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**SEMINOLE COUNTY GOVERNMENT  
AGENDA MEMORANDUM**

**SUBJECT:** Professional Services: PS-2249-07/BJH - Continuous Construction Engineering and Inspection Services Agreement for Construction Projects Less than \$1 Million

**DEPARTMENT:** Administrative Services

**DIVISION:** Purchasing and Contracts

**AUTHORIZED BY:** Frank Raymond

**CONTACT:** David Santiago

**EXT:**

**MOTION/RECOMMENDATION:**

Approve the negotiated rates and award PS-2249-07/BHJ - Continuous Construction Engineering and Inspection Services Agreement for Construction Projects Less than \$1 Million with DMJM Harris of Orlando, Florida; Keith & Schnars, Inc. of Orlando, Florida; and PB Americas of Orlando, Florida (estimated usage of \$750,000.00 per year).

County-wide

Ray Hooper

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**BACKGROUND:**

PS-2249-07/BHJ will provide construction engineering and inspection services to ensure the construction project is constructed in reasonable conformity with the plans, specifications and agreement provisions for various County construction projects with a construction cost less than one (1) million dollars.

On December 11, 2007, the Board approved the ranking and authorized staff to negotiate with DMJM Harris of Orlando, Florida; Keith & Schnars, Inc. of Orlando, Florida; and PB Americas of Orlando, Florida, the three (3) top ranked firms. The Award Agreements include the negotiated rates from each firm as Exhibit C. The term of the Agreement will be for a base period of two (2) years with three (3) renewal periods not to exceed one (1) year each.

Authorization for the performance of services by the Consultants under this Agreement shall be in the form of written Work Orders issued and executed by the County, and signed by the Consultant. The work and dollar amount for each Work Order will be within the constraints of the approved project budget and negotiated on an as-needed basis for the project.

**STAFF RECOMMENDATION:**

Staff recommends that the Board approve the negotiated rates and award PS-2249-07/BHJ - Continuous Construction Engineering and Inspection Services Agreement for Construction Projects Less than \$1 Million with DMJM Harris of Orlando, Florida; Keith & Schnars, Inc. of Orlando, Florida; and PB Americas of Orlando, Florida (estimated usage of \$750,000.00 per year).

**ATTACHMENTS:**

1. PS-2249-07\_Award Agreement with DMJM Harris
2. PS-2249-07\_Award Agreement with Keith and Schnars, P.A.
3. PS-2249-07\_Award Agreement with PB Americas, Inc.

**Additionally Reviewed By:**

County Attorney Review ( Ann Colby )

**CONSTRUCTION ENGINEERING AND INSPECTION SERVICES AGREEMENT  
CONSTRUCTION PROJECTS LESS THAN ONE MILLION DOLLARS (\$1,000,000.00)  
(PS-2249-07/BHJ)**

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and between **DMJM HARRIS**, duly authorized to conduct business in the State of Florida, whose address is 20 N. Orange Avenue, Suite 407, Orlando, Florida 32801, hereinafter called "CONSULTANT" and **SEMINOLE COUNTY**, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771, hereinafter called "COUNTY".

**W I T N E S S E T H:**

**WHEREAS**, COUNTY desires to retain the services of a competent and qualified CONSULTANT to provide construction engineering and inspection services for construction projects less than one million dollars (\$1,000,000.00) in Seminole County; and

**WHEREAS**, COUNTY has requested and received expressions of interest for the retention of services of consultants; and

**WHEREAS**, CONSULTANT is competent and qualified to furnish construction engineering and inspection services for construction projects less than one million dollars (\$1,000,000.00) services to COUNTY and desires to provide professional services according to the terms and conditions stated herein,

**NOW, THEREFORE**, in consideration of the mutual understandings and covenants set forth herein, COUNTY and CONSULTANT agree as follows:

**SECTION 1. SERVICES.** COUNTY does hereby retain CONSULTANT to furnish professional services and perform those tasks as further described in the Scope of Services attached hereto as Exhibit A and made a part hereof. Required services shall be specifically enumerated, described, and depicted in the Work Orders authorizing performance of the specific project, task, or study. This Agreement standing alone does not authorize the performance of any work or require COUNTY to

place any orders for work.

**SECTION 2. TERM.** This Agreement shall take effect on the date of its execution by COUNTY and shall run for a period of two (2) years and, at the sole option of COUNTY, may be renewed for three (3) successive periods not to exceed one (1) year each. Expiration of the term of this Agreement shall have no effect upon Work Orders issued pursuant to this Agreement and prior to the expiration date. Obligations entered therein by both parties shall remain in effect until completion of the work authorized by the Work Order.

**SECTION 3. AUTHORIZATION FOR SERVICES.** Authorization for performance of professional services by CONSULTANT under this Agreement shall be in the form of written Work Orders issued and executed by COUNTY and signed by CONSULTANT. A sample Work Order is attached hereto as Exhibit B. Each Work Order shall describe the services required, state the dates for commencement and completion of work, and establish the amount and method of payment.  The Work Orders will be issued under and shall incorporate the terms of this Agreement. COUNTY makes no covenant or promise as to the number of available projects or that CONSULTANT will perform any project for COUNTY during the life of this Agreement. COUNTY reserves the right to contract with other parties for the services contemplated by this Agreement when it is determined by COUNTY to be in the best interest of COUNTY to do so.

**SECTION 4. TIME FOR COMPLETION.** The services to be rendered by CONSULTANT shall be commenced as specified in such Work Orders as may be issued hereunder and shall be completed within the time specified therein. In the event COUNTY determines that significant benefits would accrue from expediting an otherwise established time schedule for completion of services under a given Work Order, that Work Order may include a negotiated schedule of incentives based on time savings.

**SECTION 5. COMPENSATION.** COUNTY agrees to compensate CONSULTANT for the professional services called for under this Agreement on either a "Fixed Fee Basis" or on a "Time Basis Method". If a Work Order is issued under a Time Basis Method, then CONSULTANT shall be compensated in accordance with the rate schedule attached as Exhibit C and the Truth in Negotiations Certificate, attached as Exhibit D. If a Work Order is issued for a Fixed Fee Basis, then the applicable Work Order Fixed Fee amount shall include any and all reimbursable expenses.

**SECTION 6. REIMBURSABLE EXPENSES.** If a Work Order is issued on a Time Basis Method, then reimbursable expenses are in addition to the hourly rates. Reimbursable expenses are subject to the applicable "Not-to-Exceed" or "Limitation of Funds" amount set forth in the Work Order. Reimbursable expenses may include actual expenditures made by CONSULTANT, its employees, or its professional associates in the interest of the Project for the expenses listed in the following paragraphs:



(a) Expenses of transportation, when traveling in connection with the Project based on Sections 112.061(7) and (8), Florida Statutes, or its successor; long distance calls and telegrams; and fees paid for securing approval of authorities having jurisdiction over the Project.

(b) Expense of reproductions, postage, and handling of drawings and specifications.

(c) If authorized in writing in advance by COUNTY, the cost of other expenditures made by CONSULTANT in the interest of the Project.

**SECTION 7. PAYMENT AND BILLING.**

(a) If the Scope of Services required to be performed by a Work Order is clearly defined, the Work Order shall be issued on a Fixed Fee Basis. CONSULTANT shall perform all work required by the Work Order, but in no event shall CONSULTANT be paid more than the negotiated Fixed Fee amount stated therein.

(b) If the Scope of Services is not clearly defined, the Work Order may be issued on a Time Basis Method and contain a Not-to Exceed amount. If a Not-to-Exceed amount is provided, CONSULTANT shall perform all work required by the Work Order, but in no event shall CONSULTANT be paid more than the Not-to-Exceed amount specified in the applicable Work Order.

(c) If the Scope of Services is not clearly defined, the Work Order may be issued on a Time Basis Method and contain a Limitation of Funds amount. CONSULTANT is not authorized to exceed that amount without the prior written approval of COUNTY. Said approval, if given by COUNTY, shall indicate a new Limitation of Funds amount. CONSULTANT shall advise COUNTY whenever CONSULTANT has incurred expenses on any Work Order that equals or exceeds eighty percent (80%) of the Limitation of Funds amount.

(d) For Work Orders issued on a Fixed Fee Basis, CONSULTANT may invoice the amount due based on the percentage of total Work Order services actually performed and completed, but in no event shall the invoice amount exceed a percentage of the Fixed Fee amount equal to a percentage of the total services actually completed. COUNTY shall pay CONSULTANT ninety percent (90%) of the approved amount on Work Orders issued on a Fixed Fee Basis.

(e) For Work Orders issued on a Time Basis Method with a Not-to-Exceed amount, CONSULTANT may invoice the amount due for actual work hours performed, but in no event shall the invoice amount exceed a percentage of the Not-to-Exceed amount equal to a percentage of the total services actually completed. COUNTY shall pay CONSULTANT ninety percent (90%) of the approved amount on Work Orders issued on a Time Basis Method with a Not-to-Exceed amount.

(f) Each Work Order issued on a Fixed Fee Basis or Time Basis Method with a Not-to-Exceed amount shall be treated separately for

retainage purposes. If COUNTY determines that work is substantially complete and the amount retained is considered to be in excess, COUNTY may, at its sole and absolute discretion, release the retainage or any portion thereof.

(g) For Work Orders issued on a Time Basis Method with a Limitation of Funds amount, CONSULTANT may invoice the amount due for services actually performed and completed. COUNTY shall pay CONSULTANT one hundred percent (100%) of the approved amount on Work Orders issued on a Time Basis Method with a Limitation of Funds amount.

(h) Payments shall be made by COUNTY to CONSULTANT when requested as work progresses for services furnished, but not more than once monthly. Each Work Order shall be invoiced separately. At the close of each calendar month, CONSULTANT shall render to COUNTY a properly dated itemized invoice describing any services rendered, the cost of the services, the name and address of CONSULTANT, Work Order Number, Contract Number, and all other information required by this Agreement.

The original invoice and one (1) copy shall be sent to:

Director of County Finance  
Seminole County Board of County Commissioners  
Post Office Box 8080  
Sanford, Florida 32772

Two (2) copies of the invoice shall be sent to:

Public Works (Engineering Division)  
520 W. Lake Mary Blvd., Suite 200  
Sanford, FL 32773

(i) Payment shall be made after review and approval by COUNTY within thirty (30) days of receipt of a proper invoice from CONSULTANT.

#### **SECTION 8. GENERAL TERMS OF PAYMENT AND BILLING.**

(a) Upon satisfactory completion of work required hereunder and upon acceptance of the work by COUNTY, CONSULTANT may invoice COUNTY for the full amount of compensation provided for under the terms of this Agreement including any retainage and less any amount already paid by COUNTY. COUNTY shall pay CONSULTANT within thirty (30) days of receipt

of proper invoice.

(b) COUNTY may perform or have performed an audit of the records of CONSULTANT after final payment to support final payment hereunder. This audit would be performed at a time mutually agreeable to CONSULTANT and COUNTY subsequent to the close of the final fiscal period in which the last work is performed. Total compensation to CONSULTANT may be determined subsequent to an audit as provided for in subsections (b) and (c) of this Section, and the total compensation so determined shall be used to calculate final payment to CONSULTANT. Conduct of this audit shall not delay final payment as provided by subsection (a) of this Section.

(c) In addition to the above, if federal funds are used for any work under the Agreement, the Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers, and records of CONSULTANT which are directly pertinent to work performed under this Agreement for purposes of making audit, examination, excerpts, and transcriptions.

(d) CONSULTANT agrees to maintain all books, documents, papers, accounting records, and other evidence pertaining to work performed under this Agreement in such a manner as will readily conform to the terms of this Agreement and to make such materials available at CONSULTANT's office at all reasonable times during the Agreement period and for five (5) years from the date of final payment under the contract for audit or inspection as provided for in subsections (b) and (c) of this Section.

(e) In the event any audit or inspection conducted after final payment, but within the period provided in paragraph (d) of this Section, reveals any overpayment by COUNTY under the terms of the Agreement, CONSULTANT shall refund such overpayment to COUNTY within

thirty (30) days of notice by COUNTY.

**SECTION 9. RESPONSIBILITIES OF CONSULTANT.**

(a) CONSULTANT shall be responsible for the professional quality, technical accuracy, competence, methodology, accuracy, and the coordination of all of the following which are listed for illustration purposes and not as a limitation: documents, analysis, reports, data, plans, plats, maps, surveys, specifications, and any and all other services of whatever type or nature furnished by CONSULTANT under this Agreement. CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in his plans, analysis, data, reports, designs, drawings, specifications, and any and all other services of whatever type or nature.

(b) Neither COUNTY's review, approval, or acceptance of, nor payment for, any of the services required shall be construed to operate as a waiver of any rights under this Agreement nor of any cause of action arising out of the performance of this Agreement; and CONSULTANT shall be and always remain liable to COUNTY in accordance with applicable law for any and all damages to COUNTY caused by CONSULTANT's negligent or wrongful performance of any of the services furnished under this Agreement.

**SECTION 10. OWNERSHIP OF DOCUMENTS.** All deliverable analysis, reference data, survey data, plans, and reports or any other form of written instrument or document that may result from CONSULTANT's services or have been created during the course of CONSULTANT's performance under this Agreement shall become the property of COUNTY after final payment is made to CONSULTANT.

**SECTION 11. TERMINATION.**

(a) COUNTY may, by written notice to CONSULTANT, terminate this Agreement or any Work Order issued hereunder, in whole or in part, at any time, either for COUNTY's convenience or because of the failure of

CONSULTANT to fulfill its Agreement obligations. Upon receipt of such notice, CONSULTANT shall:

(1) immediately discontinue all services affected unless the notice directs otherwise; and

(2) deliver to COUNTY all data, drawings, specifications, reports, estimates, summaries, and any and all such other information and materials of whatever type or nature as may have been accumulated by CONSULTANT in performing this Agreement, whether completed or in process.

(b) If the termination is for the convenience of COUNTY, CONSULTANT shall be paid compensation for services performed to the date of termination. If this Agreement calls for the payment based on a Fixed Fee amount, CONSULTANT shall be paid no more than a percentage of the Fixed Fee amount equivalent to the percentage of the completion of work, as determined solely and conclusively by COUNTY, contemplated by this Agreement.



(c) If the termination is due to the failure of CONSULTANT to fulfill its Agreement obligations, COUNTY may take over the work and prosecute the same to completion by other Agreements or otherwise. In such case, CONSULTANT shall be liable to COUNTY for all reasonable additional costs occasioned to COUNTY thereby. CONSULTANT shall not be liable for such additional costs if the failure to perform the Agreement arises without any fault or negligence of CONSULTANT; provided, however, that CONSULTANT shall be responsible and liable for the actions of its subcontractors, agents, employees, and persons and entities of a similar type or nature. Such causes may include acts of God or of the public enemy, acts of COUNTY in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but, in every case, the failure to perform must be beyond the control and without any fault or negligence of

CONSULTANT.

(d) If after notice of termination for failure to fulfill its Agreement obligations it is determined that CONSULTANT had not so failed, the termination shall be conclusively deemed to have been effected for the convenience of COUNTY. In such event, adjustment in the Agreement price shall be made as provided in subsection (b) of this Section.

(e) The rights and remedies of COUNTY provided for in this Section are in addition and supplemental to any and all other rights and remedies provided by law or under this Agreement.

**SECTION 12. AGREEMENT AND WORK ORDER IN CONFLICT.** Whenever the terms of this Agreement conflict with any Work Order issued pursuant to it, the Agreement shall prevail.

**SECTION 13. EQUAL OPPORTUNITY EMPLOYMENT.** CONSULTANT agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age, disability, or national origin and will take steps to ensure that applicants are employed, and employees are treated during employment, without regard to race, color, religion, sex, age, disability, or national origin. This provision shall include, but not be limited to, the following: employment; upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

**SECTION 14. NO CONTINGENT FEES.** CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from award or making of

this Agreement. For the breach or violation of this provision, COUNTY shall have the right to terminate the Agreement at its sole discretion, without liability and to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

**SECTION 15. CONFLICT OF INTEREST.**

(a) CONSULTANT agrees that it will not contract for or accept employment for the performance of any work or service with any individual, business, corporation, or government unit that would create a conflict of interest in the performance of its obligations pursuant to this Agreement with COUNTY.

(b) CONSULTANT agrees that it will neither take any action nor engage in any conduct that would cause any COUNTY employee to violate the provisions of Chapter 112, Florida Statutes, relating to ethics in government.

(c) In the event that  CONSULTANT causes or in any way promotes or encourages a COUNTY officer, employee, or agent to violate Chapter 112, Florida Statutes, COUNTY shall have the right to terminate this Agreement.

**SECTION 16. ASSIGNMENT.** This Agreement, or any interest herein, shall not be assigned, transferred, or otherwise encumbered, under any circumstances, by the parties hereto without prior written consent of the other party and in such cases only by a document of equal dignity herewith.

**SECTION 17. SUBCONTRACTORS.** In the event that CONSULTANT, during the course of the work under this Agreement, requires the services of any subcontractors or other professional associates in connection with services covered by this Agreement, CONSULTANT must first secure the prior express written approval of COUNTY. If subcontractors or other professional associates are required in connection with the services

covered by this Agreement, CONSULTANT shall remain fully responsible for the services of subcontractors or other professional associates.

**SECTION 18. INDEMNIFICATION OF COUNTY.** CONSULTANT agrees to hold harmless, replace, and indemnify COUNTY, its commissioners, officers, employees, and agents against any and all claim, losses, damages or lawsuits for damages, arising from the negligent, reckless, or intentionally wrongful provision of services hereunder by CONSULTANT, whether caused by CONSULTANT or otherwise.

**SECTION 19. INSURANCE.**

(a) GENERAL. CONSULTANT shall at its own cost procure the insurance required under this Section.

(1) CONSULTANT shall furnish COUNTY with a Certificate of Insurance signed by an authorized representative of the insurer evidencing the insurance required by this Section (Professional Liability, Workers' Compensation/Employer's Liability and Commercial General Liability). COUNTY, its officials,  officers, and employees shall be named additional insured under the Commercial General Liability policy. The Certificate of Insurance shall provide that COUNTY shall be given not less than thirty (30) days written notice prior to the cancellation or restriction of coverage. Until such time as the insurance is no longer required to be maintained by CONSULTANT, CONSULTANT shall provide COUNTY with a renewal or replacement Certificate of Insurance not less than thirty (30) days before expiration or replacement of the insurance for which a previous certificate has been provided.

(2) The Certificate shall contain a statement that it is being provided in accordance with the Agreement and that the insurance is in full compliance with the requirements of the Agreement. In lieu of the statement on the Certificate, CONSULTANT shall (at the option of COUNTY) submit a sworn notarized statement from an authorized representative of the insurer that the Certificate is being provided in accor-

dance with the Agreement and that the insurance is in full compliance with the requirements of the Agreement. **The Certificate shall have this Agreement number clearly marked on its face.**

(3) In addition to providing the Certificate of Insurance, if required by COUNTY, CONSULTANT shall, within thirty (30) days after receipt of the request, provide COUNTY with a certified copy of each of the policies of insurance providing the coverage required by this Section.

(4) Neither approval by COUNTY nor failure to disapprove the insurance furnished by a CONSULTANT shall relieve CONSULTANT of its full responsibility for performance of any obligation including CONSULTANT's indemnification of COUNTY under this Agreement.

(b) INSURANCE COMPANY REQUIREMENTS. Insurance companies providing the insurance under this Agreement must meet the following requirements:

(1) Companies issuing  policies (other than Workers' Compensation) must be authorized to conduct business in the State of Florida and prove same by maintaining Certificates of Authority issued to the companies by the Department of Insurance of the State of Florida. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by Section 440.57, Florida Statutes.

(2) In addition, such companies other than those authorized by Section 440.57, Florida Statutes, shall have and maintain a Best's Rating of "A" or better and a Financial Size Category of "VII" or better according to A.M. Best Company.

(3) If during the period which an insurance company is providing the insurance coverage required by this Agreement, an insurance company shall: (i) lose its Certificate of Authority; (ii) no longer comply with Section 440.57, Florida Statutes; or (iii) fail to maintain the requisite Best's Rating and Financial Size Category,

CONSULTANT shall, as soon as CONSULTANT has knowledge of any such circumstance, immediately notify COUNTY and immediately replace the insurance coverage provided by the insurance company with a different insurance company meeting the requirements of this Agreement. Until such time as CONSULTANT has replaced the unacceptable insurer with an insurer acceptable to COUNTY, CONSULTANT shall be deemed to be in default of this Agreement.

(c) SPECIFICATIONS. Without limiting any of the other obligations or liability of CONSULTANT, CONSULTANT shall, at its sole expense, procure, maintain, and keep in force amounts and types of insurance conforming to the minimum requirements set forth in this subsection. Except as otherwise specified in the Agreement, the insurance shall become effective prior to the commencement of work by CONSULTANT and shall be maintained in force until the Agreement completion date. The amounts and types of insurance shall conform to the following minimum requirements.



(1) Workers' Compensation/Employer's Liability.

(A) CONSULTANT's insurance shall cover CONSULTANT for liability which would be covered by the latest edition of the standard Workers' Compensation Policy as filed for use in Florida by the National Council on Compensation Insurance, without restrictive endorsements. CONSULTANT will also be responsible for procuring proper proof of coverage from its subcontractors of every tier for liability which is a result of a Workers' Compensation injury to the subcontractor's employees. The minimum required limits to be provided by both CONSULTANT and its subcontractors are outlined in subsection (c) below. In addition to coverage for the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the United States Longshoremen and Harbor Workers' Compensation Act, Federal Employers' Liability Act, and any other applicable federal or state law.

(B) Subject to the restrictions of coverage found in the standard Workers' Compensation Policy, there shall be no maximum limit on the amount of coverage for liability imposed by the Florida Workers' Compensation Act, the United States Longshoremen's and Harbor Workers' Compensation Act, or any other coverage customarily insured under Part One of the standard Workers' Compensation Policy.

(C) The minimum amount of coverage under Part Two of the standard Workers' Compensation Policy shall be:

|                |                         |
|----------------|-------------------------|
| \$ 500,000.00  | (Each Accident)         |
| \$1,000,000.00 | (Disease-Policy Limit)  |
| \$ 500,000.00  | (Disease-Each Employee) |

(2) Commercial General Liability.

(A) CONSULTANT's insurance shall cover CONSULTANT for those sources of liability which would be covered by the latest edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) as filed for use in the State of Florida by the Insurance Services Office, without the attachment of restrictive endorsements other than the elimination of Coverage C, Medical Payment, and the elimination of coverage for Fire Damage Legal Liability.

(B) The minimum limits to be maintained by CONSULTANT (inclusive of any amounts provided by an Umbrella or Excess policy) shall be as follows:

|                                     | <u>LIMITS</u>                             |
|-------------------------------------|---|
| General Aggregate                   | Three (3) Times the Each-Occurrence Limit |
| Personal & Advertising Injury Limit | \$1,000,000.00                            |
| Each Occurrence Limit               | \$1,000,000.00                            |

(3) Professional Liability Insurance. CONSULTANT shall carry professional liability insurance with limits of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00).

(d) COVERAGE. The insurance provided by CONSULTANT pursuant to this Agreement shall apply on a primary basis, and any other insurance or self-insurance maintained by COUNTY or COUNTY's officials, officers, or employees shall be in excess of and not contributing to the insurance provided by or on behalf of CONSULTANT.

(e) OCCURRENCE BASIS. The Workers' Compensation Policy and the Commercial General Liability required by this Agreement shall be provided on an occurrence rather than a claims-made basis. The Professional Liability insurance policy must be on an occurrence basis or claims-made basis. If a claims-made basis, the coverage must respond to all claims reported within three (3) years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis.

(f) OBLIGATIONS. Compliance with the foregoing insurance requirements shall not relieve CONSULTANT, its employees, or its agents of liability from any obligation  under a Section or any other portions of this Agreement.

**SECTION 20. ALTERNATIVE DISPUTE RESOLUTION.**

(a) In the event of a dispute related to any performance or payment obligation arising under this Agreement, the parties agree to exhaust COUNTY protest procedures prior to filing suit or otherwise pursuing legal remedies. COUNTY procedures for proper invoice and payment disputes are set forth in Section 22.15, "Prompt Payment Procedures," Seminole County Administrative Code.

(b) CONSULTANT agrees that it will file no suit or otherwise pursue legal remedies based on facts or evidentiary materials that were not presented for consideration in COUNTY protest procedures set forth in subsection (a) above of which CONSULTANT had knowledge and failed to present during COUNTY protest procedures.

(c) In the event that COUNTY protest procedures are exhausted and a suit is filed or legal remedies are otherwise pursued, the parties shall exercise best efforts to resolve disputes through voluntary mediation. Mediator selection and the procedures to be employed in voluntary mediation shall be mutually acceptable to the parties. Costs of voluntary mediation shall be shared equally among the parties participating in the mediation.

**SECTION 21. REPRESENTATIVES OF COUNTY AND CONSULTANT.**

(a) It is recognized that questions in the day-to-day conduct of performance pursuant to this Agreement will arise. COUNTY, upon request by CONSULTANT, shall designate in writing and shall advise CONSULTANT in writing of one (1) or more of its employees to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed. The designated representative shall have the authority to transmit instructions, receive information, and interpret and define COUNTY's policy and decisions  pertinent to the work covered by this Agreement.

(b) CONSULTANT shall at all times during the normal work week designate or appoint one or more representatives of CONSULTANT who are authorized to act on behalf of and bind CONSULTANT regarding all matters involving the conduct of the performance pursuant to this Agreement and shall keep COUNTY continually and effectively advised of such designation.

**SECTION 22. ALL PRIOR AGREEMENTS SUPERSEDED.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained or referred to in this document. Accordingly, it is agreed that no deviation from the terms hereof shall

be predicated upon any prior representations or agreements, whether oral or written.

**SECTION 23. MODIFICATIONS, AMENDMENTS OR ALTERATIONS.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

**SECTION 24. INDEPENDENT CONTRACTOR.** It is agreed that nothing herein contained is intended or should be construed as in any manner creating or establishing a relationship of co-partners between the parties or as constituting CONSULTANT (including its officers, employees, and agents) an agent, representative, or employee of COUNTY for any purpose, or in any manner, whatsoever. CONSULTANT is to be and shall remain forever an independent contractor with respect to all services performed under this Agreement.

**SECTION 25. EMPLOYEE STATUS.** Persons employed by CONSULTANT in the performance of services and functions pursuant to this Agreement shall have no claim to pension, workers' compensation, unemployment compensation, civil service, or other employee rights or privileges granted to COUNTY's officers and employees either by operation of law or by COUNTY.

**SECTION 26. SERVICES NOT PROVIDED FOR.** No claim for services furnished by CONSULTANT not specifically provided for herein shall be honored by COUNTY.

**SECTION 27. PUBLIC RECORDS LAW.** CONSULTANT acknowledges COUNTY's obligations under Article I, Section 24, Florida Constitution, and Chapter 119, Florida Statutes, to release public records to members of the public upon request. CONSULTANT acknowledges that COUNTY is required to comply with Article I, Section 24, Florida Constitution, and Chapter 119, Florida Statutes, in the handling of the materials created under this Agreement and that said statute controls over the terms of this

Agreement.

**SECTION 28. COMPLIANCE WITH LAWS AND REGULATIONS.** In providing all services pursuant to this Agreement, CONSULTANT shall abide by all statutes, ordinances, rules, and regulations pertaining to or regulating the provisions of such services, including those now in effect and hereafter adopted. Any violation of said statutes, ordinances, rules, or regulations shall constitute a material breach of this Agreement and shall entitle COUNTY to terminate this Agreement immediately upon delivery of written notice of termination to CONSULTANT.

**SECTION 29. NOTICES.** Whenever either party desires to give notice unto the other, it must be given by written notice, sent by registered or certified United States mail, return receipt requested, addressed to the party for whom it is intended at the place last specified. The place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this Section. For the present, the parties designate the following as the respective places for giving of notice, to-wit:

**For COUNTY:**

Public Works (Engineering Division)  
520 W. Lake Mary Blvd., Suite 200  
Sanford, FL 32773

**For CONSULTANT:**

DMJM Harris  
20 N. Orange Avenue, Suite 407  
Orlando, FL 32801

**SECTION 30. RIGHTS AT LAW RETAINED.** The rights and remedies of COUNTY, provided for under this Agreement, are in addition and supplemental to any other rights and remedies provided by law.

**IN WITNESS WHEREOF,** the parties hereto have made and executed this Agreement on the date below written for execution by COUNTY.

DMJM HARRIS

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
BARRY FIANDRA, Vice-President

\_\_\_\_\_  
Print Name

Date: \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Print Name

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
SEMINOLE COUNTY, FLORIDA

\_\_\_\_\_  
MARYANNE MORSE  
Clerk to the Board of  
County Commissioners of  
Seminole County, Florida.

By: \_\_\_\_\_  
BRENDA CAREY, Chairman

Date: \_\_\_\_\_

For use and reliance  
of Seminole County only.

As authorized for execution by  
the Board of County Commissioners  
at their \_\_\_\_\_, 20\_\_\_\_  
regular meeting.

Approved as to form and  
legal sufficiency.

\_\_\_\_\_  
County Attorney  
AEC/lpk  
1/29/08 2/6/08  
P:\Users\Legal Secretary CSE\Purchasing 2008\Agreements\PS-2249 DMJM Harris.doc



Attachments:

- Exhibit A - Scope of Services
- Exhibit B - Sample Work Order
- Exhibit C - Rate Schedule
- Exhibit D - Truth in Negotiations Certificate

## EXHIBIT A

### CE&I SCOPE OF SERVICES

For

Construction engineering and Inspection Master Agreement for Construction projects  
cost of \$1,000,000 or less.

#### **GENERAL**

It shall be the responsibility of the CONSULTANT to provide services as necessary to administer the construction contract in the manner so as to determine that the project is constructed in reasonable conformity with the plans, specifications and contract provisions.

#### **PRE-CONSTRUCTION ACTIVITIES**

It is the intent of the county to have the CONSULTANT perform activities prior to the start of construction. The activities will be but not limited to: Constructibility Review, Utility Coordination, Public Involvement with the stake holders and Bid review.

#### **SURVEY CONTROL**

The CONSULTANT shall (1) make and record such measurements as are necessary to calculate and document quantities for items; and (2) perform incidental engineering surveys as may be necessary to carry out the services covered by the Agreement.

#### **TESTING**

The CONSULTANT, or approved subconsultant, shall perform sampling and testing of component materials and completed work items to the extent that will determine that the materials and workmanship incorporated into the project are in reasonable conformity with the plans, specifications and contract provisions.

Sampling, testing and laboratory methods shall be accomplished by the CONSULTANT as required by the Florida Department of Transportation Standard Specification or as modified by the contract provisions.

## **CONSTRUCTION ENGINEERING SERVICES**

The CONSULTANT shall perform management engineering services necessary:

(1) to assure that proper coordination of the activities of all parties involved will accomplish a complete project; (2) to maintain organized, complete, accurate records of all activities and events relating to the project; (3) to provide interpretations of the plans, specifications and contract provisions of a minor nature (Any other major interpretations that affect the integrity of the construction plans, specifications, and contract revisions, shall first be directed to the Design Consultant for their interpretations and recommendations); (4) to make recommendations to the COUNTY to resolve disputes which arise in relation to the construction contract; and (5) to maintain an adequate level of surveillance of the Contractor's activities. The CONSULTANT shall also perform any other construction engineering services normally or customarily assigned to a Resident Engineer that are required to fulfill its responsibilities under this Agreement. Construction engineering services for this project shall include, but are not necessarily limited to, the following:

The CONSULTANT shall provide a resident project engineer and the requisite inspection staff to observe the Contractor's on-site construction operations as required or necessary to determine that quality of workmanship and materials is such that the project will be completed in reasonable conformity with the plans, specifications, and other contract provisions. The project site staff to be under the direction of a registered professional engineer (Resident Engineer).

Prior to the start of construction, the CONSULTANT shall assist the COUNTY in review of the bids received for construction of the project. The review shall consist of an overview of the bid prices received and the qualifications of the apparent, qualified low bidder.

The CONSULTANT shall maintain records of all significant activities and events relating to the project and estimates of all work completed by the Contractor. The CONSULTANT shall immediately report to the COUNTY apparent significant changes in quantity, time or cost as they are noted.

The CONSULTANT shall maintain a Project Control Schedule for the work. The CONSULTANT shall, on a regular basis, report the status to the COUNTY on all major items of work requested of the Construction Contractor reflected on the Project Control Schedule.

The CONSULTANT shall review the Construction Contractor's schedule in detail and submit a report to the COUNTY as well as meet with and discuss with the Construction Contractor during the schedule review and approval process, and any updates thereto. Any subsequent Construction Contractor requests for major activity or construction contract time extensions shall be reviewed by and commented on by the CONSULTANT. Project Control Schedule runs to review the results of Contractor requests and/or CONSULTANT recommended alternatives shall be performed by the CONSULTANT, as required.

The CONSULTANT shall maintain a log of materials entering into the work and utilized in the work with proper indication of the basis of acceptance of each shipment of material.

The CONSULTANT shall maintain records of all sampling and testing accomplished under this Agreement and analyze such records required to ascertain acceptability of material and completed work items.

The CONSULTANT shall meet with the Construction Contractor on no less than a weekly basis (depending upon actual level of activity and/or progress) for project coordination and problem resolution.

The CONSULTANT shall record minutes of each meeting and forward a copy to the Contractor and to the COUNTY with the engineer's summary weekly report. Included in the report shall be noted activities accomplished, production achieved and shall list and describe those scheduled activities which were not accomplished, and what activities/events were planned for the next week. The CONSULTANT shall list separately any quality control problems or impediments to the work that would normally be noted in the engineer's weekly summary report.

Once each month, the CONSULTANT shall prepare a tabulation of the quantity of each pay item satisfactorily completed to date. Quantities shall be based on daily records or calculations. Calculations shall be retained. The tabulation will be used for preparation of the monthly progress Estimate. The CONSULTANT shall submit the completed tabulation to the COUNTY.

Shop drawings and other submittals will be reviewed and approved by the CONSULTANT for conformance to the intent of the design concept of the project plans and specifications. Shop drawings/sample submittals and approvals shall be tracked by the CONSULTANT. Tracking shall include, but not be limited to, maintaining cognizance of the status of each submittal as it progresses through the review and approval process and procedures. The CONSULTANT shall actively encourage all reviewers to accomplish reviews promptly.

The CONSULTANT shall provide to the Contractor, interpretations of the plans, specifications and contract provisions. The CONSULTANT shall consult with the COUNTY when interpretation involves complex or otherwise significant issues or may have an impact on the cost of performing the Work. When warranted by the COUNTY, the COUNTY shall request an interpretation from the Design Consultant prior to any major changes of the plans specifications and contract revisions being clarified to the Contractor by the CEI Consultant. The COUNTY shall coordinate all requests for involvement of the Design Consultant.

The CONSULTANT shall analyze any and all problems that arise on the project and proposals submitted by the Contractor and shall prepare and submit a recommendation to the COUNTY.

The CONSULTANT shall analyze changes to the plans, specifications or contract provisions and extra work which appear to be necessary to carry out the intent of the contract when it is determined that a change or extra work is necessary and such work is clearly within the scope of the original contract. The CONSULTANT shall recommend such changes to the COUNTY for approval/disapproval.

When it is determined that a modification to the original contract for the project is required due to necessary change in the character of the Work, the CONSULTANT shall negotiate prices with the Contractor and prepare and submit for approval/disapproval by the COUNTY a Supplemental Agreement or change order.

In the event that the Contractor for a project submits a claim for additional compensation, the CONSULTANT shall analyze the submittal and prepare a recommendation to the COUNTY covering and analyzing the validity and reasonableness of the charges and shall conduct negotiations leading to a recommendation for settlement of the claim.

In the event that the Contractor submits a request for extension of the allowable contract time, the CONSULTANT shall analyze the request and prepare a recommendation to the COUNTY covering the accuracy of statement and the actual effect of the delay on the completion of the controlling work items and the costs to the COUNTY.

The CONSULTANT shall prepare and submit to the COUNTY for further processing a final estimate and two (2) sets of record plans for the construction contract.

The CONSULTANT shall monitor the construction contract to the extent necessary to observe construction activities in order to verify general compliance with the requirements of permits. The COUNTY will provide the CONSULTANT with a copy of each permit within the project limits.

Upon identification of a prospective changed condition or construction contract change, the extent of change shall be analyzed by the CONSULTANT and in order of magnitude estimate of cost and time of change, if any, will be prepared by the CONSULTANT.

The CONSULTANT shall negotiate all changes with the Contractor using the CONSULTANT - prepared estimate as a basis. The CONSULTANT shall submit the results to the COUNTY within two (2) weeks of start of negotiations or report the major differences to the COUNTY, if agreement is not reached. The CONSULTANT shall prepare supplement and change order documents and track the status of each one until executed.

#### **PERSONNEL**

The CONSULTANT shall provide an agreed upon number of qualified personnel to effectively carry out its responsibilities under this Agreement. The CONSULTANT shall utilize only competent personnel who are qualified by experience and education.

#### **STAFFING**

The CONSULTANT shall maintain an appropriate staff after completion of construction to complete the final Estimate and Record Plans. No personnel other than those

designated herewith, shall be assigned to the project by the CONSULTANT unless authorized by the COUNTY.

Construction engineering and inspection forces shall be required to be retained by or under contract to the CONSULTANT at all times while the Contractor is working on the construction contract. If the construction contract is suspended, the CONSULTANTS forces shall be adjusted, to correspond with the type of suspension; provided, however, that no member of the CONSULTANT'S forces shall be deemed to be a COUNTY employee.

### **PHOTOGRAPHS**

The CONSULTANT shall take and submit two (2) prints of each progress photograph taken each month. Views and timing of photographs shall be to show maximum progress. Photographs shall be clean, sharp and clearly show details. Photographs shall be submitted in sets with each photograph numbered in sequence beginning with the numeral one (1). Photographs shall be enclosed in a clear plastic protector punched to fit a standard 8 1/2-inch by 11-inch three-ring binder.

### **OTHER SERVICES**

The CONSULTANT shall upon written authorization by the COUNTY, perform any additional services not otherwise identified in this Agreement as may be required by the COUNTY in connection with the project. The following items are not included as part of this Agreement, but may be required of the CONSULTANT by the COUNTY to supplement the CONSULTANT'S services under this Agreement:

- (1) The CONSULTANT shall, upon review, approval and written authorization by the COUNTY, make such changes and revisions to the plans and specifications as may be required in order to complete the construction activities.
- (2) The CONSULTANT shall, upon written request by the COUNTY, assist the COUNTY in preparing for arbitration hearings, or litigation that occurs during the CONSULTANT'S contract time in connection with the project covered by the Agreement.
- (3) The CONSULTANT shall, upon written request by the COUNTY, provide qualified engineers and/or engineering witnesses, provide exhibits and otherwise assist the COUNTY in any litigation or hearings in connection with the construction contract(s).

- (4) The CONSULTANT shall, upon written request by the COUNTY, provide overall program project control schedules for the purposes of assisting the COUNTY in overall planning and scheduling of construction projects.
- (5) The CONSULTANT shall, upon written request by the COUNTY, provide project cost and cash flow analysis services to assist the COUNTY with overall program financial management of the COUNTY'S proposed road construction/improvement program.
- (6) The COUNTY agrees to compensate the CONSULTANT for authorized additional services not included in this Agreement as a supplement to the basic fee for CE&I services. The amount of such fee and the specific scope of services will be negotiated prior to the CONSULTANT providing such additional services.

**Board of County Commissioners  
SEMINOLE COUNTY, FLORIDA**

**WORK ORDER**

Work Order Number: \_\_\_\_\_

Master Agreement No.: \_\_\_\_\_ Dated: \_\_\_\_\_  
Contract Title: \_\_\_\_\_  
Project Title: \_\_\_\_\_

Consultant: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

**ATTACHMENTS TO THIS WORK ORDER:**

- drawings/plans/specifications
- scope of services
- special conditions
- \_\_\_\_\_

**METHOD OF COMPENSATION:**

- fixed fee basis
- time basis-not-to-exceed
- time basis-limitation of funds

**TIME FOR COMPLETION:** The services to be provided by the CONSULTANT shall commence upon execution of this Agreement by the parties and shall be completed within "X" (days, months, years) of the effective date of this agreement. Failure to meet the completion date may be grounds for Termination for Default.

Work Order Amount: \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_)

IN WITNESS WHEREOF, the parties hereto have made and executed this Work Order on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for the purposes stated herein.

(THIS SECTION TO BE COMPLETED BY THE COUNTY)

**ATTEST:**

\_\_\_\_\_  
, Secretary

(CORPORATE SEAL)

By: \_\_\_\_\_  
, President

Date: \_\_\_\_\_

\*\*\*\*\*

BOARD OF COUNTY COMMISSIONERS  
SEMINOLE COUNTY, FLORIDA

**WITNESSES:**

\_\_\_\_\_  
(Procurement Analyst)

By: \_\_\_\_\_  
, Procurement Supervisor

\_\_\_\_\_  
(Procurement Analyst)

Date: \_\_\_\_\_

As authorized by Section 8.153 Seminole  
County Administrative Code.

**OC #** \_\_\_\_\_

**ON #** \_\_\_\_\_

## **WORK ORDER TERMS AND CONDITIONS**

- a) Execution of this Work Order by the COUNTY shall serve as authorization for the CONSULTANT to provide, for the stated project, professional services as set out in the Scope of Services attached as Exhibit "A" to the Master Agreement cited on the face of this Work Order and as further delineated in the attachments listed on this Work Order.
- b) Term: This work order shall take effect on the date of its execution by the County and expires upon final delivery, inspection, acceptance and payment unless terminated earlier in accordance with the Termination provisions herein.
- c) The CONSULTANT shall provide said services pursuant to this Work Order, its Attachments, and the cited Master Agreement (as amended, if applicable) which is incorporated herein by reference as if it had been set out in its entirety.
- d) Whenever the Work Order conflicts with the cited Master Agreement, the Master Agreement shall prevail.
- e) METHOD OF COMPENSATION - If the compensation is based on a:
  - (i) FIXED FEE BASIS, then the Work Order Amount becomes the Fixed Fee Amount and the CONSULTANT shall perform all work required by this Work Order for the Fixed Fee Amount. The Fixed Fee is an all-inclusive Firm Fixed Price binding the CONSULTANT to complete the work for the Fixed Fee Amount regardless of the costs of performance. In no event shall the CONSULTANT be paid more than the Fixed Fee Amount.
  - (ii) TIME BASIS WITH A NOT-TO-EXCEED AMOUNT, then the Work Order Amount becomes the Not-to-Exceed Amount and the CONSULTANT shall perform all the work required by this Work Order for a sum not exceeding the Not-to-Exceed Amount. In no event is the CONSULTANT authorized to incur expenses exceeding the not-to-exceed amount without the express written consent of the COUNTY. Such consent will normally be in the form of an amendment to this Work Order. The CONSULTANT's compensation shall be based on the actual work required by this Work Order and the Labor Hour Rates established in the Master Agreement.
  - (iii) TIME BASIS WITH A LIMITATION OF FUNDS AMOUNT, then the Work Order Amount becomes the Limitation of Funds amount and the CONSULTANT is not authorized to exceed the Limitation of Funds amount without prior written approval of the COUNTY. Such approval, if given by the COUNTY, shall indicate a new Limitation of Funds amount. The CONSULTANT shall advise the COUNTY whenever the CONSULTANT has incurred expenses on this Work Order that equals or exceeds eighty percent (80%) of the Limitation of Funds amount. The CONSULTANT's compensation shall be based on the actual work required by this Work Order and the Labor Hour Rates established in the Master Agreement.
- f) Payment to the CONSULTANT shall be made by the COUNTY in strict accordance with the payment terms of the referenced Master Agreement.
- g) It is expressly understood by the CONSULTANT that this Work Order, until executed by the COUNTY, does not authorize the performance of any services by the CONSULTANT and that the COUNTY, prior to its execution of the Work Order, reserves the right to authorize a party other than the CONSULTANT to perform the services called for under this Work Order; if it is determined that to do so is in the best interest of the COUNTY.
- h) The CONSULTANT shall sign the Work Order first and the COUNTY second. This Work Order becomes effective and binding upon execution by the COUNTY and not until then. A copy of this Work Order will be forwarded to the CONSULTANT upon execution by the COUNTY.

20 N. Orange Avenue, Suite 407, Orlando, Florida 32801  
 T 407.246.7112 F 407.649.7188 www.dmjmharris.com

Mr. David R. Santiago  
 Seminole County  
 Purchasing and Contracts Division  
 1101 East First Street  
 Sanford, FL 32771-1468

December, 27 2007

Subject: Fee Schedule for PS-2249-07/BHJ – Continuous Construction Engineering and Inspection Services Agreement for Construction Projects Less than \$1 Million Dollars

Dear Mr. Santiago,

DMJM Harris is pleased to submit the requested information for the above referenced project and look forward to our first assignment.

The table below summarizes the following: Name, Category, Hourly Rates, Multiplier and Billing Rates of possible candidates that may be assigned to this project depending on the actual start date of assignments.

### Fee Schedule

| Name            | Category                | Hourly Rate* | Multiplier | Billing Rate* |
|-----------------|-------------------------|--------------|------------|---------------|
| Harold Dubon    | Senior Project Engineer | \$51.34      | 2.39       | \$122.70      |
| Paresh Shah     | Project Administrator   | \$43.61      | 2.39       | \$104.23      |
| Douglas Kellum  | Senior Inspector        | \$26.75      | 2.39       | \$63.93       |
| John Thomas     | Senior Inspector        | \$28.65      | 2.39       | \$68.47       |
| Armando Alvarez | Inspector               | \$24.68      | 2.39       | \$58.99       |
| Bakir Ebrahim   | Inspector               | \$23.75      | 2.39       | \$56.76       |
| Dominic Fiandra | Inspector Aid           | \$14.75      | 2.39       | \$35.25       |
| Barbara Joseph  | Inspector Aid           | \$15.29      | 2.39       | \$36.54       |

\* Rate for 2008

Exhibit "D"

**Truth in Negotiations Certificate**

This is to certify that, to the best of my knowledge and belief, the wage rates and other factual unit costs supporting the compensation (as defined in section 287.055 of the Florida Statutes (otherwise known as the "Consultants' Competitive Negotiations Act" or CCNA) and required under CCNA subsection 287.055 (5) (a)) submitted to Seminole County Purchasing and Contracts Division, Contracts Section, either actually or by specific identification in writing, in support of PS-2249-07/BHJ – Continuous Construction Engineering and Inspection Services Agreement for Construction Projects Less than \$1 Million Dollars are accurate, complete, and current as of 12/27/07 (Date)\*. This certification includes the wage rates and other factual unit costs supporting any Work Orders or Amendments issued under the agreement between the Consultant and the County.

Firm DMSM Harris, Inc.

Signature 

Name Barry Fiandra  
(Print or Type)

Title Vice President  
(Print or Type)

Date of execution\*\* 12/27/07

\* Insert the day, month, and year when wage rates were submitted or, if applicable, an earlier date agreed upon between the parties that are as close as practicable to the date of agreement on compensation.

\*\* Insert the day, month, and year of signing.

(End of certificate)

**CONSTRUCTION ENGINEERING AND INSPECTION SERVICES AGREEMENT  
CONSTRUCTION PROJECTS LESS THAN ONE MILLION DOLLARS (\$1,000,000.00)  
(PS-2249-07/BHJ)**

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and between **KEITH AND SCHNARS, P.A.**, duly authorized to conduct business in the State of Florida, whose address is 6500 N. Andrews Avenue, Ft. Lauderdale, Florida 33309, hereinafter called "CONSULTANT" and **SEMINOLE COUNTY**, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771, hereinafter called "COUNTY".

**W I T N E S S E T H:**

**WHEREAS**, COUNTY desires to retain the services of a competent and qualified CONSULTANT to provide construction engineering and inspection services for construction projects less than one million dollars (\$1,000,000.00) in Seminole County; and

**WHEREAS**, COUNTY has requested and received expressions of interest for the retention of services of consultants; and

**WHEREAS**, CONSULTANT is competent and qualified to furnish construction engineering and inspection services for construction projects less than one million dollars (\$1,000,000.00) services to COUNTY and desires to provide professional services according to the terms and conditions stated herein,

**NOW, THEREFORE**, in consideration of the mutual understandings and covenants set forth herein, COUNTY and CONSULTANT agree as follows:

**SECTION 1. SERVICES.** COUNTY does hereby retain CONSULTANT to furnish professional services and perform those tasks as further described in the Scope of Services attached hereto as Exhibit A and made a part hereof. Required services shall be specifically enumerated, described, and depicted in the Work Orders authorizing performance of the specific project, task, or study. This Agreement standing alone

does not authorize the performance of any work or require COUNTY to place any orders for work.

**SECTION 2. TERM.** This Agreement shall take effect on the date of its execution by COUNTY and shall run for a period of two (2) years and, at the sole option of COUNTY, may be renewed for three (3) successive periods not to exceed one (1) year each. Expiration of the term of this Agreement shall have no effect upon Work Orders issued pursuant to this Agreement and prior to the expiration date. Obligations entered therein by both parties shall remain in effect until completion of the work authorized by the Work Order.

**SECTION 3. AUTHORIZATION FOR SERVICES.** Authorization for performance of professional services by CONSULTANT under this Agreement shall be in the form of written Work Orders issued and executed by COUNTY and signed by CONSULTANT. A sample Work Order is attached hereto as Exhibit B. Each Work Order shall describe the services required, state the dates for commencement and completion of work, and establish the amount and method of payment. The Work Orders will be issued under and shall incorporate the terms of this Agreement. COUNTY makes no covenant or promise as to the number of available projects or that CONSULTANT will perform any project for COUNTY during the life of this Agreement. COUNTY reserves the right to contract with other parties for the services contemplated by this Agreement when it is determined by COUNTY to be in the best interest of COUNTY to do so.

**SECTION 4. TIME FOR COMPLETION.** The services to be rendered by CONSULTANT shall be commenced as specified in such Work Orders as may be issued hereunder and shall be completed within the time specified therein. In the event COUNTY determines that significant benefits would accrue from expediting an otherwise established time schedule for completion of services under a given Work Order, that Work Order may include a negotiated schedule of incentives based on time savings.

**SECTION 5. COMPENSATION.** COUNTY agrees to compensate CONSULTANT for the professional services called for under this Agreement on either a "Fixed Fee Basis" or on a "Time Basis Method". If a Work Order is issued under a Time Basis Method, then CONSULTANT shall be compensated in accordance with the rate schedule attached as Exhibit C and the Truth in Negotiations Certificate, attached as Exhibit D. If a Work Order is issued for a Fixed Fee Basis, then the applicable Work Order Fixed Fee amount shall include any and all reimbursable expenses.

**SECTION 6. REIMBURSABLE EXPENSES.** If a Work Order is issued on a Time Basis Method, then reimbursable expenses are in addition to the hourly rates. Reimbursable expenses are subject to the applicable "Not-to-Exceed" or "Limitation of Funds" amount set forth in the Work Order. Reimbursable expenses may include actual expenditures made by CONSULTANT, its employees, or its professional associates in the interest of the Project for the expenses listed in the following paragraphs:



(a) Expenses of transportation, when traveling in connection with the Project based on Sections 112.061(7) and (8), Florida Statutes, or its successor; long distance calls and telegrams; and fees paid for securing approval of authorities having jurisdiction over the Project.

(b) Expense of reproductions, postage, and handling of drawings and specifications.

(c) If authorized in writing in advance by COUNTY, the cost of other expenditures made by CONSULTANT in the interest of the Project.

**SECTION 7. PAYMENT AND BILLING.**

(a) If the Scope of Services required to be performed by a Work Order is clearly defined, the Work Order shall be issued on a Fixed Fee Basis. CONSULTANT shall perform all work required by the Work Order, but in no event shall CONSULTANT be paid more than the negotiated Fixed Fee amount stated therein.

(b) If the Scope of Services is not clearly defined, the Work Order may be issued on a Time Basis Method and contain a Not-to Exceed amount. If a Not-to-Exceed amount is provided, CONSULTANT shall perform all work required by the Work Order, but in no event shall CONSULTANT be paid more than the Not-to-Exceed amount specified in the applicable Work Order.

(c) If the Scope of Services is not clearly defined, the Work Order may be issued on a Time Basis Method and contain a Limitation of Funds amount. CONSULTANT is not authorized to exceed that amount without the prior written approval of COUNTY. Said approval, if given by COUNTY, shall indicate a new Limitation of Funds amount. CONSULTANT shall advise COUNTY whenever CONSULTANT has incurred expenses on any Work Order that equals or exceeds eighty percent (80%) of the Limitation of Funds amount.

(d) For Work Orders issued on a Fixed Fee Basis, CONSULTANT may invoice the amount due based on the percentage of total Work Order services actually performed and completed, but in no event shall the invoice amount exceed a percentage of the Fixed Fee amount equal to a percentage of the total services actually completed. COUNTY shall pay CONSULTANT ninety percent (90%) of the approved amount on Work Orders issued on a Fixed Fee Basis.

(e) For Work Orders issued on a Time Basis Method with a Not-to-Exceed amount, CONSULTANT may invoice the amount due for actual work hours performed, but in no event shall the invoice amount exceed a percentage of the Not-to-Exceed amount equal to a percentage of the total services actually completed. COUNTY shall pay CONSULTANT ninety percent (90%) of the approved amount on Work Orders issued on a Time Basis Method with a Not-to-Exceed amount.

(f) Each Work Order issued on a Fixed Fee Basis or Time Basis Method with a Not-to-Exceed amount shall be treated separately for

retainage purposes. If COUNTY determines that work is substantially complete and the amount retained is considered to be in excess, COUNTY may, at its sole and absolute discretion, release the retainage or any portion thereof.

(g) For Work Orders issued on a Time Basis Method with a Limitation of Funds amount, CONSULTANT may invoice the amount due for services actually performed and completed. COUNTY shall pay CONSULTANT one hundred percent (100%) of the approved amount on Work Orders issued on a Time Basis Method with a Limitation of Funds amount.

(h) Payments shall be made by COUNTY to CONSULTANT when requested as work progresses for services furnished, but not more than once monthly. Each Work Order shall be invoiced separately. At the close of each calendar month, CONSULTANT shall render to COUNTY a properly dated itemized invoice describing any services rendered, the cost of the services, the name and address of CONSULTANT, Work Order Number, Contract Number, and all other information required by this Agreement.

The original invoice and one (1) copy shall be sent to:

Director of County Finance  
Seminole County Board of County Commissioners  
Post Office Box 8080  
Sanford, Florida 32772

Two (2) copies of the invoice shall be sent to:

Public Works (Engineering Division)  
520 W. Lake Mary Blvd., Suite 200  
Sanford, FL 32773

(i) Payment shall be made after review and approval by COUNTY within thirty (30) days of receipt of a proper invoice from CONSULTANT.

**SECTION 8. GENERAL TERMS OF PAYMENT AND BILLING.**

(a) Upon satisfactory completion of work required hereunder and upon acceptance of the work by COUNTY, CONSULTANT may invoice COUNTY for the full amount of compensation provided for under the terms of this Agreement including any retainage and less any amount already paid by COUNTY. COUNTY shall pay CONSULTANT within thirty (30) days of receipt

of proper invoice.

(b) COUNTY may perform or have performed an audit of the records of CONSULTANT after final payment to support final payment hereunder. This audit would be performed at a time mutually agreeable to CONSULTANT and COUNTY subsequent to the close of the final fiscal period in which the last work is performed. Total compensation to CONSULTANT may be determined subsequent to an audit as provided for in subsections (b) and (c) of this Section, and the total compensation so determined shall be used to calculate final payment to CONSULTANT. Conduct of this audit shall not delay final payment as provided by subsection (a) of this Section.

(c) In addition to the above, if federal funds are used for any work under the Agreement, the Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers, and records of CONSULTANT which are directly pertinent to work performed under this Agreement for purposes of making audit, examination, excerpts, and transcriptions.

(d) CONSULTANT agrees to maintain all books, documents, papers, accounting records, and other evidence pertaining to work performed under this Agreement in such a manner as will readily conform to the terms of this Agreement and to make such materials available at CONSULTANT's office at all reasonable times during the Agreement period and for five (5) years from the date of final payment under the contract for audit or inspection as provided for in subsections (b) and (c) of this Section.

(e) In the event any audit or inspection conducted after final payment, but within the period provided in paragraph (d) of this Section, reveals any overpayment by COUNTY under the terms of the Agreement, CONSULTANT shall refund such overpayment to COUNTY within

thirty (30) days of notice by COUNTY.

**SECTION 9. RESPONSIBILITIES OF CONSULTANT.**

(a) CONSULTANT shall be responsible for the professional quality, technical accuracy, competence, methodology, accuracy, and the coordination of all of the following which are listed for illustration purposes and not as a limitation: documents, analysis, reports, data, plans, plats, maps, surveys, specifications, and any and all other services of whatever type or nature furnished by CONSULTANT under this Agreement. CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in his plans, analysis, data, reports, designs, drawings, specifications, and any and all other services of whatever type or nature.

(b) Neither COUNTY's review, approval, or acceptance of, nor payment for, any of the services required shall be construed to operate as a waiver of any rights under this Agreement nor of any cause of action arising out of the performance of this Agreement; and CONSULTANT shall be and always remain liable to COUNTY in accordance with applicable law for any and all damages to COUNTY caused by CONSULTANT's negligent or wrongful performance of any of the services furnished under this Agreement.

**SECTION 10. OWNERSHIP OF DOCUMENTS.** All deliverable analysis, reference data, survey data, plans, and reports or any other form of written instrument or document that may result from CONSULTANT's services or have been created during the course of CONSULTANT's performance under this Agreement shall become the property of COUNTY after final payment is made to CONSULTANT.

**SECTION 11. TERMINATION.**

(a) COUNTY may, by written notice to CONSULTANT, terminate this Agreement or any Work Order issued hereunder, in whole or in part, at any time, either for COUNTY's convenience or because of the failure of

CONSULTANT to fulfill its Agreement obligations. Upon receipt of such notice, CONSULTANT shall:

(1) immediately discontinue all services affected unless the notice directs otherwise; and

(2) deliver to COUNTY all data, drawings, specifications, reports, estimates, summaries, and any and all such other information and materials of whatever type or nature as may have been accumulated by CONSULTANT in performing this Agreement, whether completed or in process.

(b) If the termination is for the convenience of COUNTY, CONSULTANT shall be paid compensation for services performed to the date of termination. If this Agreement calls for the payment based on a Fixed Fee amount, CONSULTANT shall be paid no more than a percentage of the Fixed Fee amount equivalent to the percentage of the completion of work, as determined solely and conclusively by COUNTY, contemplated by this Agreement.



(c) If the termination is due to the failure of CONSULTANT to fulfill its Agreement obligations, COUNTY may take over the work and prosecute the same to completion by other Agreements or otherwise. In such case, CONSULTANT shall be liable to COUNTY for all reasonable additional costs occasioned to COUNTY thereby. CONSULTANT shall not be liable for such additional costs if the failure to perform the Agreement arises without any fault or negligence of CONSULTANT; provided, however, that CONSULTANT shall be responsible and liable for the actions of its subcontractors, agents, employees, and persons and entities of a similar type or nature. Such causes may include acts of God or of the public enemy, acts of COUNTY in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but, in every case, the failure to perform must be beyond the control and without any fault or negligence of

CONSULTANT.

(d) If after notice of termination for failure to fulfill its Agreement obligations it is determined that CONSULTANT had not so failed, the termination shall be conclusively deemed to have been effected for the convenience of COUNTY. In such event, adjustment in the Agreement price shall be made as provided in subsection (b) of this Section.

(e) The rights and remedies of COUNTY provided for in this Section are in addition and supplemental to any and all other rights and remedies provided by law or under this Agreement.

**SECTION 12. AGREEMENT AND WORK ORDER IN CONFLICT.** Whenever the terms of this Agreement conflict with any Work Order issued pursuant to it, the Agreement shall prevail.

**SECTION 13. EQUAL OPPORTUNITY EMPLOYMENT.** CONSULTANT agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age, disability, or national origin and will take steps to ensure that applicants are employed, and employees are treated during employment, without regard to race, color, religion, sex, age, disability, or national origin. This provision shall include, but not be limited to, the following: employment; upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

**SECTION 14. NO CONTINGENT FEES.** CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from award or making of

this Agreement. For the breach or violation of this provision, COUNTY shall have the right to terminate the Agreement at its sole discretion, without liability and to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

**SECTION 15. CONFLICT OF INTEREST.**

(a) CONSULTANT agrees that it will not contract for or accept employment for the performance of any work or service with any individual, business, corporation, or government unit that would create a conflict of interest in the performance of its obligations pursuant to this Agreement with COUNTY.

(b) CONSULTANT agrees that it will neither take any action nor engage in any conduct that would cause any COUNTY employee to violate the provisions of Chapter 112, Florida Statutes, relating to ethics in government.

(c) In the event that CONSULTANT causes or in any way promotes or encourages a COUNTY officer, employee, or agent to violate Chapter 112, Florida Statutes, COUNTY shall have the right to terminate this Agreement.

**SECTION 16. ASSIGNMENT.** This Agreement, or any interest herein, shall not be assigned, transferred, or otherwise encumbered, under any circumstances, by the parties hereto without prior written consent of the other party and in such cases only by a document of equal dignity herewith.

**SECTION 17. SUBCONTRACTORS.** In the event that CONSULTANT, during the course of the work under this Agreement, requires the services of any subcontractors or other professional associates in connection with services covered by this Agreement, CONSULTANT must first secure the prior express written approval of COUNTY. If subcontractors or other professional associates are required in connection with the services

covered by this Agreement, CONSULTANT shall remain fully responsible for the services of subcontractors or other professional associates.

**SECTION 18. INDEMNIFICATION OF COUNTY.** CONSULTANT agrees to hold harmless, replace, and indemnify COUNTY, its commissioners, officers, employees, and agents against any and all claim, losses, damages or lawsuits for damages, arising from the negligent, reckless, or intentionally wrongful provision of services hereunder by CONSULTANT, whether caused by CONSULTANT or otherwise.

**SECTION 19. INSURANCE.**

(a) GENERAL. CONSULTANT shall at its own cost procure the insurance required under this Section.

(1) CONSULTANT shall furnish COUNTY with a Certificate of Insurance signed by an authorized representative of the insurer evidencing the insurance required by this Section (Professional Liability, Workers' Compensation/Employer's Liability and Commercial General Liability). COUNTY, its officials,  officers, and employees shall be named additional insured under the Commercial General Liability policy. The Certificate of Insurance shall provide that COUNTY shall be given not less than thirty (30) days written notice prior to the cancellation or restriction of coverage. Until such time as the insurance is no longer required to be maintained by CONSULTANT, CONSULTANT shall provide COUNTY with a renewal or replacement Certificate of Insurance not less than thirty (30) days before expiration or replacement of the insurance for which a previous certificate has been provided.

(2) The Certificate shall contain a statement that it is being provided in accordance with the Agreement and that the insurance is in full compliance with the requirements of the Agreement. In lieu of the statement on the Certificate, CONSULTANT shall (at the option of COUNTY) submit a sworn notarized statement from an authorized representative of the insurer that the Certificate is being provided in accor-

dance with the Agreement and that the insurance is in full compliance with the requirements of the Agreement. **The Certificate shall have this Agreement number clearly marked on its face.**

(3) In addition to providing the Certificate of Insurance, if required by COUNTY, CONSULTANT shall, within thirty (30) days after receipt of the request, provide COUNTY with a certified copy of each of the policies of insurance providing the coverage required by this Section.

(4) Neither approval by COUNTY nor failure to disapprove the insurance furnished by a CONSULTANT shall relieve CONSULTANT of its full responsibility for performance of any obligation including CONSULTANT's indemnification of COUNTY under this Agreement.

(b) INSURANCE COMPANY REQUIREMENTS. Insurance companies providing the insurance under this Agreement must meet the following requirements:

(1) Companies issuing  policies (other than Workers' Compensation) must be authorized to conduct business in the State of Florida and prove same by maintaining Certificates of Authority issued to the companies by the Department of Insurance of the State of Florida. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by Section 440.57, Florida Statutes.

(2) In addition, such companies other than those authorized by Section 440.57, Florida Statutes, shall have and maintain a Best's Rating of "A" or better and a Financial Size Category of "VII" or better according to A.M. Best Company.

(3) If during the period which an insurance company is providing the insurance coverage required by this Agreement, an insurance company shall: (i) lose its Certificate of Authority; (ii) no longer comply with Section 440.57, Florida Statutes; or (iii) fail to maintain the requisite Best's Rating and Financial Size Category,

CONSULTANT shall, as soon as CONSULTANT has knowledge of any such circumstance, immediately notify COUNTY and immediately replace the insurance coverage provided by the insurance company with a different insurance company meeting the requirements of this Agreement. Until such time as CONSULTANT has replaced the unacceptable insurer with an insurer acceptable to COUNTY, CONSULTANT shall be deemed to be in default of this Agreement.

(c) SPECIFICATIONS. Without limiting any of the other obligations or liability of CONSULTANT, CONSULTANT shall, at its sole expense, procure, maintain, and keep in force amounts and types of insurance conforming to the minimum requirements set forth in this subsection. Except as otherwise specified in the Agreement, the insurance shall become effective prior to the commencement of work by CONSULTANT and shall be maintained in force until the Agreement completion date. The amounts and types of insurance shall conform to the following minimum requirements.



(1) Workers' Compensation/Employer's Liability.

(A) CONSULTANT's insurance shall cover CONSULTANT for liability which would be covered by the latest edition of the standard Workers' Compensation Policy as filed for use in Florida by the National Council on Compensation Insurance, without restrictive endorsements. CONSULTANT will also be responsible for procuring proper proof of coverage from its subcontractors of every tier for liability which is a result of a Workers' Compensation injury to the subcontractor's employees. The minimum required limits to be provided by both CONSULTANT and its subcontractors are outlined in subsection (c) below. In addition to coverage for the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the United States Longshoremen and Harbor Workers' Compensation Act, Federal Employers' Liability Act, and any other applicable federal or state law.

(B) Subject to the restrictions of coverage found in the standard Workers' Compensation Policy, there shall be no maximum limit on the amount of coverage for liability imposed by the Florida Workers' Compensation Act, the United States Longshoremen's and Harbor Workers' Compensation Act, or any other coverage customarily insured under Part One of the standard Workers' Compensation Policy.

(C) The minimum amount of coverage under Part Two of the standard Workers' Compensation Policy shall be:

|                |                         |
|----------------|-------------------------|
| \$ 500,000.00  | (Each Accident)         |
| \$1,000,000.00 | (Disease-Policy Limit)  |
| \$ 500,000.00  | (Disease-Each Employee) |

(2) Commercial General Liability.

(A) CONSULTANT's insurance shall cover CONSULTANT for those sources of liability which would be covered by the latest edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) as filed for use in the State of Florida by the Insurance Services Office, without the attachment of restrictive endorsements other than the elimination of Coverage C, Medical Payment, and the elimination of coverage for Fire Damage Legal Liability.

(B) The minimum limits to be maintained by CONSULTANT (inclusive of any amounts provided by an Umbrella or Excess policy) shall be as follows:

|                                     | <u>LIMITS</u>                             |
|-------------------------------------|---|
| General Aggregate                   | Three (3) Times the Each-Occurrence Limit |
| Personal & Advertising Injury Limit | \$1,000,000.00                            |
| Each Occurrence Limit               | \$1,000,000.00                            |

(3) Professional Liability Insurance. CONSULTANT shall carry professional liability insurance with limits of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00).

(d) COVERAGE. The insurance provided by CONSULTANT pursuant to this Agreement shall apply on a primary basis, and any other insurance or self-insurance maintained by COUNTY or COUNTY's officials, officers, or employees shall be in excess of and not contributing to the insurance provided by or on behalf of CONSULTANT.

(e) OCCURRENCE BASIS. The Workers' Compensation Policy and the Commercial General Liability required by this Agreement shall be provided on an occurrence rather than a claims-made basis. The Professional Liability insurance policy must be on an occurrence basis or claims-made basis. If a claims-made basis, the coverage must respond to all claims reported within three (3) years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis.

(f) OBLIGATIONS. Compliance with the foregoing insurance requirements shall not relieve CONSULTANT, its employees, or its agents of liability from any obligation  under a Section or any other portions of this Agreement.

**SECTION 20. ALTERNATIVE DISPUTE RESOLUTION.**

(a) In the event of a dispute related to any performance or payment obligation arising under this Agreement, the parties agree to exhaust COUNTY protest procedures prior to filing suit or otherwise pursuing legal remedies. COUNTY procedures for proper invoice and payment disputes are set forth in Section 22.15, "Prompt Payment Procedures," Seminole County Administrative Code.

(b) CONSULTANT agrees that it will file no suit or otherwise pursue legal remedies based on facts or evidentiary materials that were not presented for consideration in COUNTY protest procedures set forth in subsection (a) above of which CONSULTANT had knowledge and failed to present during COUNTY protest procedures.

(c) In the event that COUNTY protest procedures are exhausted and a suit is filed or legal remedies are otherwise pursued, the parties shall exercise best efforts to resolve disputes through voluntary mediation. Mediator selection and the procedures to be employed in voluntary mediation shall be mutually acceptable to the parties. Costs of voluntary mediation shall be shared equally among the parties participating in the mediation.

**SECTION 21. REPRESENTATIVES OF COUNTY AND CONSULTANT.**

(a) It is recognized that questions in the day-to-day conduct of performance pursuant to this Agreement will arise. COUNTY, upon request by CONSULTANT, shall designate in writing and shall advise CONSULTANT in writing of one (1) or more of its employees to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed. The designated representative shall have the authority to transmit instructions, receive information, and interpret and define COUNTY's policy and decisions  pertinent to the work covered by this Agreement.

(b) CONSULTANT shall at all times during the normal work week designate or appoint one or more representatives of CONSULTANT who are authorized to act on behalf of and bind CONSULTANT regarding all matters involving the conduct of the performance pursuant to this Agreement and shall keep COUNTY continually and effectively advised of such designation.

**SECTION 22. ALL PRIOR AGREEMENTS SUPERSEDED.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained or referred to in this document. Accordingly, it is agreed that no deviation from the terms hereof shall

be predicated upon any prior representations or agreements, whether oral or written.

**SECTION 23. MODIFICATIONS, AMENDMENTS OR ALTERATIONS.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

**SECTION 24. INDEPENDENT CONTRACTOR.** It is agreed that nothing herein contained is intended or should be construed as in any manner creating or establishing a relationship of co-partners between the parties or as constituting CONSULTANT (including its officers, employees, and agents) an agent, representative, or employee of COUNTY for any purpose, or in any manner, whatsoever. CONSULTANT is to be and shall remain forever an independent contractor with respect to all services performed under this Agreement.

**SECTION 25. EMPLOYEE STATUS.** Persons employed by CONSULTANT in the performance of services and functions pursuant to this Agreement shall have no claim to pension, workers' compensation, unemployment compensation, civil service, or other employee rights or privileges granted to COUNTY's officers and employees either by operation of law or by COUNTY.

**SECTION 26. SERVICES NOT PROVIDED FOR.** No claim for services furnished by CONSULTANT not specifically provided for herein shall be honored by COUNTY.

**SECTION 27. PUBLIC RECORDS LAW.** CONSULTANT acknowledges COUNTY's obligations under Article I, Section 24, Florida Constitution, and Chapter 119, Florida Statutes, to release public records to members of the public upon request. CONSULTANT acknowledges that COUNTY is required to comply with Article I, Section 24, Florida Constitution, and Chapter 119, Florida Statutes, in the handling of the materials created under this Agreement and that said statute controls over the terms of this

Agreement.

**SECTION 28. COMPLIANCE WITH LAWS AND REGULATIONS.** In providing all services pursuant to this Agreement, CONSULTANT shall abide by all statutes, ordinances, rules, and regulations pertaining to or regulating the provisions of such services, including those now in effect and hereafter adopted. Any violation of said statutes, ordinances, rules, or regulations shall constitute a material breach of this Agreement and shall entitle COUNTY to terminate this Agreement immediately upon delivery of written notice of termination to CONSULTANT.

**SECTION 29. NOTICES.** Whenever either party desires to give notice unto the other, it must be given by written notice, sent by registered or certified United States mail, return receipt requested, addressed to the party for whom it is intended at the place last specified. The place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this Section. For the present, the parties designate the following as the respective places for giving of notice, to-wit:

**For COUNTY:**

Public Works (Engineering Division)  
520 W. Lake Mary Blvd., Suite 200  
Sanford, FL 32773

**For CONSULTANT:**

Keith and Schnars, P.A.  
6500 N. Andrews Avenue  
Ft. Lauderdale, FL 33309

**SECTION 30. RIGHTS AT LAW RETAINED.** The rights and remedies of COUNTY, provided for under this Agreement, are in addition and supplemental to any other rights and remedies provided by law.

**IN WITNESS WHEREOF,** the parties hereto have made and executed this Agreement on the date below written for execution by COUNTY.

KEITH AND SCHNARS, P.A.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Print Name

By: \_\_\_\_\_

PHIL CLELAND  
Vice-President Construction Services

Date: \_\_\_\_\_

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
SEMINOLE COUNTY, FLORIDA

\_\_\_\_\_  
MARYANNE MORSE  
Clerk to the Board of  
County Commissioners of  
Seminole County, Florida.

By: \_\_\_\_\_  
BRENDA CAREY, Chairman

Date: \_\_\_\_\_

For use and reliance  
of Seminole County only.

As authorized for execution by  
the Board of County Commissioners  
at their \_\_\_\_\_, 20\_\_\_\_  
regular meeting.

Approved as to form and  
legal sufficiency.



\_\_\_\_\_  
County Attorney  
AEC/lpk  
1/29/08 2/6/08  
P:\Users\Legal Secretary CSB\Purchasing 2008\Agreements\PS-2249 Keith & Schnars.doc

Attachments:

- Exhibit A - Scope of Services
- Exhibit B - Sample Work Order
- Exhibit C - Rate Schedule
- Exhibit D - Truth in Negotiations Certificate

EXHIBIT A

CE&I SCOPE OF SERVICES

For

Construction engineering and Inspection Master Agreement for Construction projects  
cost of \$1,000,000 or less.

**GENERAL**

It shall be the responsibility of the CONSULTANT to provide services as necessary to administer the construction contract in the manner so as to determine that the project is constructed in reasonable conformity with the plans, specifications and contract provisions.

**PRE-CONSTRUCTION ACTIVITIES**

It is the intent of the county to have the CONSULTANT perform activities prior to the start of construction. The activities will be but not limited to: Constructibility Review, Utility Coordination, Public Involvement with the stake holders and Bid review.

**SURVEY CONTROL**

The CONSULTANT shall (1) make and record such measurements as are necessary to calculate and document quantities for items; and (2) perform incidental engineering surveys as may be necessary to carry out the services covered by the Agreement.

**TESTING**

The CONSULTANT, or approved subconsultant, shall perform sampling and testing of component materials and completed work items to the extent that will determine that the materials and workmanship incorporated into the project are in reasonable conformity with the plans, specifications and contract provisions.

Sampling, testing and laboratory methods shall be accomplished by the CONSULTANT as required by the Florida Department of Transportation Standard Specification or as modified by the contract provisions.

## **CONSTRUCTION ENGINEERING SERVICES**

The CONSULTANT shall perform management engineering services necessary:

(1) to assure that proper coordination of the activities of all parties involved will accomplish a complete project; (2) to maintain organized, complete, accurate records of all activities and events relating to the project; (3) to provide interpretations of the plans, specifications and contract provisions of a minor nature (Any other major interpretations that affect the integrity of the construction plans, specifications, and contract revisions, shall first be directed to the Design Consultant for their interpretations and recommendations); (4) to make recommendations to the COUNTY to resolve disputes which arise in relation to the construction contract; and (5) to maintain an adequate level of surveillance of the Contractor's activities. The CONSULTANT shall also perform any other construction engineering services normally or customarily assigned to a Resident Engineer that are required to fulfill its responsibilities under this Agreement. Construction engineering services for this project shall include, but are not necessarily limited to, the following:

The CONSULTANT shall provide a resident project engineer and the requisite inspection staff to observe the Contractor's on-site construction operations as required or necessary to determine that quality of workmanship and materials is such that the project will be completed in reasonable conformity with the plans, specifications, and other contract provisions. The project site staff to be under the direction of a registered professional engineer (Resident Engineer).

Prior to the start of construction, the CONSULTANT shall assist the COUNTY in review of the bids received for construction of the project. The review shall consist of an overview of the bid prices received and the qualifications of the apparent, qualified low bidder.

The CONSULTANT shall maintain records of all significant activities and events relating to the project and estimates of all work completed by the Contractor. The CONSULTANT shall immediately report to the COUNTY apparent significant changes in quantity, time or cost as they are noted.

The CONSULTANT shall maintain a Project Control Schedule for the work. The CONSULTANT shall, on a regular basis, report the status to the COUNTY on all major items of work requested of the Construction Contractor reflected on the Project Control Schedule.

The CONSULTANT shall review the Construction Contractor's schedule in detail and submit a report to the COUNTY as well as meet with and discuss with the Construction Contractor during the schedule review and approval process, and any updates thereto. Any subsequent Construction Contractor requests for major activity or construction contract time extensions shall be reviewed by and commented on by the CONSULTANT. Project Control Schedule runs to review the results of Contractor requests and/or CONSULTANT recommended alternatives shall be performed by the CONSULTANT, as required.

The CONSULTANT shall maintain a log of materials entering into the work and utilized in the work with proper indication of the basis of acceptance of each shipment of material.

The CONSULTANT shall maintain records of all sampling and testing accomplished under this Agreement and analyze such records required to ascertain acceptability of material and completed work items.

The CONSULTANT shall meet with the Construction Contractor on no less than a weekly basis (depending upon actual level of activity and/or progress) for project coordination and problem resolution.

The CONSULTANT shall record minutes of each meeting and forward a copy to the Contractor and to the COUNTY with the engineer's summary weekly report. Included in the report shall be noted activities accomplished, production achieved and shall list and describe those scheduled activities which were not accomplished, and what activities/events were planned for the next week. The CONSULTANT shall list separately any quality control problems or impediments to the work that would normally be noted in the engineer's weekly summary report.

Once each month, the CONSULTANT shall prepare a tabulation of the quantity of each pay item satisfactorily completed to date. Quantities shall be based on daily records or calculations. Calculations shall be retained. The tabulation will be used for preparation of the monthly progress Estimate. The CONSULTANT shall submit the completed tabulation to the COUNTY.

Shop drawings and other submittals will be reviewed and approved by the CONSULTANT for conformance to the intent of the design concept of the project plans and specifications. Shop drawings/sample submittals and approvals shall be tracked by the CONSULTANT. Tracking shall include, but not be limited to, maintaining cognizance of the status of each submittal as it progresses through the review and approval process and procedures. The CONSULTANT shall actively encourage all reviewers to accomplish reviews promptly.

The CONSULTANT shall provide to the Contractor, interpretations of the plans, specifications and contract provisions. The CONSULTANT shall consult with the COUNTY when interpretation involves complex or otherwise significant issues or may have an impact on the cost of performing the Work. When warranted by the COUNTY, the COUNTY shall request an interpretation from the Design Consultant prior to any major changes of the plans specifications and contract revisions being clarified to the Contractor by the CEI Consultant. The COUNTY shall coordinate all requests for involvement of the Design Consultant.

The CONSULTANT shall analyze any and all problems that arise on the project and proposals submitted by the Contractor and shall prepare and submit a recommendation to the COUNTY.

The CONSULTANT shall analyze changes to the plans, specifications or contract provisions and extra work which appear to be necessary to carry out the intent of the contract when it is determined that a change or extra work is necessary and such work is clearly within the scope of the original contract. The CONSULTANT shall recommend such changes to the COUNTY for approval/disapproval.

When it is determined that a modification to the original contract for the project is required due to necessary change in the character of the Work, the CONSULTANT shall negotiate prices with the Contractor and prepare and submit for approval/disapproval by the COUNTY a Supplemental Agreement or change order.

In the event that the Contractor for a project submits a claim for additional compensation, the CONSULTANT shall analyze the submittal and prepare a recommendation to the COUNTY covering and analyzing the validity and reasonableness of the charges and shall conduct negotiations leading to a recommendation for settlement of the claim.

In the event that the Contractor submits a request for extension of the allowable contract time, the CONSULTANT shall analyze the request and prepare a recommendation to the COUNTY covering the accuracy of statement and the actual effect of the delay on the completion of the controlling work items and the costs to the COUNTY.

The CONSULTANT shall prepare and submit to the COUNTY for further processing a final estimate and two (2) sets of record plans for the construction contract.

The CONSULTANT shall monitor the construction contract to the extent necessary to observe construction activities in order to verify general compliance with the requirements of permits. The COUNTY will provide the CONSULTANT with a copy of each permit within the project limits.

Upon identification of a prospective changed condition or construction contract change, the extent of change shall be analyzed by the CONSULTANT and in order of magnitude estimate of cost and time of change, if any, will be prepared by the CONSULTANT.

The CONSULTANT shall negotiate all changes with the Contractor using the CONSULTANT - prepared estimate as a basis. The CONSULTANT shall submit the results to the COUNTY within two (2) weeks of start of negotiations or report the major differences to the COUNTY, if agreement is not reached. The CONSULTANT shall prepare supplement and change order documents and track the status of each one until executed.

#### **PERSONNEL**

The CONSULTANT shall provide an agreed upon number of qualified personnel to effectively carry out its responsibilities under this Agreement. The CONSULTANT shall utilize only competent personnel who are qualified by experience and education.

#### **STAFFING**

The CONSULTANT shall maintain an appropriate staff after completion of construction to complete the final Estimate and Record Plans. No personnel other than those

designated herewith, shall be assigned to the project by the CONSULTANT unless authorized by the COUNTY.

Construction engineering and inspection forces shall be required to be retained by or under contract to the CONSULTANT at all times while the Contractor is working on the construction contract. If the construction contract is suspended, the CONSULTANTS forces shall be adjusted, to correspond with the type of suspension; provided, however, that no member of the CONSULTANT'S forces shall be deemed to be a COUNTY employee.

### **PHOTOGRAPHS**

The CONSULTANT shall take and submit two (2) prints of each progress photograph taken each month. Views and timing of photographs shall be to show maximum progress. Photographs shall be clean, sharp and clearly show details. Photographs shall be submitted in sets with each photograph numbered in sequence beginning with the numeral one (1). Photographs shall be enclosed in a clear plastic protector punched to fit a standard 8 1/2-inch by 11-inch three-ring binder.

### **OTHER SERVICES**

The CONSULTANT shall upon written authorization by the COUNTY, perform any additional services not otherwise identified in this Agreement as may be required by the COUNTY in connection with the project. The following items are not included as part of this Agreement, but may be required of the CONSULTANT by the COUNTY to supplement the CONSULTANT'S services under this Agreement:

- (1) The CONSULTANT shall, upon review, approval and written authorization by the COUNTY, make such changes and revisions to the plans and specifications as may be required in order to complete the construction activities.
- (2) The CONSULTANT shall, upon written request by the COUNTY, assist the COUNTY in preparing for arbitration hearings, or litigation that occurs during the CONSULTANT'S contract time in connection with the project covered by the Agreement.
- (3) The CONSULTANT shall, upon written request by the COUNTY, provide qualified engineers and/or engineering witnesses, provide exhibits and otherwise assist the COUNTY in any litigation or hearings in connection with the construction contract(s).

- (4) The CONSULTANT shall, upon written request by the COUNTY, provide overall program project control schedules for the purposes of assisting the COUNTY in overall planning and scheduling of construction projects.
- (5) The CONSULTANT shall, upon written request by the COUNTY, provide project cost and cash flow analysis services to assist the COUNTY with overall program financial management of the COUNTY'S proposed road construction/improvement program.
- (6) The COUNTY agrees to compensate the CONSULTANT for authorized additional services not included in this Agreement as a supplement to the basic fee for CE&I services. The amount of such fee and the specific scope of services will be negotiated prior to the CONSULTANT providing such additional services.

Board of County Commissioners  
SEMINOLE COUNTY, FLORIDA

**WORK ORDER**

Work Order Number: \_\_\_\_\_

Master Agreement No.: \_\_\_\_\_ Dated: \_\_\_\_\_  
Contract Title: \_\_\_\_\_  
Project Title: \_\_\_\_\_

Consultant: \_\_\_\_\_  
Address: \_\_\_\_\_

ATTACHMENTS TO THIS WORK ORDER:

- drawings/plans/specifications
- scope of services
- special conditions
- \_\_\_\_\_

METHOD OF COMPENSATION:

- fixed fee basis
- time basis-not-to-exceed
- time basis-limitation of funds

TIME FOR COMPLETION: The services to be provided by the CONSULTANT shall commence upon execution of this Agreement by the parties and shall be completed within "X" (days, months, years) of the effective date of this agreement. Failure to meet the completion date may be grounds for Termination for Default.

Work Order Amount: \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_)

IN WITNESS WHEREOF, the parties hereto have made and executed this Work Order on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for the purposes stated herein.

(THIS SECTION TO BE COMPLETED BY THE COUNTY)

ATTEST:

\_\_\_\_\_  
, Secretary

By: \_\_\_\_\_  
, President

(CORPORATE SEAL)

Date: \_\_\_\_\_

\*\*\*\*\*

BOARD OF COUNTY COMMISSIONERS  
SEMINOLE COUNTY, FLORIDA

WITNESSES:

\_\_\_\_\_  
(Procurement Analyst)

By: \_\_\_\_\_  
, Procurement Supervisor

\_\_\_\_\_  
(Procurement Analyst)

Date: \_\_\_\_\_

As authorized by Section 8.153 Seminole  
County Administrative Code.

OC # \_\_\_\_\_

ON # \_\_\_\_\_

## **WORK ORDER TERMS AND CONDITIONS**

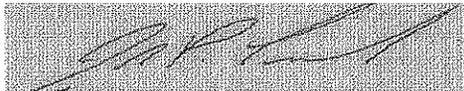
- a) Execution of this Work Order by the COUNTY shall serve as authorization for the CONSULTANT to provide, for the stated project, professional services as set out in the Scope of Services attached as Exhibit "A" to the Master Agreement cited on the face of this Work Order and as further delineated in the attachments listed on this Work Order.
- b) Term: This work order shall take effect on the date of its execution by the County and expires upon final delivery, inspection, acceptance and payment unless terminated earlier in accordance with the Termination provisions herein.
- c) The CONSULTANT shall provide said services pursuant to this Work Order, its Attachments, and the cited Master Agreement (as amended, if applicable) which is incorporated herein by reference as if it had been set out in its entirety.
- d) Whenever the Work Order conflicts with the cited Master Agreement, the Master Agreement shall prevail.
- e) METHOD OF COMPENSATION - If the compensation is based on a:
  - (i) FIXED FEE BASIS, then the Work Order Amount becomes the Fixed Fee Amount and the CONSULTANT shall perform all work required by this Work Order for the Fixed Fee Amount. The Fixed Fee is an all-inclusive Firm Fixed Price binding the CONSULTANT to complete the work for the Fixed Fee Amount regardless of the costs of performance. In no event shall the CONSULTANT be paid more than the Fixed Fee Amount.
  - (ii) TIME BASIS WITH A NOT-TO-EXCEED AMOUNT, then the Work Order Amount becomes the Not-to-Exceed Amount and the CONSULTANT shall perform all the work required by this Work Order for a sum not exceeding the Not-to-Exceed Amount. In no event is the CONSULTANT authorized to incur expenses exceeding the not-to-exceed amount without the express written consent of the COUNTY. Such consent will normally be in the form of an amendment to this Work Order. The CONSULTANT's compensation shall be based on the actual work required by this Work Order and the Labor Hour Rates established in the Master Agreement.
  - (iii) TIME BASIS WITH A LIMITATION OF FUNDS AMOUNT, then the Work Order Amount becomes the Limitation of Funds amount and the CONSULTANT is not authorized to exceed the Limitation of Funds amount without prior written approval of the COUNTY. Such approval, if given by the COUNTY, shall indicate a new Limitation of Funds amount. The CONSULTANT shall advise the COUNTY whenever the CONSULTANT has incurred expenses on this Work Order that equals or exceeds eighty percent (80%) of the Limitation of Funds amount. The CONSULTANT's compensation shall be based on the actual work required by this Work Order and the Labor Hour Rates established in the Master Agreement.
- f) Payment to the CONSULTANT shall be made by the COUNTY in strict accordance with the payment terms of the referenced Master Agreement.
- g) It is expressly understood by the CONSULTANT that this Work Order, until executed by the COUNTY, does not authorize the performance of any services by the CONSULTANT and that the COUNTY, prior to its execution of the Work Order, reserves the right to authorize a party other than the CONSULTANT to perform the services called for under this Work Order; if it is determined that to do so is in the best interest of the COUNTY.
- h) The CONSULTANT shall sign the Work Order first and the COUNTY second. This Work Order becomes effective and binding upon execution by the COUNTY and not until then. A copy of this Work Order will be forwarded to the CONSULTANT upon execution by the COUNTY.

| Proposed Rates for PS2249-07/BHJ                                     |                  |                         |                                |
|--|------------------|-------------------------|--------------------------------|
| CEI Services for Construction Projects Less than \$1 Million Dollars |                  |                         |                                |
| EMPLOYEE NAME  | 2008 Salary Rate | Total Overhead & Profit | 2008 Rate w/ Overhead & Profit |
| Resident / Project Engineer (Pete Petyk, P.E.)                       | \$43.48          | 270.907%                | \$117.79                       |
| Senior Inspector (Frank Robb, P.L.S.)                                | \$30.90          | 270.907%                | \$83.71                        |
| Inspector & Utility Inspector (Richard Kennedy)                      | \$20.90          | 270.907%                | \$56.62                        |
| Senior Inspector (Brian Moshier)                                     | \$24.46          | 270.907%                | \$66.26                        |
| Secretary / Clerical (Pam Pudlo)                                     | \$16.50          | 270.907%                | \$44.70                        |
|  |                  |                         |                                |

**NOTES:**

Billing rates were calculated from the following factors.  
 Fringe and General Overhead Rate = 158.907%  
 Maximum Limit Accepted by Seminole County = 162.0%  
 Salary and Overhead = 258.907%  
 Profit Margin = 12%  
 Salary / Overhead + Profit = 270.907%

The proposed 2008 wage rates will become effective on January 1, 2008



John P. Cleland, P.E.  
 Vice President Construction Services

EXHIBIT "C"

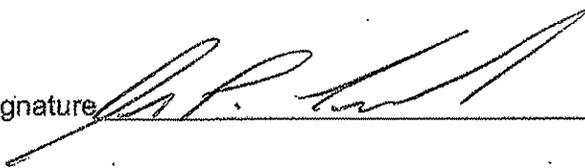
Exhibit "D"

Truth in Negotiations Certificate

This is to certify that, to the best of my knowledge and belief, the wage rates and other factual unit costs supporting the compensation (as defined in section 287.055 of the Florida Statutes (otherwise known as the "Consultants' Competitive Negotiations Act" or CCNA) and required under CCNA subsection 287.055 (5) (a)) submitted to Seminole County Purchasing and Contracts Division, Contracts Section, either actually or by specific identification in writing, in support of PS-2249-07/BHJ -- Continuous Construction Engineering and Inspection Services Agreement for Construction Projects Less than \$1 Million Dollars are accurate, complete, and current as of December 20, 2007 (Date)\*. This certification includes the wage rates and other factual unit costs supporting any Work Orders or Amendments issued under the agreement between the Consultant and the County.

Firm Keith and Schnars, P.A.

Signature



\_\_\_\_\_

Name John P. Cleland, P.E.  
(Print or Type)

Title Vice President of Construction Services  
(Print or Type)

Date of execution\*\* December 19, 2007

\* Insert the day, month, and year when wage rates were submitted or, if applicable, an earlier date agreed upon between the parties that are as close as practicable to the date of agreement on compensation.

\*\* Insert the day, month, and year of signing.

(End of certificate)

**CONSTRUCTION ENGINEERING AND INSPECTION SERVICES AGREEMENT  
CONSTRUCTION PROJECTS LESS THAN ONE MILLION DOLLARS (\$1,000,000.00)  
(PS-2249-07/BHJ)**

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and between **PB AMERICAS, INC.**, duly authorized to conduct business in the State of Florida, whose address is 100 E. Pine Street, Suite 500, Orlando, Florida 32801, hereinafter called "CONSULTANT" and **SEMINOLE COUNTY**, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1101 East First Street, Sanford, Florida 32771, hereinafter called "COUNTY".

**W I T N E S S E T H:**

**WHEREAS**, COUNTY desires to retain the services of a competent and qualified CONSULTANT to provide construction engineering and inspection services for construction projects less than one million dollars (\$1,000,000.00) in Seminole County; and

**WHEREAS**, COUNTY has requested and received expressions of interest for the retention of services of consultants; and

**WHEREAS**, CONSULTANT is competent and qualified to furnish construction engineering and inspection services for construction projects less than one million dollars (\$1,000,000.00) services to COUNTY and desires to provide professional services according to the terms and conditions stated herein,

**NOW, THEREFORE**, in consideration of the mutual understandings and covenants set forth herein, COUNTY and CONSULTANT agree as follows:

**SECTION 1. SERVICES.** COUNTY does hereby retain CONSULTANT to furnish professional services and perform those tasks as further described in the Scope of Services attached hereto as Exhibit A and made a part hereof. Required services shall be specifically enumerated, described, and depicted in the Work Orders authorizing performance of the specific project, task, or study. This Agreement standing alone does not authorize the performance of any work or require COUNTY to

place any orders for work.

**SECTION 2. TERM.** This Agreement shall take effect on the date of its execution by COUNTY and shall run for a period of two (2) years and, at the sole option of COUNTY, may be renewed for three (3) successive periods not to exceed one (1) year each. Expiration of the term of this Agreement shall have no effect upon Work Orders issued pursuant to this Agreement and prior to the expiration date. Obligations entered therein by both parties shall remain in effect until completion of the work authorized by the Work Order.

**SECTION 3. AUTHORIZATION FOR SERVICES.** Authorization for performance of professional services by CONSULTANT under this Agreement shall be in the form of written Work Orders issued and executed by COUNTY and signed by CONSULTANT. A sample Work Order is attached hereto as Exhibit B. Each Work Order shall describe the services required, state the dates for commencement and completion of work, and establish the amount and method of payment.  The Work Orders will be issued under and shall incorporate the terms of this Agreement. COUNTY makes no covenant or promise as to the number of available projects or that CONSULTANT will perform any project for COUNTY during the life of this Agreement. COUNTY reserves the right to contract with other parties for the services contemplated by this Agreement when it is determined by COUNTY to be in the best interest of COUNTY to do so.

**SECTION 4. TIME FOR COMPLETION.** The services to be rendered by CONSULTANT shall be commenced as specified in such Work Orders as may be issued hereunder and shall be completed within the time specified therein. In the event COUNTY determines that significant benefits would accrue from expediting an otherwise established time schedule for completion of services under a given Work Order, that Work Order may include a negotiated schedule of incentives based on time savings.

**SECTION 5. COMPENSATION.** COUNTY agrees to compensate CONSULTANT for the professional services called for under this Agreement on either a "Fixed Fee Basis" or on a "Time Basis Method". If a Work Order is issued under a Time Basis Method, then CONSULTANT shall be compensated in accordance with the rate schedule attached as Exhibit C and the Truth in Negotiations Certificate, attached as Exhibit D. If a Work Order is issued for a Fixed Fee Basis, then the applicable Work Order Fixed Fee amount shall include any and all reimbursable expenses.

**SECTION 6. REIMBURSABLE EXPENSES.** If a Work Order is issued on a Time Basis Method, then reimbursable expenses are in addition to the hourly rates. Reimbursable expenses are subject to the applicable "Not-to-Exceed" or "Limitation of Funds" amount set forth in the Work Order. Reimbursable expenses may include actual expenditures made by CONSULTANT, its employees, or its professional associates in the interest of the Project for the expenses listed in the following paragraphs:



(a) Expenses of transportation, when traveling in connection with the Project based on Sections 112.061(7) and (8), Florida Statutes, or its successor; long distance calls and telegrams; and fees paid for securing approval of authorities having jurisdiction over the Project.

(b) Expense of reproductions, postage, and handling of drawings and specifications.

(c) If authorized in writing in advance by COUNTY, the cost of other expenditures made by CONSULTANT in the interest of the Project.

**SECTION 7. PAYMENT AND BILLING.**

(a) If the Scope of Services required to be performed by a Work Order is clearly defined, the Work Order shall be issued on a Fixed Fee Basis. CONSULTANT shall perform all work required by the Work Order, but in no event shall CONSULTANT be paid more than the negotiated Fixed Fee amount stated therein.

(b) If the Scope of Services is not clearly defined, the Work Order may be issued on a Time Basis Method and contain a Not-to Exceed amount. If a Not-to-Exceed amount is provided, CONSULTANT shall perform all work required by the Work Order, but in no event shall CONSULTANT be paid more than the Not-to-Exceed amount specified in the applicable Work Order.

(c) If the Scope of Services is not clearly defined, the Work Order may be issued on a Time Basis Method and contain a Limitation of Funds amount. CONSULTANT is not authorized to exceed that amount without the prior written approval of COUNTY. Said approval, if given by COUNTY, shall indicate a new Limitation of Funds amount. CONSULTANT shall advise COUNTY whenever CONSULTANT has incurred expenses on any Work Order that equals or exceeds eighty percent (80%) of the Limitation of Funds amount.

(d) For Work Orders issued on a Fixed Fee Basis, CONSULTANT may invoice the amount due based on  the percentage of total Work Order services actually performed and completed, but in no event shall the invoice amount exceed a percentage of the Fixed Fee amount equal to a percentage of the total services actually completed. COUNTY shall pay CONSULTANT ninety percent (90%) of the approved amount on Work Orders issued on a Fixed Fee Basis.

(e) For Work Orders issued on a Time Basis Method with a Not-to-Exceed amount, CONSULTANT may invoice the amount due for actual work hours performed, but in no event shall the invoice amount exceed a percentage of the Not-to-Exceed amount equal to a percentage of the total services actually completed. COUNTY shall pay CONSULTANT ninety percent (90%) of the approved amount on Work Orders issued on a Time Basis Method with a Not-to-Exceed amount.

(f) Each Work Order issued on a Fixed Fee Basis or Time Basis Method with a Not-to-Exceed amount shall be treated separately for

retainage purposes. If COUNTY determines that work is substantially complete and the amount retained is considered to be in excess, COUNTY may, at its sole and absolute discretion, release the retainage or any portion thereof.

(g) For Work Orders issued on a Time Basis Method with a Limitation of Funds amount, CONSULTANT may invoice the amount due for services actually performed and completed. COUNTY shall pay CONSULTANT one hundred percent (100%) of the approved amount on Work Orders issued on a Time Basis Method with a Limitation of Funds amount.

(h) Payments shall be made by COUNTY to CONSULTANT when requested as work progresses for services furnished, but not more than once monthly. Each Work Order shall be invoiced separately. At the close of each calendar month, CONSULTANT shall render to COUNTY a properly dated itemized invoice describing any services rendered, the cost of the services, the name and address of CONSULTANT, Work Order Number, Contract Number, and all other information required by this Agreement.

The original invoice and one (1) copy shall be sent to:

Director of County Finance  
Seminole County Board of County Commissioners  
Post Office Box 8080  
Sanford, Florida 32772

Two (2) copies of the invoice shall be sent to:

Public Works (Engineering Division)  
520 W. Lake Mary Blvd., Suite 200  
Sanford, FL 32773

(i) Payment shall be made after review and approval by COUNTY within thirty (30) days of receipt of a proper invoice from CONSULTANT.

#### **SECTION 8. GENERAL TERMS OF PAYMENT AND BILLING.**

(a) Upon satisfactory completion of work required hereunder and upon acceptance of the work by COUNTY, CONSULTANT may invoice COUNTY for the full amount of compensation provided for under the terms of this Agreement including any retainage and less any amount already paid by COUNTY. COUNTY shall pay CONSULTANT within thirty (30) days of receipt

of proper invoice.

(b) COUNTY may perform or have performed an audit of the records of CONSULTANT after final payment to support final payment hereunder. This audit would be performed at a time mutually agreeable to CONSULTANT and COUNTY subsequent to the close of the final fiscal period in which the last work is performed. Total compensation to CONSULTANT may be determined subsequent to an audit as provided for in subsections (b) and (c) of this Section, and the total compensation so determined shall be used to calculate final payment to CONSULTANT. Conduct of this audit shall not delay final payment as provided by subsection (a) of this Section.

(c) In addition to the above, if federal funds are used for any work under the Agreement, the Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers, and records of CONSULTANT which are directly pertinent to work performed under this Agreement for purposes of making audit, examination, excerpts, and transcriptions.

(d) CONSULTANT agrees to maintain all books, documents, papers, accounting records, and other evidence pertaining to work performed under this Agreement in such a manner as will readily conform to the terms of this Agreement and to make such materials available at CONSULTANT's office at all reasonable times during the Agreement period and for five (5) years from the date of final payment under the contract for audit or inspection as provided for in subsections (b) and (c) of this Section.

(e) In the event any audit or inspection conducted after final payment, but within the period provided in paragraph (d) of this Section, reveals any overpayment by COUNTY under the terms of the Agreement, CONSULTANT shall refund such overpayment to COUNTY within

thirty (30) days of notice by COUNTY.

**SECTION 9. RESPONSIBILITIES OF CONSULTANT.**

(a) CONSULTANT shall be responsible for the professional quality, technical accuracy, competence, methodology, accuracy, and the coordination of all of the following which are listed for illustration purposes and not as a limitation: documents, analysis, reports, data, plans, plats, maps, surveys, specifications, and any and all other services of whatever type or nature furnished by CONSULTANT under this Agreement. CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in his plans, analysis, data, reports, designs, drawings, specifications, and any and all other services of whatever type or nature.

(b) Neither COUNTY's review, approval, or acceptance of, nor payment for, any of the services required shall be construed to operate as a waiver of any rights under this Agreement nor of any cause of action arising out of the performance of this Agreement; and CONSULTANT shall be and always remain liable to COUNTY in accordance with applicable law for any and all damages to COUNTY caused by CONSULTANT's negligent or wrongful performance of any of the services furnished under this Agreement.

**SECTION 10. OWNERSHIP OF DOCUMENTS.** All deliverable analysis, reference data, survey data, plans, and reports or any other form of written instrument or document that may result from CONSULTANT's services or have been created during the course of CONSULTANT's performance under this Agreement shall become the property of COUNTY after final payment is made to CONSULTANT.

**SECTION 11. TERMINATION.**

(a) COUNTY may, by written notice to CONSULTANT, terminate this Agreement or any Work Order issued hereunder, in whole or in part, at any time, either for COUNTY's convenience or because of the failure of

CONSULTANT to fulfill its Agreement obligations. Upon receipt of such notice, CONSULTANT shall:

(1) immediately discontinue all services affected unless the notice directs otherwise; and

(2) deliver to COUNTY all data, drawings, specifications, reports, estimates, summaries, and any and all such other information and materials of whatever type or nature as may have been accumulated by CONSULTANT in performing this Agreement, whether completed or in process.

(b) If the termination is for the convenience of COUNTY, CONSULTANT shall be paid compensation for services performed to the date of termination. If this Agreement calls for the payment based on a Fixed Fee amount, CONSULTANT shall be paid no more than a percentage of the Fixed Fee amount equivalent to the percentage of the completion of work, as determined solely and conclusively by COUNTY, contemplated by this Agreement.



(c) If the termination is due to the failure of CONSULTANT to fulfill its Agreement obligations, COUNTY may take over the work and prosecute the same to completion by other Agreements or otherwise. In such case, CONSULTANT shall be liable to COUNTY for all reasonable additional costs occasioned to COUNTY thereby. CONSULTANT shall not be liable for such additional costs if the failure to perform the Agreement arises without any fault or negligence of CONSULTANT; provided, however, that CONSULTANT shall be responsible and liable for the actions of its subcontractors, agents, employees, and persons and entities of a similar type or nature. Such causes may include acts of God or of the public enemy, acts of COUNTY in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but, in every case, the failure to perform must be beyond the control and without any fault or negligence of

CONSULTANT.

(d) If after notice of termination for failure to fulfill its Agreement obligations it is determined that CONSULTANT had not so failed, the termination shall be conclusively deemed to have been effected for the convenience of COUNTY. In such event, adjustment in the Agreement price shall be made as provided in subsection (b) of this Section.

(e) The rights and remedies of COUNTY provided for in this Section are in addition and supplemental to any and all other rights and remedies provided by law or under this Agreement.

**SECTION 12. AGREEMENT AND WORK ORDER IN CONFLICT.** Whenever the terms of this Agreement conflict with any Work Order issued pursuant to it, the Agreement shall prevail.

**SECTION 13. EQUAL OPPORTUNITY EMPLOYMENT.** CONSULTANT agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age, disability, or national origin and will take steps to ensure that applicants are employed, and employees are treated during employment, without regard to race, color, religion, sex, age, disability, or national origin. This provision shall include, but not be limited to, the following: employment; upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

**SECTION 14. NO CONTINGENT FEES.** CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from award or making of

this Agreement. For the breach or violation of this provision, COUNTY shall have the right to terminate the Agreement at its sole discretion, without liability and to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

**SECTION 15. CONFLICT OF INTEREST.**

(a) CONSULTANT agrees that it will not contract for or accept employment for the performance of any work or service with any individual, business, corporation, or government unit that would create a conflict of interest in the performance of its obligations pursuant to this Agreement with COUNTY.

(b) CONSULTANT agrees that it will neither take any action nor engage in any conduct that would cause any COUNTY employee to violate the provisions of Chapter 112, Florida Statutes, relating to ethics in government.

(c) In the event that CONSULTANT causes or in any way promotes or encourages a COUNTY officer, employee, or agent to violate Chapter 112, Florida Statutes, COUNTY shall have the right to terminate this Agreement.

**SECTION 16. ASSIGNMENT.** This Agreement, or any interest herein, shall not be assigned, transferred, or otherwise encumbered, under any circumstances, by the parties hereto without prior written consent of the other party and in such cases only by a document of equal dignity herewith.

**SECTION 17. SUBCONTRACTORS.** In the event that CONSULTANT, during the course of the work under this Agreement, requires the services of any subcontractors or other professional associates in connection with services covered by this Agreement, CONSULTANT must first secure the prior express written approval of COUNTY. If subcontractors or other professional associates are required in connection with the services

covered by this Agreement, CONSULTANT shall remain fully responsible for the services of subcontractors or other professional associates.

**SECTION 18. INDEMNIFICATION OF COUNTY.** CONSULTANT agrees to hold harmless, replace, and indemnify COUNTY, its commissioners, officers, employees, and agents against any and all claim, losses, damages or lawsuits for damages, arising from the negligent, reckless, or intentionally wrongful provision of services hereunder by CONSULTANT, whether caused by CONSULTANT or otherwise.

**SECTION 19. INSURANCE.**

(a) GENERAL. CONSULTANT shall at its own cost procure the insurance required under this Section.

(1) CONSULTANT shall furnish COUNTY with a Certificate of Insurance signed by an authorized representative of the insurer evidencing the insurance required by this Section (Professional Liability, Workers' Compensation/Employer's Liability and Commercial General Liability). COUNTY, its officials,  officers, and employees shall be named additional insured under the Commercial General Liability policy. The Certificate of Insurance shall provide that COUNTY shall be given not less than thirty (30) days written notice prior to the cancellation or restriction of coverage. Until such time as the insurance is no longer required to be maintained by CONSULTANT, CONSULTANT shall provide COUNTY with a renewal or replacement Certificate of Insurance not less than thirty (30) days before expiration or replacement of the insurance for which a previous certificate has been provided.

(2) The Certificate shall contain a statement that it is being provided in accordance with the Agreement and that the insurance is in full compliance with the requirements of the Agreement. In lieu of the statement on the Certificate, CONSULTANT shall (at the option of COUNTY) submit a sworn notarized statement from an authorized representative of the insurer that the Certificate is being provided in accor-

dance with the Agreement and that the insurance is in full compliance with the requirements of the Agreement. **The Certificate shall have this Agreement number clearly marked on its face.**

(3) In addition to providing the Certificate of Insurance, if required by COUNTY, CONSULTANT shall, within thirty (30) days after receipt of the request, provide COUNTY with a certified copy of each of the policies of insurance providing the coverage required by this Section.

(4) Neither approval by COUNTY nor failure to disapprove the insurance furnished by a CONSULTANT shall relieve CONSULTANT of its full responsibility for performance of any obligation including CONSULTANT's indemnification of COUNTY under this Agreement.

(b) INSURANCE COMPANY REQUIREMENTS. Insurance companies providing the insurance under this Agreement must meet the following requirements:

(1) Companies issuing  policies (other than Workers' Compensation) must be authorized to conduct business in the State of Florida and prove same by maintaining Certificates of Authority issued to the companies by the Department of Insurance of the State of Florida. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by Section 440.57, Florida Statutes.

(2) In addition, such companies other than those authorized by Section 440.57, Florida Statutes, shall have and maintain a Best's Rating of "A" or better and a Financial Size Category of "VII" or better according to A.M. Best Company.

(3) If during the period which an insurance company is providing the insurance coverage required by this Agreement, an insurance company shall: (i) lose its Certificate of Authority; (ii) no longer comply with Section 440.57, Florida Statutes; or (iii) fail to maintain the requisite Best's Rating and Financial Size Category,

CONSULTANT shall, as soon as CONSULTANT has knowledge of any such circumstance, immediately notify COUNTY and immediately replace the insurance coverage provided by the insurance company with a different insurance company meeting the requirements of this Agreement. Until such time as CONSULTANT has replaced the unacceptable insurer with an insurer acceptable to COUNTY, CONSULTANT shall be deemed to be in default of this Agreement.

(c) SPECIFICATIONS. Without limiting any of the other obligations or liability of CONSULTANT, CONSULTANT shall, at its sole expense, procure, maintain, and keep in force amounts and types of insurance conforming to the minimum requirements set forth in this subsection. Except as otherwise specified in the Agreement, the insurance shall become effective prior to the commencement of work by CONSULTANT and shall be maintained in force until the Agreement completion date. The amounts and types of insurance shall conform to the following minimum requirements.



(1) Workers' Compensation/Employer's Liability.

(A) CONSULTANT's insurance shall cover CONSULTANT for liability which would be covered by the latest edition of the standard Workers' Compensation Policy as filed for use in Florida by the National Council on Compensation Insurance, without restrictive endorsements. CONSULTANT will also be responsible for procuring proper proof of coverage from its subcontractors of every tier for liability which is a result of a Workers' Compensation injury to the subcontractor's employees. The minimum required limits to be provided by both CONSULTANT and its subcontractors are outlined in subsection (c) below. In addition to coverage for the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the United States Longshoremen and Harbor Workers' Compensation Act, Federal Employers' Liability Act, and any other applicable federal or state law.

(B) Subject to the restrictions of coverage found in the standard Workers' Compensation Policy, there shall be no maximum limit on the amount of coverage for liability imposed by the Florida Workers' Compensation Act, the United States Longshoremen's and Harbor Workers' Compensation Act, or any other coverage customarily insured under Part One of the standard Workers' Compensation Policy.

(C) The minimum amount of coverage under Part Two of the standard Workers' Compensation Policy shall be:

|                |                         |
|----------------|-------------------------|
| \$ 500,000.00  | (Each Accident)         |
| \$1,000,000.00 | (Disease-Policy Limit)  |
| \$ 500,000.00  | (Disease-Each Employee) |

(2) Commercial General Liability.

(A) CONSULTANT's insurance shall cover CONSULTANT for those sources of liability which would be covered by the latest edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) as filed for use in the State of Florida by the Insurance Services Office, without the attachment of restrictive endorsements other than the elimination of Coverage C, Medical Payment, and the elimination of coverage for Fire Damage Legal Liability.

(B) The minimum limits to be maintained by CONSULTANT (inclusive of any amounts provided by an Umbrella or Excess policy) shall be as follows:

|                                     | <u>LIMITS</u>                             |
|-------------------------------------|---|
| General Aggregate                   | Three (3) Times the Each-Occurrence Limit |
| Personal & Advertising Injury Limit | \$1,000,000.00                            |
| Each Occurrence Limit               | \$1,000,000.00                            |

(3) Professional Liability Insurance. CONSULTANT shall carry professional liability insurance with limits of not less than ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00).

(d) COVERAGE. The insurance provided by CONSULTANT pursuant to this Agreement shall apply on a primary basis, and any other insurance or self-insurance maintained by COUNTY or COUNTY's officials, officers, or employees shall be in excess of and not contributing to the insurance provided by or on behalf of CONSULTANT.

(e) OCCURRENCE BASIS. The Workers' Compensation Policy and the Commercial General Liability required by this Agreement shall be provided on an occurrence rather than a claims-made basis. The Professional Liability insurance policy must be on an occurrence basis or claims-made basis. If a claims-made basis, the coverage must respond to all claims reported within three (3) years following the period for which coverage is required and which would have been covered had the coverage been on an occurrence basis.

(f) OBLIGATIONS. Compliance with the foregoing insurance requirements shall not relieve CONSULTANT, its employees, or its agents of liability from any obligation  under a Section or any other portions of this Agreement.

**SECTION 20. ALTERNATIVE DISPUTE RESOLUTION.**

(a) In the event of a dispute related to any performance or payment obligation arising under this Agreement, the parties agree to exhaust COUNTY protest procedures prior to filing suit or otherwise pursuing legal remedies. COUNTY procedures for proper invoice and payment disputes are set forth in Section 22.15, "Prompt Payment Procedures," Seminole County Administrative Code.

(b) CONSULTANT agrees that it will file no suit or otherwise pursue legal remedies based on facts or evidentiary materials that were not presented for consideration in COUNTY protest procedures set forth in subsection (a) above of which CONSULTANT had knowledge and failed to present during COUNTY protest procedures.

(c) In the event that COUNTY protest procedures are exhausted and a suit is filed or legal remedies are otherwise pursued, the parties shall exercise best efforts to resolve disputes through voluntary mediation. Mediator selection and the procedures to be employed in voluntary mediation shall be mutually acceptable to the parties. Costs of voluntary mediation shall be shared equally among the parties participating in the mediation.

**SECTION 21. REPRESENTATIVES OF COUNTY AND CONSULTANT.**

(a) It is recognized that questions in the day-to-day conduct of performance pursuant to this Agreement will arise. COUNTY, upon request by CONSULTANT, shall designate in writing and shall advise CONSULTANT in writing of one (1) or more of its employees to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed. The designated representative shall have the authority to transmit instructions, receive information, and interpret and define COUNTY's policy and decisions  to the work covered by this Agreement.

(b) CONSULTANT shall at all times during the normal work week designate or appoint one or more representatives of CONSULTANT who are authorized to act on behalf of and bind CONSULTANT regarding all matters involving the conduct of the performance pursuant to this Agreement and shall keep COUNTY continually and effectively advised of such designation.

**SECTION 22. ALL PRIOR AGREEMENTS SUPERSEDED.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained or referred to in this document. Accordingly, it is agreed that no deviation from the terms hereof shall

be predicated upon any prior representations or agreements, whether oral or written.

**SECTION 23. MODIFICATIONS, AMENDMENTS OR ALTERATIONS.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

**SECTION 24. INDEPENDENT CONTRACTOR.** It is agreed that nothing herein contained is intended or should be construed as in any manner creating or establishing a relationship of co-partners between the parties or as constituting CONSULTANT (including its officers, employees, and agents) an agent, representative, or employee of COUNTY for any purpose, or in any manner, whatsoever. CONSULTANT is to be and shall remain forever an independent contractor with respect to all services performed under this Agreement.

**SECTION 25. EMPLOYEE STATUS.** Persons employed by CONSULTANT in the performance of services and functions pursuant to this Agreement shall have no claim to pension, workers' compensation, unemployment compensation, civil service, or other employee rights or privileges granted to COUNTY's officers and employees either by operation of law or by COUNTY.

**SECTION 26. SERVICES NOT PROVIDED FOR.** No claim for services furnished by CONSULTANT not specifically provided for herein shall be honored by COUNTY.

**SECTION 27. PUBLIC RECORDS LAW.** CONSULTANT acknowledges COUNTY's obligations under Article I, Section 24, Florida Constitution, and Chapter 119, Florida Statutes, to release public records to members of the public upon request. CONSULTANT acknowledges that COUNTY is required to comply with Article I, Section 24, Florida Constitution, and Chapter 119, Florida Statutes, in the handling of the materials created under this Agreement and that said statute controls over the terms of this

Agreement.

**SECTION 28. COMPLIANCE WITH LAWS AND REGULATIONS.** In providing all services pursuant to this Agreement, CONSULTANT shall abide by all statutes, ordinances, rules, and regulations pertaining to or regulating the provisions of such services, including those now in effect and hereafter adopted. Any violation of said statutes, ordinances, rules, or regulations shall constitute a material breach of this Agreement and shall entitle COUNTY to terminate this Agreement immediately upon delivery of written notice of termination to CONSULTANT.

**SECTION 29. NOTICES.** Whenever either party desires to give notice unto the other, it must be given by written notice, sent by registered or certified United States mail, return receipt requested, addressed to the party for whom it is intended at the place last specified. The place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this Section. For the present, the parties designate the following as the respective places for giving of notice, to-wit:

**For COUNTY:**

Public Works (Engineering Division)  
520 W. Lake Mary Blvd., Suite 200  
Sanford, FL 32773

**For CONSULTANT:**

PB Americas, Inc.  
100 E. Pine Street, Suite 500  
Orlando, FL 32801

**SECTION 30. RIGHTS AT LAW RETAINED.** The rights and remedies of COUNTY, provided for under this Agreement, are in addition and supplemental to any other rights and remedies provided by law.

**IN WITNESS WHEREOF,** the parties hereto have made and executed this Agreement on the date below written for execution by COUNTY.

ATTEST:

PB AMERICAS, INC.

\_\_\_\_\_  
, Secretary

By: \_\_\_\_\_  
G. DEWEY MARTIN, III, P.E.  
Vice-President  
Southeastern Geography Manager

(CORPORATE SEAL)

Date: \_\_\_\_\_

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
SEMINOLE COUNTY, FLORIDA

\_\_\_\_\_  
MARYANNE MORSE  
Clerk to the Board of  
County Commissioners of  
Seminole County, Florida.

By: \_\_\_\_\_  
BRENDA CAREY, Chairman

Date: \_\_\_\_\_

For use and reliance  
of Seminole County only.

As authorized for execution by  
the Board of County Commissioners  
at their \_\_\_\_\_, 20\_\_\_\_  
regular meeting.

Approved as to form and  
legal sufficiency.

\_\_\_\_\_  
County Attorney  
AEC/lpk  
1/29/08 2/6/08  
P:\Users\Legal Secretary CSE\Purchasing 2008\Agreements\PS-2249 PB Americas.doc



Attachments:

- Exhibit A - Scope of Services
- Exhibit B - Sample Work Order
- Exhibit C - Rate Schedule
- Exhibit D - Truth in Negotiations Certificate

## EXHIBIT A

### CE&I SCOPE OF SERVICES

For

Construction engineering and Inspection Master Agreement for Construction projects  
cost of \$1,000,000 or less.

#### **GENERAL**

It shall be the responsibility of the CONSULTANT to provide services as necessary to administer the construction contract in the manner so as to determine that the project is constructed in reasonable conformity with the plans, specifications and contract provisions.

#### **PRE-CONSTRUCTION ACTIVITIES**

It is the intent of the county to have the CONSULTANT perform activities prior to the start of construction. The activities will be but not limited to: Constructibility Review, Utility Coordination, Public Involvement with the stake holders and Bid review.

#### **SURVEY CONTROL**

The CONSULTANT shall (1) make and record such measurements as are necessary to calculate and document quantities for items; and (2) perform incidental engineering surveys as may be necessary to carry out the services covered by the Agreement.

#### **TESTING**

The CONSULTANT, or approved subconsultant, shall perform sampling and testing of component materials and completed work items to the extent that will determine that the materials and workmanship incorporated into the project are in reasonable conformity with the plans, specifications and contract provisions.

Sampling, testing and laboratory methods shall be accomplished by the CONSULTANT as required by the Florida Department of Transportation Standard Specification or as modified by the contract provisions.

## **CONSTRUCTION ENGINEERING SERVICES**

The CONSULTANT shall perform management engineering services necessary:

(1) to assure that proper coordination of the activities of all parties involved will accomplish a complete project; (2) to maintain organized, complete, accurate records of all activities and events relating to the project; (3) to provide interpretations of the plans, specifications and contract provisions of a minor nature (Any other major interpretations that affect the integrity of the construction plans, specifications, and contract revisions, shall first be directed to the Design Consultant for their interpretations and recommendations); (4) to make recommendations to the COUNTY to resolve disputes which arise in relation to the construction contract; and (5) to maintain an adequate level of surveillance of the Contractor's activities. The CONSULTANT shall also perform any other construction engineering services normally or customarily assigned to a Resident Engineer that are required to fulfill its responsibilities under this Agreement. Construction engineering services for this project shall include, but are not necessarily limited to, the following:

The CONSULTANT shall provide a resident project engineer and the requisite inspection staff to observe the Contractor's on-site construction operations as required or necessary to determine that quality of workmanship and materials is such that the project will be completed in reasonable conformity with the plans, specifications, and other contract provisions. The project site staff to be under the direction of a registered professional engineer (Resident Engineer).

Prior to the start of construction, the CONSULTANT shall assist the COUNTY in review of the bids received for construction of the project. The review shall consist of an overview of the bid prices received and the qualifications of the apparent, qualified low bidder.

The CONSULTANT shall maintain records of all significant activities and events relating to the project and estimates of all work completed by the Contractor. The CONSULTANT shall immediately report to the COUNTY apparent significant changes in quantity, time or cost as they are noted.

The CONSULTANT shall maintain a Project Control Schedule for the work. The CONSULTANT shall, on a regular basis, report the status to the COUNTY on all major items of work requested of the Construction Contractor reflected on the Project Control Schedule.

The CONSULTANT shall review the Construction Contractor's schedule in detail and submit a report to the COUNTY as well as meet with and discuss with the Construction Contractor during the schedule review and approval process, and any updates thereto. Any subsequent Construction Contractor requests for major activity or construction contract time extensions shall be reviewed by and commented on by the CONSULTANT. Project Control Schedule runs to review the results of Contractor requests and/or CONSULTANT recommended alternatives shall be performed by the CONSULTANT, as required.

The CONSULTANT shall maintain a log of materials entering into the work and utilized in the work with proper indication of the basis of acceptance of each shipment of material.

The CONSULTANT shall maintain records of all sampling and testing accomplished under this Agreement and analyze such records required to ascertain acceptability of material and completed work items.

The CONSULTANT shall meet with the Construction Contractor on no less than a weekly basis (depending upon actual level of activity and/or progress) for project coordination and problem resolution.

The CONSULTANT shall record minutes of each meeting and forward a copy to the Contractor and to the COUNTY with the engineer's summary weekly report. Included in the report shall be noted activities accomplished, production achieved and shall list and describe those scheduled activities which were not accomplished, and what activities/events were planned for the next week. The CONSULTANT shall list separately any quality control problems or impediments to the work that would normally be noted in the engineer's weekly summary report.

Once each month, the CONSULTANT shall prepare a tabulation of the quantity of each pay item satisfactorily completed to date. Quantities shall be based on daily records or calculations. Calculations shall be retained. The tabulation will be used for preparation of the monthly progress Estimate. The CONSULTANT shall submit the completed tabulation to the COUNTY.

Shop drawings and other submittals will be reviewed and approved by the CONSULTANT for conformance to the intent of the design concept of the project plans and specifications. Shop drawings/sample submittals and approvals shall be tracked by the CONSULTANT. Tracking shall include, but not be limited to, maintaining cognizance of the status of each submittal as it progresses through the review and approval process and procedures. The CONSULTANT shall actively encourage all reviewers to accomplish reviews promptly.

The CONSULTANT shall provide to the Contractor, interpretations of the plans, specifications and contract provisions. The CONSULTANT shall consult with the COUNTY when interpretation involves complex or otherwise significant issues or may have an impact on the cost of performing the Work. When warranted by the COUNTY, the COUNTY shall request an interpretation from the Design Consultant prior to any major changes of the plans specifications and contract revisions being clarified to the Contractor by the CEI Consultant. The COUNTY shall coordinate all requests for involvement of the Design Consultant.

The CONSULTANT shall analyze any and all problems that arise on the project and proposals submitted by the Contractor and shall prepare and submit a recommendation to the COUNTY.

The CONSULTANT shall analyze changes to the plans, specifications or contract provisions and extra work which appear to be necessary to carry out the intent of the contract when it is determined that a change or extra work is necessary and such work is clearly within the scope of the original contract. The CONSULTANT shall recommend such changes to the COUNTY for approval/disapproval.

When it is determined that a modification to the original contract for the project is required due to necessary change in the character of the Work, the CONSULTANT shall negotiate prices with the Contractor and prepare and submit for approval/disapproval by the COUNTY a Supplemental Agreement or change order.

In the event that the Contractor for a project submits a claim for additional compensation, the CONSULTANT shall analyze the submittal and prepare a recommendation to the COUNTY covering and analyzing the validity and reasonableness of the charges and shall conduct negotiations leading to a recommendation for settlement of the claim.

In the event that the Contractor submits a request for extension of the allowable contract time, the CONSULTANT shall analyze the request and prepare a recommendation to the COUNTY covering the accuracy of statement and the actual effect of the delay on the completion of the controlling work items and the costs to the COUNTY.

The CONSULTANT shall prepare and submit to the COUNTY for further processing a final estimate and two (2) sets of record plans for the construction contract.

The CONSULTANT shall monitor the construction contract to the extent necessary to observe construction activities in order to verify general compliance with the requirements of permits. The COUNTY will provide the CONSULTANT with a copy of each permit within the project limits.

Upon identification of a prospective changed condition or construction contract change, the extent of change shall be analyzed by the CONSULTANT and in order of magnitude estimate of cost and time of change, if any, will be prepared by the CONSULTANT.

The CONSULTANT shall negotiate all changes with the Contractor using the CONSULTANT - prepared estimate as a basis. The CONSULTANT shall submit the results to the COUNTY within two (2) weeks of start of negotiations or report the major differences to the COUNTY, if agreement is not reached. The CONSULTANT shall prepare supplement and change order documents and track the status of each one until executed.

#### **PERSONNEL**

The CONSULTANT shall provide an agreed upon number of qualified personnel to effectively carry out its responsibilities under this Agreement. The CONSULTANT shall utilize only competent personnel who are qualified by experience and education.

#### **STAFFING**

The CONSULTANT shall maintain an appropriate staff after completion of construction to complete the final Estimate and Record Plans. No personnel other than those

designated herewith, shall be assigned to the project by the CONSULTANT unless authorized by the COUNTY.

Construction engineering and inspection forces shall be required to be retained by or under contract to the CONSULTANT at all times while the Contractor is working on the construction contract. If the construction contract is suspended, the CONSULTANTS forces shall be adjusted, to correspond with the type of suspension; provided, however, that no member of the CONSULTANTS forces shall be deemed to be a COUNTY employee.

### **PHOTOGRAPHS**

The CONSULTANT shall take and submit two (2) prints of each progress photograph taken each month. Views and timing of photographs shall be to show maximum progress. Photographs shall be clean, sharp and clearly show details. Photographs shall be submitted in sets with each photograph numbered in sequence beginning with the numeral one (1). Photographs shall be enclosed in a clear plastic protector punched to fit a standard 8 1/2-inch by 11-inch three-ring binder.

### **OTHER SERVICES**

The CONSULTANT shall upon written authorization by the COUNTY, perform any additional services not otherwise identified in this Agreement as may be required by the COUNTY in connection with the project. The following items are not included as part of this Agreement, but may be required of the CONSULTANT by the COUNTY to supplement the CONSULTANT'S services under this Agreement:

- (1) The CONSULTANT shall, upon review, approval and written authorization by the COUNTY, make such changes and revisions to the plans and specifications as may be required in order to complete the construction activities.
- (2) The CONSULTANT shall, upon written request by the COUNTY, assist the COUNTY in preparing for arbitration hearings, or litigation that occurs during the CONSULTANT'S contract time in connection with the project covered by the Agreement.
- (3) The CONSULTANT shall, upon written request by the COUNTY, provide qualified engineers and/or engineering witnesses, provide exhibits and otherwise assist the COUNTY in any litigation or hearings in connection with the construction contract(s).

- (4) The CONSULTANT shall, upon written request by the COUNTY, provide overall program project control schedules for the purposes of assisting the COUNTY in overall planning and scheduling of construction projects.
- (5) The CONSULTANT shall, upon written request by the COUNTY, provide project cost and cash flow analysis services to assist the COUNTY with overall program financial management of the COUNTY'S proposed road construction/improvement program.
- (6) The COUNTY agrees to compensate the CONSULTANT for authorized additional services not included in this Agreement as a supplement to the basic fee for CE&I services. The amount of such fee and the specific scope of services will be negotiated prior to the CONSULTANT providing such additional services.

Board of County Commissioners  
SEMINOLE COUNTY, FLORIDA

WORK ORDER

Work Order Number: \_\_\_\_\_

Master Agreement No.: \_\_\_\_\_ Dated: \_\_\_\_\_  
Contract Title: \_\_\_\_\_  
Project Title: \_\_\_\_\_

Consultant: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

ATTACHMENTS TO THIS WORK ORDER:

- drawings/plans/specifications
- scope of services
- special conditions
- \_\_\_\_\_

METHOD OF COMPENSATION:

- fixed fee basis
- time basis-not-to-exceed
- time basis-limitation of funds

TIME FOR COMPLETION: The services to be provided by the CONSULTANT shall commence upon execution of this Agreement by the parties and shall be completed within "X" (days, months, years) of the effective date of this agreement. Failure to meet the completion date may be grounds for Termination for Default.

Work Order Amount: \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_)

IN WITNESS WHEREOF, the parties hereto have made and executed this Work Order on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for the purposes stated herein.

(THIS SECTION TO BE COMPLETED BY THE COUNTY)

ATTEST:

\_\_\_\_\_  
, Secretary

By: \_\_\_\_\_  
, President

(CORPORATE SEAL)

Date: \_\_\_\_\_

WITNESSES:

\_\_\_\_\_  
(Procurement Analyst)

By: \_\_\_\_\_  
, Procurement Supervisor

\_\_\_\_\_  
(Procurement Analyst)

Date: \_\_\_\_\_  
As authorized by Section 8.153 Seminole  
County Administrative Code.

OC # \_\_\_\_\_

ON # \_\_\_\_\_

## **WORK ORDER TERMS AND CONDITIONS**

- a) Execution of this Work Order by the COUNTY shall serve as authorization for the CONSULTANT to provide, for the stated project, professional services as set out in the Scope of Services attached as Exhibit "A" to the Master Agreement cited on the face of this Work Order and as further delineated in the attachments listed on this Work Order.
- b) Term: This work order shall take effect on the date of its execution by the County and expires upon final delivery, inspection, acceptance and payment unless terminated earlier in accordance with the Termination provisions herein.
- c) The CONSULTANT shall provide said services pursuant to this Work Order, its Attachments, and the cited Master Agreement (as amended, if applicable) which is incorporated herein by reference as if it had been set out in its entirety.
- d) Whenever the Work Order conflicts with the cited Master Agreement, the Master Agreement shall prevail.
- e) METHOD OF COMPENSATION - If the compensation is based on a:
  - (i) FIXED FEE BASIS, then the Work Order Amount becomes the Fixed Fee Amount and the CONSULTANT shall perform all work required by this Work Order for the Fixed Fee Amount. The Fixed Fee is an all-inclusive Firm Fixed Price binding the CONSULTANT to complete the work for the Fixed Fee Amount regardless of the costs of performance. In no event shall the CONSULTANT be paid more than the Fixed Fee Amount.
  - (ii) TIME BASIS WITH A NOT-TO-EXCEED AMOUNT, then the Work Order Amount becomes the Not-to-Exceed Amount and the CONSULTANT shall perform all the work required by this Work Order for a sum not exceeding the Not-to-Exceed Amount. In no event is the CONSULTANT authorized to incur expenses exceeding the not-to-exceed amount without the express written consent of the COUNTY. Such consent will normally be in the form of an amendment to this Work Order. The CONSULTANT's compensation shall be based on the actual work required by this Work Order and the Labor Hour Rates established in the Master Agreement.
  - (iii) TIME BASIS WITH A LIMITATION OF FUNDS AMOUNT, then the Work Order Amount becomes the Limitation of Funds amount and the CONSULTANT is not authorized to exceed the Limitation of Funds amount without prior written approval of the COUNTY. Such approval, if given by the COUNTY, shall indicate a new Limitation of Funds amount. The CONSULTANT shall advise the COUNTY whenever the CONSULTANT has incurred expenses on this Work Order that equals or exceeds eighty percent (80%) of the Limitation of Funds amount. The CONSULTANT's compensation shall be based on the actual work required by this Work Order and the Labor Hour Rates established in the Master Agreement.
- f) Payment to the CONSULTANT shall be made by the COUNTY in strict accordance with the payment terms of the referenced Master Agreement.
- g) It is expressly understood by the CONSULTANT that this Work Order, until executed by the COUNTY, does not authorize the performance of any services by the CONSULTANT and that the COUNTY, prior to its execution of the Work Order, reserves the right to authorize a party other than the CONSULTANT to perform the services called for under this Work Order; if it is determined that to do so is in the best interest of the COUNTY.
- h) The CONSULTANT shall sign the Work Order first and the COUNTY second. This Work Order becomes effective and binding upon execution by the COUNTY and not until then. A copy of this Work Order will be forwarded to the CONSULTANT upon execution by the COUNTY.

# Exhibit "C"



Client:  
Seminole County  
1101 East First Street  
Sanford, FL 32771  
  
407-665-7116

CEI:  
PB Americas, Inc.  
5405 W. Cypress Street  
Suite 300  
Tampa, FL 33607  
813-287-2626

Project Name: Continuous Construction Engineering & Inspection Services  
Project Number: PS-2249-07/BHJ Projects Less than \$1M

| Personnel      | Classification                  | 2008 Hourly Rates | Multiplier | 2008 Billing Rate |
|----------------|---------------------------------|-------------------|------------|-------------------|
| Ryan, Marty    | Resident Engineer               | \$ 48.07          | 2.85       | \$ 137.00         |
| Johnson, Barry | Project Administrator/ Engineer | \$ 41.54          | 2.85       | \$ 118.39         |
| Coderre, Pat   | Senior Inspector                | \$ 25.87          | 2.85       | \$ 73.73          |
| Swingle, Shane | Inspector                       | \$ 21.90          | 2.85       | \$ 62.42          |

Revised 1/24/08

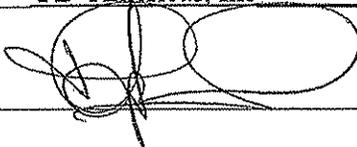
## Exhibit "D"

### Truth in Negotiations Certificate

This is to certify that, to the best of my knowledge and belief, the wage rates and other factual unit costs supporting the compensation (as defined in section 287.055 of the Florida Statutes (otherwise know as the "Consultants' Competitive Negotiations Act" or CCNA) and required under CCNA subsection 287.055 (5) (a)) submitted to Seminole county Purchasing and Contracts Division, Contracts Sections, either actually or by specific identification in writing in support of PS-2249-07/BHJ – Continuous Construction Engineering and Inspection Services Agreement for Construction Projects Less than \$1 Million Dollars are accurate, complete, and current as of \_effective date January \_5\_, 2008 \_\_ (Date)\*. This certification includes the wage rates and other factual unit costs supporting any Work Orders or Amendments issued under the agreement between the Consultant and the County.

*NOTE: The wages contained in this proposal are rates that are proposed for January 2008. Rates will be in effect as of January 5, 2008.*

Firm           PB Americas, Inc          

Signature  \_\_\_\_\_

Name           Kenneth Spillett, P.E.          

Title           Senior Vice President          

Date of execution\*\*           January 3, 2008          

\*Insert the day, month, and year when wage rate were submitted or, if applicable, an earlier date agreed upon between the parties that are as close as practicable to the date of agreement on compensation

\*\*Insert the day, month, and year of signing.

(End of certificate)