

**CONTINUING SERVICE AGREEMENT
FOR PROFESSIONAL CONTINUING PROFESSIONAL ARCHITECTURAL/
LANDSCAPE ARCHITECTURAL CONSULTING SERVICES**

THIS AGREEMENT, made and entered into this 13th day of May, 2008, by and between *Associated Consulting International, Inc. (ACi), 955 North Pennsylvania Avenue, Winter Park, FL 32789* and the *CITY OF MAITLAND, FLORIDA (CITY)*, identified herein, provides for the professional services described under item 2 of this Agreement.

CLIENT: City of Maitland
ADDRESS: 1776 Independence Lane
Maitland, Florida 32751

CONTACT PERSON(s): Dean Sprague, City Manager and Verl R. Emrick,
Executive Director Maitland CRA

TELEPHONE NO.: (407) 539-6222 and (407) 539- 1255, respectively

1. **DESCRIPTION OF PROJECT:** Professional Consulting Architectural/ Landscape Architectural Services for the City of Maitland, Florida.
2. **DESCRIPTION OF PROFESSIONAL SERVICES:** The CITY does hereby retain ACi to furnish professional services and perform those tasks include but are not limited to and are generally described as, professional planning consulting activities, conduct of specific planning studies related to implementation of the **Downtown Maitland Revitalization Plan**, assist with such CRA administrative activities as may be specified and as further described in a **Scope of Services**, for specific task as they may arise, said Scope shall be attached hereto and by reference incorporated herein.
3. **TERM:** This Agreement shall take effect on May 13, 2008, renews the Master contract executed October 27, 2003(attached) and shall run for a period of one 3year period expiring on May 14, 2011, and may be renewed, upon renegotiation, for one successive period not to exceed one (1) year each.
4. **COMPENSATION:** The CITY agrees to compensate ACi for the professional services called for under this Agreement in accordance to the budget accompanying each Scope of Work, as it may be amended. Additional work items may be approved by the CRA Board from time to time during the contract period with the compensation being computed on an hourly basis and or an agreed upon unit price for the task(s) to be accomplished. Budgeted authorization for this contract shall determined by individual Work Orders of other amendments to the Master Contract approved and executed October 27, 2003,
5. **INSURANCE:** ACi shall maintain Workers' Compensation insurance and employer's liability, and comprehensive automobile liability (bodily injury and property damage) insurance. Upon request, ACi will provide insurance certificates to the CITY.

6. **ASSIGNMENT:** This Agreement is binding upon and will inure to the benefit of the **CITY and ACi** and respective successors and assigns. Except as provided herein, neither party may assign its rights or obligations hereunder without the prior written consent of the other party.
7. **SUSPENSION, TERMINATION, CANCELLATION OR ABANDONMENT:** In the event the project described in an accompanying Scope of Services, or the services of **ACi** called for under this Agreement, is/are suspended, canceled, terminated or abandoned without cause by the **CITY, and/or ACi** shall be given thirty (30) days prior written notice of such action and shall be compensated for the professional services provided up to the date of suspension, termination, cancellation or abandonment in accordance with the provisions of the Agreement, including reimbursable expenses.
8. **CONFLICT OF INTEREST:** **ACi** agrees to not engage in any service or project which directly conflicts with any of the interests of the **CLIENT**. In the event there is such conflict, the **CITY** may terminate the Agreement pursuant to Paragraph 6.
9. **REUSE AND OWNERSHIP OF DOCUMENTS:** All data, inputs, analytical reports, contract documents and other work products that result from the professional lobbying services as part of this Agreement shall become the property of the **CITY** and shall be delivered to the **CITY** as requested. **The CITY** may use all data and products for purposes deemed appropriate by **CITY** for the business of the **CITY**.
10. **CONFIDENTIALITY CLAUSE:** To the extent that it is not in conflict with Chapter 119, F.S., **ACi** shall not release any data or information developed as part of this Agreement except to designated representatives of **the CITY**, until the final product is accepted and approved by the **CITY**.
11. **VALIDITY:** If any provision of this Agreement is invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect and the provision declared invalid or unenforceable shall continue as to the circumstances.
12. **AMENDMENTS:** This Agreement may not be amended except by written amendment signed by both parties.
13. **DISPUTE RESOLUTION:** In the unlikely event of any dispute, difference, claim or counterclaim between **ACi and the CITY** arising out of or in connection with this Agreement, which cannot be amicably resolved by the parties through good faith negotiations, any such matter, prior to litigation, shall be submitted to mediation by a mediator, certified by the Supreme Court of the State of Florida, that is mutually agreeable to both parties. If such mediation is unsuccessful, the parties agree that venue shall lie in Orange County, Florida for any subsequent litigation. Any attorney's fees incurred as a result of litigation of this Agreement shall be awarded to the prevailing party.

14. **ENTIRETY OF AGREEMENT:** This writing embodies the entire Agreement and understanding between the parties hereto, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby. No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing signed by both parties hereto.
15. **GOVERNANCE:** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida.
16. **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, with return receipt requested, addressed to the party for whom it is intended at the place last specified and 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 the giving of notice, to wit:

For the CITY:

Executive Director, Maitland CRA
 1776 Independence Lane
 Maitland, Florida 32751

For (FIRM):

ACi
 955 North Pennsylvania Avenue
 Winter Park, FL 32789

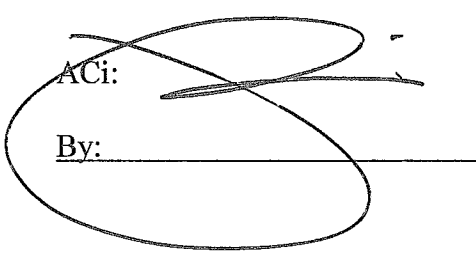
IN WITNESS WHEREOF, this Agreement is accepted on the date written above and subject to the terms and conditions set forth above.

CITY OF MAITLAND:

By: 
 Verl R. Emrick, Ex. Dir. CRA

WITNESSES:


ACi:

By: 

WITNESSES:


**CONTRACT FOR CONTINUING ARCHITECTURAL/
LANDSCAPE ARCHITECTURAL/ PLANNING SERVICES
FOR DOWNTOWN MAITLAND**

THIS AGREEMENT is made and entered into this 27 day of October, 2003, between the CITY OF MAITLAND, a Florida municipal corporation, hereinafter referred to as the "CITY", and ASSOCIATED CONSULTING INTERNATIONAL, INC. (ACi) hereinafter referred to as the "CONSULTANT".

WITNESSETH:

Whereas, the CITY desires to obtain the architectural/ landscape architectural/planning service of said CONSULTANT to provide and perform continuing professional services as further described hereinafter within the parameters and the limitation of Florida Statutes 287.055(2) (g); and,

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

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

Whereas, the City intends to study, design, and construct various projects including those listed in the Downtown Maitland Revitalization Plan, dated July 2003; and,

Whereas, the performance of such services will be pursuant to a assignment of projects by a written "Continuing Service Authorization Form"; and,

Whereas, the CONSULTANT's services and expertise are necessary to implement CITY's contemplated projects.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, it is agreed by and between the parties hereto as follows:

ARTICLE 1.00 - GENERAL DESCRIPTION OF SERVICES

The services shall include, but are not necessarily limited to, advise and consultation; technical investigations and analyses; ; planning; design; construction consultation, observation and management services and other services in the areas of architecture, landscape architecture, planning, transportation, streetscape, construction/structural, and other areas as necessary to implement the CITY's contemplated projects.

1.01 AGREEMENT SUBJECT TO LIMITATIONS OF SECTION 287.055(2) (g), FLA. STATUTES - pursuant to Florida Statutes Section 287.02(g), professional services of CONSULTANT are limited to projects in which construction costs do not exceed \$500,000.00 and/or for study activity when the fee for such professional service does not exceed \$25,000.00.

- 1.02 **OTHER WORK** - Professional services also includes work of a specified nature as outlined in this Agreement, as allowed by *Section 287.02(g), Florida Statutes*, and projects for the Downtown Maitland Revitalization Plan, dated July 2003 as contained in RFQ No. 151-01-11.
- 1.03 **CITY RESERVES RIGHT TO RETAIN OTHER CONSULTANTS FOR SPECIFIC PROJECTS** - The CITY reserves the right to obtain professional services of another CONSULTANT through a similar Continuing Services Contract, by an appropriate bidding or RFP process for any CIP or other project of the CITY, including, but not limited to those projects as contained in RFQ No. 151-01-11.

ARTICLE 2.00 - TERM OF CONTRACT

The basic Contract period shall be from date this Contract is executed until September 30, 2006. The CITY, at its sole option, after the basic Contract period, may extend the Contract for additional one (1) year periods, to a maximum of five (5) years, or may elect to re-advertise at the end of each Fiscal Year.

On or about July 1, 2004, and on or about each July 1 thereafter, the Consultant may petition the City Council for a rate adjustment to reflect the change in the cost of doing business, as measured by fluctuations in the Consumer Price Index (CPI) U.S. Average, South Group for all items, All Urban Wage Earners and Clerical Workers, published by the U.S. Department of Labor, Bureau of Labor Statistics, for the preceding 12-month period ending May 30. The maximum increase for any annual period shall be four-percent (4%). The City Council shall approve the adjusted rate by Resolution, which rate shall take effect on services billed by the City in October.

ARTICLE 3.00 - DEFINITIONS

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

- 3.01 **"CONSULTANT"** means the individual or firm offering professional services, which has executed this Agreement, and which shall be legally obligated, responsible, and liable for providing and performing any and all of the services, work and materials, including services and/or work of sub-consultants and sub-contractors, required under the covenants, terms and provisions contained in this Agreement and any and all Amendments thereto.
- 3.02 **"CONTINUING SERVICE AUTHORIZATION FORM"** shall be a written document, including but not limited to a Purchase Order, setting forth guidelines and criteria, along with the time and schedule of performance and compensation, for specific PROJECT(s) to be performed by the CONSULTANT under the terms of this Agreement.
- 3.03 **"CONTRACT MANAGER"** means the Community Development Director or his designee. The CONTRACT MANAGER, within the authority conferred by the CITY, acting as the CITY's designated representative, shall issue written notification to the CONSULTANT of any and all changes, when duly approved pursuant to this Agreement, in the CONSULTANT'S: (1) Compensation; (2) time and/or schedule of service delivery; (3) scope of services; and, (4) any other Amendment(s) or changes(s) pertaining to this Agreement. The CONTRACT MANAGER shall be responsible for acting on the CITY's behalf to administer, coordinate, interpret and otherwise manage the contractual provisions and requirements set forth in this Agreement, or any Amendment(s), Assignment(s), or Continuing Service Authorization Form(s) issued thereunder.
- 3.04 **"PARTIES"** means the signatories to this Agreement.

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

3.06 **"SUB-CONSULTANT"** means any individual or firm offering professional services which is engaged by the CONSULTANT or SUB-CONSULTANT to assist the CONSULTANT or SUB-CONSULTANT in providing and performing the professional services, work and materials for which the CONSULTANT is contractually obligated, responsible and liable to provide and performed under this Agreement. The SUB-CONSULTANT(s) engaged by the CONSULTANT shall be limited to those as identified in EXHIBIT C, attached hereto, as from time to time amended or as amended through the Task Authorization.

3.07 **"LUMP SUM METHOD OF COMPENSATION"** - Lump sum compensation shall be the total fixed price amount payable under the Lump Sum Method (including all payroll costs, overhead costs, other direct costs, fees, sub-consultants and specialist costs, as presented in EXHIBIT B, C, and D), for the services to be provided in the Purchase Order unless there is a change in the scope of the work, or other conditions stipulated in any Amendment, and the Purchase Order is modified by such Amendment.

3.08 **"BILLING RATE METHOD OF COMPENSATION"** - Compensation for services performed under the Billing Rate method shall be based on the CONSULTANT's actual hours by employee category times the rate for the category, plus actual Sub-consultant Costs and actual Other Direct Costs. EXHIBIT B attached hereto, represents the hourly rate of the CONSULTANT for professional services performed under this Contract. EXHIBIT C attached hereto, represents the rates and costs for sub-consultant(s) and specialist(s).

3.09 **"TASK AUTHORIZATION"** – Continuing Service Authorization Form (used interchangeably).

3.10 **"OTHER DIRECT COST"** - Other Direct Costs include actual costs to the CONSULTANT(s) of project-related expenses that are required to complete the Continuing Service Authorization Form. EXHIBIT D represents the "other direct costs" table.

ARTICLE 4.00 - SCOPE OF PROFESSIONAL SERVICES

The CONSULTANT hereby agrees to provide and perform the professional services required and necessary to complete to the satisfaction of the CITY the services and work as set forth in each project assignment by a Continuing Service Authorization Form.

The CONSULTANT shall diligently and in a professional and timely manner perform the work included in the Continuing Service Authorization Form. Unless modified in writing by the parties hereto, duties of the CONSULTANT shall not be construed to exceed those services as set forth in the Continuing Service Authorization Form.

The CONSULTANT agrees to perform specialized professional services for the CITY. It is agreed without limiting the generality of the foregoing that the CONSULTANT shall:

- 1) Provide all applicable architectural certifications, architectural (non-engineering) surveys, calculations, drawings, and other documents required for special permits and authorizations from various government bodies or agencies having jurisdiction over the project.

- 2) Prepare a Design Schedule showing the proposed dates of completion of various design phases and scheduled completion of construction drawings and the technical specification manuals; submit the Design Schedule for Contract Manager's review and approval;
- 3) Verify and evaluate technical proposals furnished by any required construction contractor or a construction management firm, if requested by the CITY, and provided such amplifications and explanations that may be necessary to clarify the intent of the drawings and specifications. Cooperate with and facilitate the performance of duties of a Construction Manager if so required by the CITY;
- 4) Furnish consultation and advice as requested by the CITY during any required construction and perform Construction Administration Services as required unless otherwise stipulated in a specific Continuing Service Authorization Form;
- 5) Furnish all other services including without limitation those specified hereinafter in this Agreement and those required for the completion of specific projects as described in Downtown Maitland Revitalization Plan dated July 2003.

ARTICLE 5.00 - OBLIGATIONS OF THE CONSULTANT

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

- 5.01 **RESPONSIBILITY OF THE CONSULTANT** - The CONSULTANT shall be responsible for the professional and technical accuracy and the coordination of all designs, drawings, specifications and other work or materials furnished by the CONSULTANT under this Contract. Drawings, specifications, and estimates shall be delivered to the Contract Manager in such sequence and at such times as required by the CITY and as will insure that the construction work can be initiated promptly, procurement of materials made without delay and continuous prosecution of the work promoted, all in strict accordance with the approved Design Schedule as provided in Article 4.00, Paragraph #2 above. After the Contract Manager has approved the various drawings and specifications noted herein, the CONSULTANT shall furnish such number of sets of prints and approved specifications as may be required by the Contract Manager.
- 5.02 **LICENSES** - The CONSULTANT agrees to obtain and maintain, throughout the period that this Agreement is in effect, all such licenses as are required to do business in the State of Florida, in Orange County, and in the City of Maitland, Florida, including, but not limited to, licenses required by any State Boards and other governmental agencies responsible for regulating and licensing the professional services provided and performed by the CONSULTANT pursuant to this Agreement.
- 5.03 **SITE VISITS/SPECIAL PERMITS** - The CONSULTANT shall visit the site and shall initiate and hold such conferences with representatives of the City and other agencies, boards or government bodies having jurisdiction over the area the project covers and take such other action as may be necessary to obtain all permits and authorizations (except the construction permits) and all other data upon which to develop the design and preliminary sketches showing the contemplated project. Permit Schedule indicating the dates on which permit applications will be submitted and the expected permit / authorization issuance dates.

Unless otherwise specified in writing by the CITY in the Continuing Service Authorization Form, the CONSULTANT will be responsible for preparation, submittal and responses to agency review and comments regarding required permits with respect to the CONSULTANT's design, drawings, and specifications required by any governmental body having authority over a

PROJECT. Any fees required for such reviews, approvals or permits will be covered by a check issued by the CITY and made payable to the respective governmental body upon the CONSULTANT agency furnishing the CITY satisfactory documentation of such fees. The CONSULTANT will be responsible for advising the CITY when renewals and/or extensions are due and for preparation, submittal and responses to agency reviews and comments regarding renewals or extensions of reviews, approvals or permits that may be required while each supplement is in effect.

The CITY shall, at the CONSULTANT's request, assist in obtaining required signatures and provide the CONSULTANT with all information known to be available to the CITY so as to assist the CONSULTANT in the preparation and submittal of any original, renewal or extension of required reviews, approvals or permits.

5.04 SCHEMATIC DESIGN PHASE –

5.04.1 The CONSULTANT shall review the program furnished by the CITY to ascertain the requirements of the PROJECT and shall arrive at a mutual understanding of such requirements with the CITY.

5.04.2 The CONSULTANT shall provide a preliminary evaluation of the CITY's program, schedule and construction budget requirements, each in terms of the other, subject to the following limitation: The CONSULTANT's evaluation of the Owner's Project budget represents the CONSULTANT's judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the CONSULTANT nor the CITY has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market, or negotiating conditions. Accordingly, the CONSULTANT cannot and does not warrant or represent that bids or negotiated prices will not vary from the CITY's PROJECT budget or from any estimate of Construction Cost or evaluation prepared or agreed to by the CONSULTANT. Regardless of limitations, CITY reserves the right to terminate this Agreement if CONSULTANT's cost estimates or evaluation of budget for any PROJECT is deemed to be unacceptable for that PROJECT.

5.04.3 The CONSULTANT shall review with the CITY alternative approaches to design and construction of the PROJECT.

5.04.4 Based on the mutually agreed-upon program, schedule and construction budget requirements, the CONSULTANT shall prepare, for approval by the CITY, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of PROJECT components.

5.04.5 The CONSULTANT shall submit to the CITY a preliminary estimate of Construction Cost based on current area, volume or similar conceptual estimating techniques.

5.04.6 The CONSULTANT shall change the Schematic Design Documents to the extent necessary to meet the requirements of the CITY, and after approval by the Contract Manager, the CONSULTANT shall furnish to the CITY all necessary prints of the approved Schematic Design Documents together with the revised construction Cost Estimate.

5.05 DESIGN DEVELOPMENT PHASE

5.05.1 Based on the approved Schematic Design Documents and any adjustments authorized by the CITY in the program, schedule or construction budget, the CONSULTANT shall prepare, for approval by the CITY, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the PROJECT as to architectural,

structural, mechanical and electrical systems, materials and such other elements as may be appropriate.

5.05.2 The CONSULTANT shall advise the CITY of any adjustments to the preliminary estimate of Construction Cost. If costs are projected to exceed preliminary budget, then CONSULTANT shall provide CITY with detailed description of changes influencing cost increase over budget and options for reducing costs to within the preliminary budget.

5.05.3 The CONSULTANT shall change the Design Development Documents to the extent necessary to meet the requirements of the CITY, and after approval by the Contract Manager, the CONSULTANT shall furnish to the CITY all necessary prints of the approved Design Development Documents together with the revised construction Cost Estimate.

5.06 CONSTRUCTION DOCUMENTS PHASE

5.06.1 Based on the approved Design Development Documents and any further adjustments in the scope or quality of the PROJECT or in the construction budget authorized by the CITY, the CONSULTANT shall prepare, for approval by the CITY, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the PROJECT.

5.06.2 The CONSULTANT shall assist the CITY in the preparation of necessary bidding information, bidding forms, the Conditions of the Contract, and the form of Agreement between the CITY and Contractor.

5.06.3 The CONSULTANT shall advise the CITY of any adjustments to previous preliminary estimates of Construction Cost indicated by changes in requirements or general market conditions.

5.06.4 The CONSULTANT shall assist the CITY in connection with the CITY's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the PROJECT and the required drawings and specifications provided in this phase shall satisfy all requirements of permitting and regulatory agencies having jurisdiction.

5.06.5 The CONSULTANT shall change the Construction Documents to the extent necessary to meet the requirements of the CITY and permitting and regulatory agencies having jurisdiction, and after approval by the Contract Manager, the CONSULTANT shall furnish to the CITY all necessary prints of the approved Construction Documents together with the revised construction Cost Estimate.

5.07 ORIGINAL DRAWINGS / FINAL PLANS - Upon approval of final plans, the CONSULTANT shall deliver to the CITY one set of original drawings, in such medium and on such materials, as may be required by the Contract Manager, suitable for reproduction, showing complete approved construction requirements (not of "as-built" construction unless otherwise stipulated), provided, however, that should this Contract be terminated by the CITY, the CONSULTANT shall deliver to the CITY one set of originals in a form acceptable to the CITY. Such originals, as are delivered, shall become and remain the property of the CITY.

5.07 REVISION OF DRAWINGS AND SPECIFICATIONS - The CONSULTANT shall, without additional fee, correct and revise the drawings, specifications, or other materials furnished under this Contract, if the Contract Manager finds that such revision is necessary to correct errors or deficiencies for which the CONSULTANT is responsible.

5.08 BIDDING OR NEGOTIATION PHASE - The CONSULTANT, following the CITY's approval of the Construction Documents and of the latest preliminary estimate of Construction Cost, shall assist the CITY in obtaining bids or negotiated proposals and assist in awarding and preparing

contracts for construction. The CONSULTANT shall perform all necessary architectural services of every kind required in connections with the competitive bidding for construction of the project and the preparation of all documents required thereof, including preparation of documents for separate bid packages for multiple contractors or documents to be used in connection with the services of a Construction Manager if so required by Contract Manager. Upon award of construction Contract(s), the CONSULTANT shall furnish, upon request and without additional compensation, such amplifications and explanations and attend such conferences as may, in the opinion of the Contract Manager, be necessary to clarify the intent of the drawings and specifications and shall afford the benefit of its advice on questions that may arise in connection with the construction of the project.

5.08 CONSTRUCTION PHASE –

- 5.08.1** The CONSULTANT's responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the award of the initial Contract for Construction and terminates at the earlier of the issuance to the CITY of the final Certificate of Payment or sixty (60) days after the date of Substantial Completion of the Work.
- 5.08.2** The CONSULTANT shall provide administration of the Contract for Construction as set forth below and in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Contract, unless otherwise provided in this Contract or in the Continuing Service Authorization Form. Modifications made to the General Conditions, when adopted as part of the Contract Documents, shall be enforceable under this Contract only to the extent that they are consistent with this Contract or approved in writing by the CONSULTANT.
- 5.08.3** Duties, responsibilities and limitations of authority of the CONSULTANT under this section shall not be restricted, modified or extended without written consent by the CITY and CONSULTANT, which consent will not be unreasonably withheld.
- 5.08.4** Following the award of Contract(s) for the construction of the project, the CONSULTANT shall:
- (a) Provide general surveillance during construction which shall include sufficient visits to the site of the project to observe the progress and quality of the work, and to determine if the work is proceeding in accordance with the Contract documents. On the basis of the CONSULTANT's observations during such periodic visits, the CONSULTANT shall keep the CITY informed of the progress and quality of the work, guard the CITY against defects and deficiencies in the work of the contractors, and all subcontractors and recommend disapproval work that does not, in the CONSULTANT's opinion, conform to the Contract documents. In no respect, however, shall the CONSULTANT be responsible for the performance of the contractor(s) of the construction Contract(s).
 - (b) The CONSULTANT shall check and approve samples, schedules, shop drawings and other submissions for conformance with the Contract documents, and for compliance with the information given by the Contract documents. They shall prepare any necessary change orders and assemble written guarantees required of the contractors.
 - (c) Based on the observations and surveillance, as set forth above and on evaluation of the contractors' progress payment requests, the CONSULTANT shall determine the amount owed to the contractor(s) and shall transmit the contractor's payment requests to the CITY with recommendation for payment in accordance with the terms and conditions of the Contract documents. The CONSULTANT shall conduct visits to the project as necessary to determine the dates of Substantial and Final Completion and shall issue to the CITY a Final Certificate of Payment. Such certificate for payment shall constitute a representation of the CONSULTANT to the CITY that the quantity of the work has been performed in accordance with the Contract documents. The CONSULTANT shall obtain from the contractor(s) a periodic waiver of liens and "no lien affidavits" with each

payment request. The CONSULTANT shall obtain from the contractor(s) final waivers of lien and final "no lien affidavits" prior to certification of Final Payment. (d) Nothing contained in any part of this Contract is intended or shall be construed to govern or modify any of the terms or conditions of the construction Contract documents or the rights and obligations between the CITY and its contractor or contractors, and any legal relationships between the CITY and contractor(s) are exclusively framed by the terms and conditions of the Contract for construction between the CITY and the contractor(s).

- 5.08.5 The CONSULTANT shall be a representative of and shall advise and consult with the CITY during the administration of the Contract for Construction. The CONSULTANT shall have authority to act on behalf of the CITY only to the extent provided in the Continuing Service Authorization Form.
- 5.08.6 The CONSULTANT shall report to the CITY known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor. However, the CONSULTANT shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The CONSULTANT shall be responsible for the CONSULTANT's negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.
- 5.08.7 CONSULTANT shall at all times have access to the Work wherever it is in preparation or progress.
- 5.08.8 Except as otherwise provided in this Contract or when direct communications have been specially authorized, the CITY shall endeavor to communicate with the Contractor through the CONSULTANT about matters arising out of or relating to the Contract Documents. Communications by and with the CONSULTANT's subconsultants shall be through the CONSULTANT.

5.09 CERTIFICATES FOR PAYMENT

- 5.09.1 CONSULTANT shall review and certify the amounts due the Contractor and shall issue certificates in such amounts.
- 5.09.2 CONSULTANT's certification for payment shall constitute a representation to the CITY, based on the CONSULTANT's evaluation of the Work as provided herein and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the CONSULTANT's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the CONSULTANT.
- 5.09.3 The issuance of a Certificate for Payment shall not be a representation that the CONSULTANT has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the CITY to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

5.10 ADDITIONAL REQUIRED SERVICES - The CITY and the CONSULTANT agree that there may be certain additional services required to be performed by the CONSULTANT during term of this Agreement that cannot be defined sufficiently at the time of execution of this Agreement. Such additional services shall be authorized in writing as Continuing Service Authorization Forms or amendment(s) thereto.

5.11 PERSONNEL

- (1) Qualified Personnel - The CONSULTANT agrees that when the services, to be provided and performed hereunder relate to a professional service(s) which, under Florida Statutes, requires a license, certificate of authorization, or other form of legal entitlement to practice such services, it will employ and/or retain only qualified personnel to be in responsible charge of all such services to be provided pursuant to this Agreement.
- (2) CONSULTANT's Project Manager - The CONSULTANT agrees to employ and designate, in writing, a qualified, licensed professional to serve as the CONSULTANT's Project Manager. The CONSULTANT's Project Manager shall be authorized and responsible to act on behalf of the CONSULTANT with respect to directing, coordinating and administering all aspects of the services to be provided and performed under this Agreement and any Amendment(s) or change thereto. The CONSULTANT's Project Manager shall have full authority to bind and obligate the CONSULTANT on any matter arising under this Agreement and its Amendment(s) unless substituted arrangements have been expressly agreed to by the CITY in writing.

The CONSULTANT agrees that the Project Manager shall devote whatever time is required to satisfactorily manage the services provided and performed by the CONSULTANT throughout the entire period that this Agreement is in effect. The person selected by the CONSULTANT to serve as the CONSULTANT's Project Manager shall be subject to the prior approval and acceptance of the CITY.

- (3) Removal of Personnel - The CONSULTANT agrees to promptly remove and replace the CONSULTANT's Project Manager, or any other personnel employed or retained by the CONSULTANT, or personnel of the subconsultant(s) or sub-contractor(s) engaged by the CONSULTANT to provide and/or perform services and/or work pursuant to the requirements of this Agreement, who the CITY shall request in writing be removed, which request may be made by the CITY with or without cause. All sub-consultants shall be subject to prior written approval by the CITY.
- 5.12 TIMELY ACCOMPLISHMENT OF SERVICES** - The timely and expeditious accomplishment and completion by the CONSULTANT of all professional services provided pursuant to this Agreement, and any Amendments or changes thereto, is of the essence. The CONSULTANT agrees to employ, engage, retain and/or assign an adequate number of personnel throughout the period of this Agreement so that all professional services provided pursuant to this Agreement, or any Amendments or changes hereto, will be provided, performed and completed in a diligent, continuous, expeditious and timely manner.
- 5.13 NOTICE AND EXTENSION OF TERM** - The CITY shall give prompt written notice to the CONSULTANT whenever the CITY observes or otherwise becomes aware of any development that affects the scope or timing of the CONSULTANT's Services, or any defect in the work of the contractor(s). If the CONSULTANT has been delayed in completing its Services through no fault or negligence of its own, and, as a result, will be unable to complete performance fully and satisfactorily under the provisions of any Continuing Service Authorization Form, then, in the Contract Manager's sole discretion, and upon the submission to the Contract Manager of

evidence of the causes of the delay, the CONSULTANT shall be granted an extension of its project schedule equal to the period the CONSULTANT was actually and necessarily delayed.

- 5.14 *STANDARDS OF PROFESSIONAL SERVICES*** - The CONSULTANT agrees to provide and perform the professional services provided pursuant to this Agreement, and any Amendments or changes thereto, in accordance with generally accepted standards of professional practice and in accordance with the laws, statutes, ordinance, codes, rules, regulations and requirements of any and all governmental agencies which may regulate or have jurisdiction over the project and services to be provided and/or performed by the CONSULTANT, and by any SUB-CONSULTANT(s) and/or sub-contractor(s) engaged by the CONSULTANT.
- 5.15 *NOT TO DIVULGE CERTAIN INFORMATION*** - CONSULTANT agrees, during the term of this Agreement and forever thereafter, not to divulge, furnish or make available to any third person, firm, or organization, without CITY's prior written consent, or unless incident to the proper performance of CONSULTANT's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by CONSULTANT or any subconsultant(s) or sub-contractor(s) pursuant to this Agreement, and CONSULTANT shall require all of its employees, sub-consultants(s) and subcontractor(s) to comply with the provisions of this paragraph.
- 5.16 *EXPERT WITNESS*** - The CONSULTANT shall serve as an expert witness for the CITY in any legal proceedings arising in connection with this Contract, if the CITY so requests. The expert witness fee for CONSULTANT shall be negotiated at the time the CONSULTANT is called for such a duty.
- 5.17 *RESPONSIBILITY FOR ESTIMATES OF CONSTRUCTION COSTS***
- (1) In the event the services required pursuant to the Agreement include the CONSULTANT preparing and submitting opinions of probable construction cost which are based on designs, plans, drawings, and specifications and bid documents prepared by the CONSULTANT, the CONSULTANT will develop an opinion of probable construction cost using professional care and judgment in accordance with the guidelines set forth by the American Institute of Architects (AIA). It is recognized that the final costs of the project will depend on competitive market conditions and other factors beyond the CONSULTANT's control. Thus, final costs will vary from any opinion of probable construction costs.
 - (2) The CONSULTANT shall develop and prepare project designs, plans, drawings, specifications, and bid documents that will be the basis of the CONSULTANT preparing a project estimate. Such project estimate will not exceed by more than ten percent (10%) any budget estimate, or budgetary limitation(s) established by the CITY and provided by the CITY to the CONSULTANT and accepted by the CONSULTANT for its guidance during the planning and design development phase.
 - (3) In the event the lowest, responsible and acceptable priced proposal or bid received by the CITY within six (6) months from the date of the CITY's acceptance of designs, plans, drawings, specifications and bid documents produced by the CONSULTANT exceeds the budget prepared by the CONSULTANT by ten percent (10%) but less than 25%, the CITY may: (1) give written approval to increase such, Construction Cost Estimate; (2) authorize negotiating or rebidding of the Project within a reasonable time; or, (3) cooperate in revising the Project's requirements and with sound professional practices. In the case of (3), the CONSULTANT shall modify the Drawings and Specifications as necessary to

bring the construction cost within the construction Cost Estimate. In lieu of other compensation for Services in making such Services, all overhead expenses reasonable related thereto, and Reimbursable Expenses, but without profit, shall be paid to the CONSULTANT on account of such Services only if such budget exceedance was as a result of CONSULTANT's failure to perform as indicated in 5.17(l).

- (4) If the lowest, responsive and acceptable priced proposal or bid exceeds the established Budget Estimate by 25% or more, the CITY may: (1) give written approval to increase the construction Cost Estimate; (2) authorize negotiations or rebidding of the Project within a reasonable time; or, (3) cooperate in revising the Project's general scope, extent or character to the extent consistent with the Project's requirements and with sound professional practices. In the case of (3), the CONSULTANT shall modify the Drawings and Specifications as necessary to bring the Construction cost within the Construction Cost Estimate at no cost to the CITY only if such budget exceedance was as a result of CONSULTANT's failure to perform as indicated in 5.17(l).

ARTICLE 6.00 - OBLIGATIONS OF THE CITY

6.01 DESIGNATION OF CITY'S CONTRACT MANAGER / PROJECT COORDINATOR - The CITY agrees in each Task Authorization to promptly advise the CONSULTANT, of the person designated to serve and act as the CITY'S CONTRACT MANAGER pursuant to the provisions of Article 3.02 of this Agreement.

6.02 AVAILABILITY OF CITY INFORMATION - Guidelines to the CONSULTANT regarding requirements the CITY has established or suggests relative to a PROJECT including, but not limited to such items as: goals, objectives, constraints, and any special financial, budgeting, space, site, operational equipment, technical, construction, time and scheduling criteria shall be attached to any Task Authorization.

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

6.03 AVAILABILITY OF CITY'S DESIGNATED REPRESENTATIVES - The CITY agrees that the CONTRACT MANAGER shall be available within a reasonable period of time, with reasonable prior notice given by the CONSULTANT, to meet and/or consult with the CONSULTANT on matters pertaining to the services to be provided and performed by the CONSULTANT. The CITY further agrees to respond within a reasonable period of time to written requests submitted by the CONSULTANT.

6.04 ACCESS TO CITY PROPERTY - The CITY agrees, with reasonable prior written notice given by the CONSULTANT, to provide the CONSULTANT with access within a reasonable period of time to CITY property, facilities, buildings and structures to enable the CONSULTANT to provide and perform the required professional services and work pursuant to this Agreement. Such rights of access shall not be exercised in such a manner or to such an extent as to impede or interfere with CITY operations, or the operations carried on by others under a lease, or other contractual arrangement with the CITY, or in such a manner as to adversely affect the public

health and safety. Such access may, or may not, be within the CONSULTANT's normal office and/or field work days and/or work hours.

ARTICLE 7.00 - OWNERSHIP AND REUSE OF DOCUMENTS

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

Upon completion of any PROJECT or termination of this Agreement, all of the above documents to the extent and in the form requested by the CITY in the Task Authorization shall be promptly delivered to and become the property of the CITY.

7.02 **REUSE OF DOCUMENTS** - The CITY shall have unlimited rights, for the benefit of the CITY, in all drawings, designs, specifications, notes, and other CONSULTANT's work produced in the performance of this Contract, or in contemplation thereof, and all as-built drawings produced after completion of the work, including the right to use same on any other CITY work without additional cost to the CITY. All documents including drawings and specifications prepared by CONSULTANT pursuant to this Contract are instruments of service with respect to each project. They are not intended or represented to be suitable for reuse by CITY or others for any other project.

Reuse for another project without written verifications or adaptation by CONSULTANT for the specific purpose intended will be at CITY's risk. Any such verification or adaptation, if requested by CITY, will entitle CONSULTANT to further compensation at rates to be agreed upon by CITY and CONSULTANT. A set of plans and specifications and all as-built drawings shall be delivered to and become the property of the CITY upon completion of each project by the CONSULTANT in a form acceptable to the CITY.

ARTICLE 8.00 - MAINTENANCE OF RECORDS

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

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

ARTICLE 9.00 - COMPENSATION AND METHOD OF PAYMENT

9.01 **BASIC SERVICES** - The CITY shall pay the CONSULTANT for all requested and authorized professional services rendered by the CONSULTANT, completed in accordance with the requirements, provisions, and/or terms of this Agreement and applicable Task Authorization, and accepted by the CITY. Such payment shall be either a lump sum, or billing rate method of compensation, or combination of such methods as designated by the Task Authorization.

9.02 METHOD OF PAYMENT

- (1) The CONSULTANT shall submit a monthly statement for professional services rendered to date of the statement. The monthly statements shall reflect the CONSULTANT's cost of the services actually completed at the time of billing to the total services to be performed under the appropriate Task Authorization issued pursuant to the Agreement. Such statements are to be prepared by the CONSULTANT in a form and accompanied by such supporting data as may be required by the Contract Manager of the CITY.
- (2) The CITY shall issue payment to the CONSULTANT within thirty (30) calendar days after receipt of an invoice statement from the CONSULTANT containing the requested breakdown and detailed description and documentation of charges. Should the CITY object or take exception to the amount of any CONSULTANT's invoice statement, the CITY shall notify the CONSULTANT of such objection or exception with the thirty (30) calendar days payment. If such objection or exception remains unresolved at the end of said thirty (30) calendar day period, the CITY shall withhold the disputed amount and make payment to the CONSULTANT of the amount not in dispute. Payment of any disputed amount, or adjustments thereto, shall be made within thirty (30) calendar days of the date such disputed amount is resolved by mutual agreement of the parties to this Agreement. If the parties cannot agree, the dispute shall be submitted to Mediation as set forth in Article 21.00 of this Agreement.

9.03 PAYMENT WHEN CONSULTANT'S SERVICES ARE TERMINATED UNDER THIS AGREEMENT

- (1) In the event of termination of this Agreement at the convenience of the CITY, not due to the fault of the CONSULTANT, the CITY shall compensate the CONSULTANT for: (1) all services performed prior to the effective date of termination; (2) reimbursable direct costs then due; and, (3) reasonable expenses incurred by the CONSULTANT in effecting the termination of services and work and incurred by the submittal to the CITY of project drawings, plans, data, and other project documents.
- (2) In the event of termination of this Agreement due to the fault of the CONSULTANT, or at the written request of the CONSULTANT, the CITY shall compensate the CONSULTANT for: (1) all services completed prior to the effective date of termination which have resulted in a product that tangible benefited the CITY; (2) reimbursable direct costs then due; and, (3) reasonable expenses incurred by the CONSULTANT in effecting termination of project work incurred by the submittal to the CITY of project drawings, plans, data and other project drawings. Any such payments shall be subject to set-offs for any damages incurred by CITY resulting from delays occasioned by the termination.

9.04 PAYMENT WHEN SERVICES OR A SPECIFIC TASK AUTHORIZATION ARE SUSPENDED OR TERMINATED - In the event the CITY suspends the CONSULTANT's services and work on all or part of the professional services required to be provided and performed by the CONSULTANT pursuant to a specific Task Authorization, the CITY shall compensate the CONSULTANT for all services performed prior to the effective date of such suspension or termination of a specific Task Authorization and reimbursable direct costs then due.

9.05 LIMITATION ON TERMINATION PAYMENT TO CONSULTANT - In no event shall payments to CONSULTANT under Article 9.03 or 9.04 of this Agreement exceed the total Task Authorization or Contract price. It is agreed that such total price shall be reduced by the amount of payments made to date of termination.

9.06 In the event the Contract is terminated because of CONSULTANT's default, the CITY may take over the CONSULTANT's work and services and complete the same by Contract or otherwise, and the CONSULTANT shall be liable to the CITY for the completion costs of the project.

ARTICLE 10.00 - MODIFICATIONS TO SCOPE OF WORK/CHANGE ORDERS

As applicable to each specific project performed by the CONSULTANT during the term of this Agreement, the Contract Manager may at any time, by written order, and without notice to the sureties, make changes within the general scope of this Agreement the work and service to be performed under a Task Authorization or under this Agreement. If any such changes cause an increase or decrease in the CONSULTANT's cost, or the time required for performance of the project work, an equitable adjustment shall be made and the Task Authorization or this Agreement shall be amended in writing accordingly. Any claim by the CONSULTANT for adjustment under this clause must be asserted in writing within thirty (30) calendar days from the date of receipt by the CONSULTANT of the notification of change unless the Contract Manager grants a further period of time before the date of Final Payment under a Task Authorization or this Agreement. The CONSULTANT shall proceed with the prosecution of the work as changed. Except as otherwise provided in this Agreement, no charge for any extra work or materials is allowed.

ARTICLE 11.00 - AUDIT AND EXAMINATION OF RECORDS

For purposes of verifying that cost or pricing data submitted, in conjunction with the negotiation of this Contract or any Contract change or other modification are accurate, complete, and current, the Contract Manager, shall, until the expiration of three (3) years from the date of final payment under this Contract, have the right to examine those books, records, documents, and other supporting data which will permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein, which were prepared by the CONSULTANT in connection with work under this Contract.

The CONSULTANT agrees to insert the substance of this clause in all sub-contracts hereunder so as to apply until three (3) years after final payment under the subcontract, unless the price is based on established catalog or market prices or commercial items sold in substantial quantities to the general public, or prices are set by law or regulation.

ARTICLE 12.00 - SUBCONTRACTORS; OUTSIDE ASSOCIATES AND CONSULTANTS

Any subcontractors and outside associates or sub-consultants required by the CONSULTANT in connection with the professional services covered by the Agreement will be limited to such individuals or firms as are specifically identified in the appropriate Task Authorization per this Agreement. Any substitution of such subcontractors, associates, or consultants will be subject to the prior written approval of the Contract Manager.

ARTICLE 13.00 - TIME AND SCHEDULE OF PERFORMANCE

13.01 TIME IS OF THE ESSENCE - The timely performance and completion of the required services, work and materials is vitally important to the interest of the CITY. Time is of the essence for all the duties and obligations contained in this Agreement and any Amendment(s) thereto.

13.02 NOTICE TO PROCEED - Following the execution of this Agreement by both parties, and after the CONSULTANT has complied with the insurance requirements set forth hereinafter, the CITY shall issue the CONSULTANT a written Notice to Proceed for each project identified in each Task Authorization. Following the issuance of such Notice to Proceed, the CONSULTANT shall be authorized to commence work and the CONSULTANT thereafter shall commence work promptly and shall carry on all such services and work as may be required in a continuous, diligent and forthright manner to expeditious completion.

13.03 **TIME OF PERFORMANCE** - The CONSULTANT agrees to complete the services required pursuant to this Agreement within the time period(s) for completion of the various phases and/or tasks of the PROJECT as set forth in each Task Authorization.

Should the CONSULTANT be obstructed or delayed in the prosecution or completion of its obligations under this Agreement and any Amendment(s) or changes hereto, as a result of unforeseeable causes beyond the control of the CONSULTANT, or its sub-consultants(s) and/or sub-contractor(s), and not due to their fault or neglect, the CONSULTANT shall notify the CITY, in writing promptly, after the commencement of such delay, stating the cause(s) thereof and requesting an extension of the CONSULTANT's Time of performance. The CONSULTANT may, subsequent to notifying the CITY of the delay, request a time extension to the CONSULTANT's Time of Performance prior to the completion of the project. Upon receipt of the CONSULTANT's request for an extension of time, the CITY shall grant the extension if the CITY determines the delay(s) encountered by the CONSULTANT, or its sub-consultant(s) and/or subcontractor(s), is due to unforeseen causes and not attributable to their fault or neglect.

13.04 **FAILURE TO PERFORM IN A TIMELY MANNER** - Should the CONSULTANT fail to commence, provide, and/or perform any of the services and work required pursuant to this Agreement in a timely, continuous, diligent and expeditious manner, the CITY may consider such failure as justifiable cause to terminate this Agreement and/or any Task Authorization.

ARTICLE 14.00 - INSURANCE COVERAGE TO BE OBTAINED

The CONSULTANT shall obtain and maintain such insurance coverage and in such amounts, as specifically identified and specified by this Agreement.

14.01 CONSULTANT REQUIRED TO FILE INSURANCE CERTIFICATE(S)

- (1) The CONSULTANT within thirty (30) calendar days from execution of this Agreement, shall submit to the CITY all such insurance certificates and policies as are required under this Agreement. Failure of the CONSULTANT to submit such certificates and policies within the required time shall be considered cause for the CITY to cancel this Agreement without penalty or expense, and rescind its action to engage the CONSULTANT. Before the CITY shall provide the CONSULTANT with written Notice to Proceed, and before the CONSULTANT shall commence any service or work pursuant to the requirements of this Agreement, the CONSULTANT shall obtain and maintain insurance coverages of the types and to the limits specified hereinafter, and the CONSULTANT shall file with the CITY certificates and policies of all such, insurance coverages.
- (2) Each Certificate of Insurance shall be submitted to the CITY in triplicate.
- (3) Each Certificate of Insurance shall specifically include all of the following:
 - (A) The name and type of policy and coverages provided;
 - (B) The amount or limit applicable to each coverage provided;
 - (C) The date of expiration of coverage;
 - (D) The designation of the CITY if Maitland, Florida as an additional insured and a certificate holder. (This requirement is excepted for Professional Liability Insurance and for Worker's Compensation Insurance).
 - (E) A specific reference to this Agreement (this requirement is excepted for Professional Liability Insurance);

- (4) The following clause must appear on the Certificate of Insurance and the present Cancellation Clause appearing on the Certificate of Insurance must be "X'd" out and be initialed by the Agent of the Insurer:

"Cancellation - Should any of the above described policies be cancelled before the stated expiration date thereof, insurer will not cancel same until at least thirty (30) days prior written notice (by certified mail) has been given to the below named certificate holder. This prior notice provision is a part of each of the described policies."

- (5) Each Certificate of Insurance shall be accompanied by documentation that is acceptable to the CITY establishing that the insurance agent and/or agency issuing the Certificate of Insurance has been duly authorized, in writing, to do so by and on behalf of the insurance company underwriting the insurance coverage(s) indicated on each Certificate of Insurance.
- (6) If the initial, or any subsequently issued Certificate of Insurance expires prior to the completion of the work or termination of this Agreement, the CONSULTANT shall furnish to the CITY, triplicate, renewal or replacement Certificate(s) or Insurance not later than thirty (30) calendar days prior to the date of their expiration. Failure of the CONSULTANT to provide the CITY with such renewal certificate(s) shall be considered justification for the CITY to terminate this Agreement.

14.02 INSURANCE COVERAGE AND POLICIES REQUIRED - All policies required hereunder must contain language requiring thirty (30) days notification to the CITY and to the CITY's designated insurance External Risk Manager of any changes in, or cancellations of coverage.

All insurance policies shall be issued by insurers licensed to do business in the State of Florida and any insuring company is required to have a minimum rating of B, Class VIII in the "Best Key Rating Guide" published by A.M. Best & Company, Inc.

- (1) **WORKER'S COMPENSATION.** The CONSULTANT shall secure and maintain during the Contract term, all Worker's Compensation Insurance required by Florida law for itself and his employees, and shall require the same coverage for his consultants or subsidiaries, if any, and their employees covering this project, without exclusion of any class of employee, and with FIVE-HUNDRED-THOUSAND DOLLARS (\$500,000.00) Employer's Liability coverage.
- (2) **LIABILITY**
- (A) **COMMERCIAL GENERAL** - The CONSULTANT shall secure and maintain during the Contract term ONE MILLION DOLLARS (\$1,000,000.00) single limit Commercial Liability insurance covering itself, employees, agents, consultants or subsidiaries and their employees or agents, for claims for damages for personal injury and property damage, including what is commonly known as Groups A, B, and C. Such policy shall include coverage for claims by any person as a result of actions directly or indirectly related to the employment of such person by the CONSULTANT or by any other persons. Public Liability coverage shall include either Blanket contractual insurance, and shall make express reference to the CONSULTANT's hold-harmless provision as provided in Article 15.00 of this Agreement.
- (B) **MOTOR VEHICLE** - The CONSULTANT shall secure and maintain during Contract term, ONE MILLION DOLLARS (\$1,000,000.00) single limit Business Automobile Liability insurance, covering itself, employees, agents, consultants

or subsidiaries and their employees or agents, for claims for damages for personal injury and property damage, including what is commonly known as Groups A, B, and C. Such policies shall include coverage for claims by any person as a result of actions directly or indirectly related to the employment of such person by the CONSULTANT or by any other persons. Public Liability coverage shall also include automobiles, whether owned, non-owned, or hired. It shall include Blanket Contractual insurance, and shall make express reference to the CONSULTANT'S hold-harmless provision as provided in Article 15.00 of this Agreement.

- (C) **PROFESSIONAL** - The CONSULTANT shall secure and maintain during the Contract term and for at least three (3) years thereafter, Professional Liability insurance coverage with minimum limits of ONE MILLION DOLLARS (\$1,000,000.00) (with a maximum deductible of \$50,000 per claim). Such policy shall cover all of the CONSULTANT's professional liabilities whether occasioned by the CONSULTANT, its agents, employees, subconsultants or subsidiaries, or their agents or employees, arising out of services performed under or in accordance with this Contract. The CONSULTANT shall immediately inform its carrier, the CITY's designated insurance Risk Manager and the CITY of any contractual obligations that may alter its Professional Liability coverage under this Contract. The CONSULTANT will furnish copies of the policy and any changes or Task Authorizations thereto, immediately, to the CITY and CITY's designated Risk Manager, prior to the commencement of any such contractual obligations. The proposed policy shall be subject to the CITY's approval.

The CONSULTANT shall timely report in writing to the CITY's designated insurance Risk Manager any option for modification in the original Professional Liability coverage offered by its insurer for the benefit of the CITY; the additional expense of such option, if any, shall if exercised by the CITY, constitute a reimbursable expense to the CONSULTANT.

- (3) **PERSONAL PROPERTY** - The CONSULTANT shall secure and maintain during the Contract term, adequate insurance coverage for its own personal property and for the personal property of its employees and agents, and shall require the same coverage for its subsidiaries or sub-consultants and their employees and agents. Such coverage shall include, but not be limited to, motor vehicles, whether licensed or unlicensed, mobile equipment, whether licensed or unlicensed, and temporary or portable shelters or offices.

14.03 NOTICE OF CLAIMS - The CONSULTANT shall timely report in writing to the CITY's Director Risk Management and CITY's designated insurance Risk Manager, any incident which might reasonably be expected to result in claims under any of the coverages mentioned herein.

ARTICLE 15.00 - HOLD-HARMLESS AND INDEMNITY

15.01 LIABILITY - The CONSULTANT shall indemnify and hold the CITY harmless from all claims for personal injury and property damages that may arise and be the proximate result of errors, omission, or negligent acts of the CONSULTANT or its sub-consultants, employees, or agents during the performance of services under this Contract. Notwithstanding this indemnification and not by any way of waiver of such indemnification, the CONSULTANT shall obtain and retain throughout the term of the Contract, insurance coverage described herein.

15.02 **PERSONAL PROPERTY** - The CONSULTANT shall save the CITY harmless from the claims of any person for loss, loss of use, or damage to the personal property of the CONSULTANT, its agents, employees, sub-consultants or subsidiaries, during the Contract term; such save harmless agreement shall include a waiver by the CONSULTANT's Personal Property Insurance Company of any subrogation against the CITY for loss occurring under the CONSULTANT's Personal Property Insurance on the project site.

ARTICLE 16.00 - TERMINATION

16.01 **GENERAL PROVISIONS** - This Agreement may be terminated by the CITY without just cause at its convenience, or due to the default by the CONSULTANT, by giving thirty (30) calendar days written notice to the CONSULTANT.

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

If the CONSULTANT is adjudged bankrupt or insolvent; if it makes a general assignment for the benefit of its creditors; if a trustee or receiver is appointed for the CONSULTANT or for any of its property; if it files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws; if it otherwise violated any provisions of this Agreement; or for any other just cause, the CITY may, without prejudice to any other right or remedy, and after giving the CONSULTANT written notice, terminate this Agreement.

16.02 **TERMINATION OF WORK ON A SPECIFIC PROJECT** -The performance of work on a specific project under a Task Authorization may be terminated by the CITY in whole, or in part, whenever the Contract Manager shall determine that such termination is in the best interest of the CITY. Any such termination shall be effected by deliver to the CONSULTANT a Notice of Termination specifying the extent to which performance of work under the Task Authorization is terminated, and the date upon which such termination becomes effective.

16.03 **OBLIGATION OF CONSULTANT UPON RECEIPT OF NOTICE OF TERMINATION** - After receipt of a Notice of Termination of this Agreement or of any work specifically assigned Task Authorization, and except as otherwise directed by the Contract Manager, the CONSULTANT shall:

- (1) Stop work under the Agreement or Task Authorization on the date and to the extent specified in the Notice of Termination.
- (2) Place no further orders or sub-contracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the Agreement or Task Authorization.
- (3) Terminate all orders and sub-contracts to the extent that they relate to the performance of work terminated by the Notice of Termination.
- (4) Assign to the CITY, in the manner, at the times and to the extent directed by the Contract Manager, all of the right, title, and interest of the CONSULTANT under the orders and sub-contracts so terminated, in which case the CITY shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and sub-contracts.

- (5) Settle all outstanding liabilities and all claims arising out of such termination of orders and sub-contracts with the approval or ratification of the Contract Manager, the extent the CITY may require which approval or ratification shall be final for all the purposes of this clause.
- (6) Transfer title and deliver to the CITY, in the manner, at the times, and to the extent, if any, directed by the Contract Manager:
 - (A) The sketches, calculations, reports, models, studies and other work in process, completed work, supplies and other materials produced as a part of, or acquired in connection with the performance of the work terminated by the Notice of Termination; and,
 - (B) The completed or partially completed plans, drawings, information, and other property which, if the Contract has been completed, would have been required to be furnished to the CITY.
- (7) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination.

16.04 CLAIM FOR AMOUNT DUE CONSULTANT - After receipt of a Notice of Termination, the CONSULTANT shall submit to the Contract Manager its termination claim, in the form and with certification required by the Contract Manager. Such claim shall be submitted promptly but in no event later than thirty (30) calendar days from the effective date of termination, unless one or more extensions in writing are granted by the Contract Manager, upon request of the CONSULTANT made in writing within such thirty (30) calendar days period or authorized extension thereof. Upon failure of the CONSULTANT to submit its termination claim within the time allowed, the Contract Manager may determine on the basis of information available to him, the amount, if any, due to the CONSULTANT by reason of the Termination and shall thereupon pay to the CONSULTANT the amount so determined.

ARTICLE 17.00 - NOTICE AND ADDRESS OF RECORD

17.01 NOTICE BY CONSULTANT TO CITY - All notice required and/or made pursuant to this Agreement to be given by the CONSULTANT to the CITY shall be in writing and shall be given by the United States Postal Service Department first class mail service, postage prepaid, addressed to the following CITY address:

City of Maitland
 1776 Independence Lane
 Maitland, Florida 32751-5658
 ATTENTION: City Manager

17.02 NOTICES BY CITY TO CONSULTANT- All notices required and/or made pursuant to this Agreement to be given by the CITY to the CONSULTANT shall be made in writing and shall be given by the United States Postal Service Department first class mail service, postage prepaid, addressed to the following CONSULTANT's address:

Associated Consulting International, Inc.
 955 North Pennsylvania Avenue, Winter Park, Florida 32789-2463
 ATTENTION: Larry H. Adams, Jr. City of Maitland Project, Managing
 Principal

17.03 CHANGE OF ADDRESS OF RECORD - Either party may change its address of record by written notice to the other party given in accordance with the requirements of this Article.

ARTICLE 18.00 - WAIVER OF BREACH

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

Neither the Contract Manager's review, approval or acceptance of, nor payment for, any of the services required under this Agreement shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the CONSULTANT shall be and remain liable to the CITY for all costs of any kind which were incurred by the CITY as a result of the CONSULTANT's negligent performance of the services furnished under this Agreement.

ARTICLE 19.00 - EQUAL OPPORTUNITY / DISADVANTAGED BUSINESS ENTERPRISES

During the performance of this Contract, the CONSULTANT agrees as follows:

- (1) The CONSULTANT will not discriminate against any employee or applicant for employment because of race, creed, color, sex, or national origin. The CONSULTANT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex, or national origin. Such action shall include, but not be limited to, the following: Employment upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates or pay or other forms of compensation; and, selection for training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

ARTICLE 20.00 - COVENANT AGAINST CONTINGENT FEES

The CONSULTANT warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission percentage, brokerage or contingent fee excepting bona fide employees or established commercial or selling agencies maintained by the CONSULTANT for the purpose of securing business. For breach or violation of this warranty, the CITY in its discretion shall have the right to cancel this Agreement without liability or, to remain a party to this Agreement and deduct from the CONSULTANT's compensation (project fee), the full amount of such commission percentage, brokerage, or contingent fee.

ARTICLE 21.00 - DISPUTE RESOLUTION: Mediation then Lawsuit

This Agreement shall be governed by the laws of the State of Florida. All controversies, claims, and disputes between the parties arising out of, or related to this Agreement, or the breach or interpretation hereof, will first be submitted to Mediation by a Mediator, certified by the Supreme Court of Florida, that is mutually agreeable to both the CONSULTANT and the CITY. The cost of the Mediator's fee shall be borne equally by the parties. The Mediation process shall be invoked by written notice from either party. The CITY shall retain the Mediator and schedule the Mediation within thirty (30) calendar days of receiving written notice from the CONSULTANT, or on a date as agreed by the parties. Mediation shall be a condition precedent to filing of a lawsuit by either party. If such Mediation is unsuccessful, the parties agree that proper venue for enforcement or interpretation of this Agreement shall have its venue in Orange County, Florida.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement effective the day and year last written as follows:

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND BENEFIT OF THE CITY OF MAITLAND ONLY

Clifford B. Shepard III
CLIFFORD B. SHEPARD III, ESQ.
CITY ATTORNEY

DATE 10-30-03

Signed, sealed and delivered
In the presence of:
Kit Poon

Erica Hurley
Erica Hurley
Erica Hurley

ASSOCIATED CONSULTING INTERNATIONAL, INC.
Larry Adams

Larry Adams, President
10.27.03
DATE

Signed, sealed and delivered
In the presence of:
Kit Poon

Erica Hurley
Erica Hurley
Erica Hurley
Corporate Seal

John A. Cunningham

John A. Cunningham, Executive Vice-President
10/27/03
DATE

Signed, sealed and delivered
In the presence of:
Cynthia Cooper
CYNTHIA COOPER

Dave Tomok

CITY OF MAITLAND
Dean Sprague

Dean Sprague, City Manager
10/30/03
DATE

ATTEST:
Maria Waldorf

CITY CLERK - Acting
MARIA WALDORF

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me on this 30th day of OCTOBER, 2003, by Dean E. Sprague and ~~Donna L. Williams~~ MARIA WALDRON as City Manager and City Clerk of the CITY OF MAITLAND, FLORIDA, a Florida municipal corporation, on behalf of the corporation. Acting



Lawrence A. Pizza, Jr.
MY COMMISSION # DD079171 EXPIRES
December 17, 2005
BONDED THRU TROY FAIN INSURANCE, INC

Lawrence A. Pizza, Jr.
Notary Public
Print Name: LAWRENCE A. PIZZA JR

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me on this 27 day of October, 2003, by Larry H. Adams, Jr., as President of Associated Consulting International, Inc., a Florida Corporation, on behalf of the Company.



Erica L. Hurley
My Commission CC965645
Expires September 05, 2004

Erica Lynn Hurley
Notary Public
Print Name: Erica Lynn Hurley

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me on this 27 day of October, 2003, by John A. Cunningham, as Executive Vice-President of Associated Consulting International, Inc., a Florida Corporation, on behalf of the Company.



Erica L. Hurley
My Commission CC965645
Expires September 05, 2004

Erica Lynn Hurley
Notary Public
Print Name: Erica Lynn Hurley