Insured's liability as a tenant for "property damage" to premises rented to the Additional Insured or temporarily occupied by the Additional Insured with permission of the owner; or
- (d) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section II - Coverage A - Bodily Injury And Property Damage Liability.

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When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the Insured's rights against all those other Insurers.

When this insurance is excess over other Insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- 1) The total amount that all such other insurance would pay for the loss in the absence of this Insurance; and
- 2) The total of all deductible and self-Insured amounts under all that other Insurance.

We will share the remaining loss, if any, with any other Insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

**3. Method Of Sharing**

If all of the other Insurance permits contribution by equal shares, we will follow this method also under this approach each Insurer contributes equal amounts until it has paid its applicable limit of Insurance or none of the loss remains, whichever comes first.

If any of the other Insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each Insurer's share is based on the ratio of its applicable limit of Insurance to the total applicable limits of insurance of all insurers.

**CG0001 (1207) COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

• **Separation of Insured's**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this Insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

**CG 2404 (05 09) WAIVER OF TRANSFER OF RIGHTS OF RECOVERY TO US**

• **Waiver of Subrogation**

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

**SCHEDULE**

Name Of Person Or Organization: Persons or organizations with whom you have a written contract executed prior to the "bodily injury" or "property damage," that requires you to waive your rights of recovery
--

The following is added to Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us of Section IV- Conditions:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.



Authorized Representative

12/31/2014  
Policy NO. ZHF894489204

**Name Insured:** Carollo Engineers, Inc.

**Additional Insured:** Any person or organization with whom the named insured agreed in a written contract to name as additional insured.

This Notice does not form a part of the insurance contract.

No coverage is provided by this Notice, nor can it be construed to replace any provisions of the policy (including its endorsements), if there is any conflict between this Notice and the policy (including its endorsements), the provisions of the policy (including its endorsements) shall prevail.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## BLANKET ADDITIONAL INSURED – PRIMARY AND NON-CONTRIBUTORY

This endorsement modifies insurance provided under the following:

### BUSINESS AUTO COVERAGE FORM

**A. The following is added to SECTION II – LIABILITY COVERAGE, Paragraph A.1. Who Is An Insured:**

**Additional Insured if Required by Contract**

If you agree in a written contract, written agreement or written permit that a person or organization be added as an additional "insured" under this Coverage Part, such person or organization is an "insured"; but only to the extent that such person or organization qualifies as an "insured" under paragraph A.1.c. of this Section.

If you agree in a written contract, written agreement or written permit that a person or organization be added as an additional "insured" under this Coverage Part, the most we will pay on behalf of such additional "insured" is the lesser of:

- (1) The Limits of Insurance for liability coverage specified in the written contract, written agreement or written permit; or
- (2) The Limits of Insurance for Liability Coverage shown in the Declarations applicable to this Coverage Part.

Such amount shall be part of and not in addition to the Limits of Insurance shown in the Declarations applicable to this Coverage Part. Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", the most we will pay for the total of all damages and "covered pollution cost or expense" combined resulting from any one "accident" is the Limit of Insurance for Liability Coverage shown in the Declarations.

**B. The following is added to SECTION IV – BUSINESS AUTO CONDITIONS, Paragraph B. General Conditions, subparagraph 5. Other Insurance:**

**Primary and Non-Contributory**

If you agree in a written contract, written agreement or written permit that the insurance provided to a person or organization who qualifies as an additional "insured" under **SECTION II – LIABILITY COVERAGE, Paragraph A.1. Who Is An Insured**, subparagraph **Additional Insured if Required by Contract** is primary and non-contributory, the following applies:

The liability coverage provided by this Coverage Part is primary to any other insurance available to the additional "insured" as a Named Insured. We will not seek contribution from any other insurance available to the additional "insured" except:

- (1) For the sole negligence of the additional "insured"; or
- (2) For negligence arising out of the ownership, maintenance or use of any "auto" not owned by the additional "insured" or by you, unless that "auto" is a "trailer" connected to an "auto" owned by the additional "insured" or by you; or
- (3) When the additional "insured" is also an additional "insured" under another liability policy.

**C. This endorsement will apply only if the "accident" occurs:**

1. During the policy period;
2. Subsequent to the execution of the written contract or written agreement or the issuance of the written permit; and
3. Prior to the expiration of the period of time that the written contract, written agreement or written permit requires such insurance to be provided to the additional "insured".

**D. Coverage provided to an additional "insured" will not be broader than coverage provided to any other "insured" under this Coverage Part.**

ALL OTHER TERMS, CONDITIONS, AND EXCLUSIONS REMAIN UNCHANGED.



**CONTRACT REVIEW CHECKLIST**

**CONTRACT TYPE:** PROFESSIONAL SERVICES AGREEMENT

**SUBJECT:** Project known as: UTILITIES WATER & WASTEWATER ENGINEER OF RECORD

between Lee County and Carollo Engineers Inc.

**Reference:** Department Director approval:  
County Administrator approval:

Reference: Board action approving contract/agreement

August 4, 2015 Agenda Item No. 50.

*2 originals*

The subject contract is forwarded herewith for review and/or endorsements:

(1) By the Director of ROUTED BY PROCUREMENT MANAGEMENT

Project Sponsoring Department

- Recommending execution
- Not recommending execution for the following reason(s)

Date received \_\_\_\_\_ Date returned/forwarded \_\_\_\_\_

Signed \_\_\_\_\_

(2) By Procurement Management

- Recommending execution
- Not recommending execution for the following reason(s)

Date received \_\_\_\_\_ Date returned/forwarded \_\_\_\_\_

Signed \_\_\_\_\_

2015 NOV -5 AM 11:24  
RECEIVED BY  
LEGAL ATTORNEY

(3) By the Risk Management

- Recommending execution
- Not recommending execution for the following reason(s)

Date received Nov 4, 2015 Date returned/forwarded Nov 5, 2015

Signed \_\_\_\_\_

(4) By the County Attorney

- Recommending execution
- Not recommending execution for the following reason(s)

Date received 11-5-15 Date returned/forwarded 11-5-15

Signed \_\_\_\_\_

2015 NOV -6 PM 4:42

(5) **BOARD**

(6) Clerks Office, Minutes Department 11-09-15 TR

(7) **PROCUREMENT MGMT.** Diana Khan

RECEIVED  
MINUTES OFFICE

<b>Blue Sheet No. 20150395</b>	<b>Lee County Board Of County Commissioners Agenda Item Report Meeting Date: 8/4/2015</b>	<b>Item No. 50</b>
------------------------------------	---	--------------------

**TITLE:**

Approve ranking and award for CN150306 Lee County Utilities Water and Wastewater Engineer of Record for its Water and Wastewater Operations

**ACTION REQUESTED:**

- A) Concur with the ranking of Engineers by the Competitive Negotiations Committee for CN150306 LEE COUNTY UTILITIES WATER & WASTEWATER ENGINEER OF RECORD as follows: Number 1 – Carollo Engineers, Inc.; Number 2 – Stantec Consulting Services, Inc.; Number 3 – CDM Smith, Inc; Number 4 - CPH, Inc.  
 B) Authorize staff to negotiate a Professional Services Agreement with the Number 1 ranked firm, Carollo Engineers, Inc. to provide professional consulting services for a two year term with the option to re-negotiate and renew for up to two additional one year periods.  
 C) Approve an annual expenditure not to exceed \$200,000.  
 D) Authorize the Chair on behalf of the Board to execute the Agreement upon completion of the final negotiations.

**FUNDING:**

\$200,000; Enterprise Fund; Included in the FY 14/15 Utilities Operating Budget

This is an annual requirement by Lee County Utilities' Second Amended and Restated Water & Sewer Revenue Bond Resolution No. 93-06-40. The annual expenditure is a not to exceed amount of \$200,000 per year for up to the next four years, and will be included in the annual Operating Budget.

Fund: Utilities Operating; Programs: Sewer Operations and Water Operations; Project: Other Professional Services; Accounts: OD5360648700.503190 & OD5366248700.503190

**WHAT ACTION ACCOMPLISHES:**

Approves the ranking of consultants, authorizes negotiations, and authorizes award of a Professional Services Agreement with the number one ranked consultant for CN150306 Lee County Utilities Water and Wastewater Engineer of Record. Professional engineering services will include physical inspection of facilities, review of operations for conformance to regulations, review of insurance requirements and rates and charges for compliance with Bond Covenants as necessary to prepare an annual report, and preparation of the Annual Report with evaluation and recommendations, as well as other miscellaneous related services on an as-needed basis.

**MANAGEMENT RECOMMENDATION:**

Approve.

<b>Requirement/Purpose: (specify)</b>	<b>Request Initiated</b>
<input type="checkbox"/> Statute <input type="checkbox"/> Ordinance <input checked="" type="checkbox"/> Admin Code AC-4-4 <input type="checkbox"/> Other	<b>Commissioner:</b> <b>Department:</b> UTILITIES <b>Division:</b> No Divisions <b>By:</b> Pam Keyes

<b>Required Review:</b>					
<b>Pam Keyes</b>	<b>Robert Franceschini</b>	<b>Reginald Kantor</b>	<b>Mike Figueroa</b>	<b>Peter Winton</b>	<b>Corris L. McIntosh Jr.</b>
UTILITIES	Purchasing	Budget Analyst	Risk	Budget Services	County Attorney
<b>Doug Meurer</b>					
County Manager					

## **Background:**

Letters of Interest were solicited on behalf of the Board of County Commissioners for the project known as CN150306 LEE COUNTY UTILITIES WATER & WASTEWATER ENGINEER OF RECORD.

The deadline for receipt of Letters of Interest was June 2, 2015. A total of 4 Letters of Interest were received by the established deadline and considered at the Competitive Negotiations Committee meeting held on June 5, 2015. The Competitive Negotiations Committee consisted of the following staff members: Pam Keyes, Public Utilities Director, Non-Voting Chair; Jessica Munoz, Utilities; Hank Barroso, Utilities; and Tom Mamott, Utilities.

During the evaluation process the Competitive Negotiation Committee considered criteria as listed in the solicitation request, including: experience with water and wastewater treatment facilities, water distribution systems, wastewater collection systems, and reuse water distribution systems; experience in compliance with regulatory requirements; experience with insurance coverage requirements and bonding requirements; and qualifications of key personnel.

At the committee meeting, points were presented and put on record by each committee member with respect to each submittal from all firms. Based on the information submitted by the Consultants in their Letters of Interest, it was the consensus of the committee to rank the firms as follows: Number 1 – Carollo Engineers, Inc.; Number 2 – Stantec Consulting Services, Inc.; Number 3 – CDM Smith, Inc; Number 4 - CPH, Inc. and invite the number one ranked firm for a telephone interview. The Chair entertained a motion to approve the ranking and to delegate authority to Procurement Management to conduct the telephone interview with the number one ranked firm with the further authority to present the selection to the Board if no issues were found during the interview process.

Per Section 6 of the Contracts Manual for annual-type master contracts, the Board can concur with the selection of a consultant and authorize staff to negotiate an annual contract within the same Agenda Item. This will eliminate the need for an additional Agenda Item requesting Board approval of the Professional Services Agreement. It is also requested the Board approve an annual expenditure limit of \$200,000 for this Agreement and eliminate the need for additional Agenda Items requesting Board approval of Supplemental Task Authorizations within this annual expenditure limit.

Under Section 5.18 of the Second Amended and Restated Water and Sewer Revenue Bond Resolution of Lee County (No. 93-06-40), Lee County Utilities is required to prepare and submit an Annual Water and Wastewater Engineer of Record Report. The Engineer of Record Report provides an overview of the physical, operational and financial conditions of the water and wastewater systems as well as evaluates Lee County Utilities' compliance with the bond provisions.

- 1) Ranking of Firms
- 2) Sample Contract
- 3) Evaluation Meeting Minutes