

**TAB 14**



**LOMBARDO, FOLEY & KOLARIK, INC.**  
Consulting Engineers, Surveyors & Planners

ROBERT J. LOMBARDO, P.E.  
JOHN R. FOLEY, P.E.  
KENNETH C. KOLARIK, P.S.M.

August 3, 2010

**RECEIVED**

AUG 04 2010

**PUBLIC WORKS  
DEPARTMENT**

*Hand delivered  
10:44 am*

Mr. Allen R. Tusing, Director  
City of Palmetto Public Works Dept.  
600 17th St W  
Palmetto, FL 34221-3272

Dear Allen:

In response to your email of July 27, 2010 I have enclosed a signed contract for the consulting engineering services. The document made certain corrections which I believe are typos with regard to the reference in one section to another article. As an example, Article 3 Section K referenced Article 9, we believe it should be Article 10. Section L of that same Article 3 referenced under paragraph 2 Article 26, which we believe should be 27. Article 4.A. b) referenced Article 6, it should be Article 7. That same article paragraph B reference Article 5 and it should be Article 6. There is also a typo in Paragraph B of Article 7, in a sentence that started with the word "it." We believe that it should be the word "if."

With regard to the fee schedule, we have provided our fees based upon the schedule that we provided in the initial proposal. We have slightly modified your identification of the various individuals to better fit our specific fee schedule. We also modified your rate schedule to provide further clarification under materials.

We sincerely appreciate the fact that our firm is selected to serve the City of Palmetto. The reduction in fees for the Development Review Committee services is shown on the fee schedule. If you have any questions with regard to this information, call me at your convenience.

Very truly yours,

Robert J. Lombardo, P.E.  
President

RJL:sm

Enclosure

vjl\Tusing\_80310.doc

AGREEMENT  
PROFESSIONAL ENGINEERING CONSULTING SERVICES  
FOR GENERAL ENGINEERING PROJECTS

THIS AGREEMENT is made and entered into by and between the CITY OF PALMETTO, a Florida Municipal Corporation, hereinafter referred to as the "City," with offices located at 516 8th Avenue West, Palmetto, Florida 34221, and LOMBARDO, FOLEY & KOLARIK, INC., hereinafter called "the Consultant," duly authorized to conduct business in the State of Florida, with offices located at 825 4th Street West, Palmetto, FL 34221.

WHEREAS, the City has determined that it is necessary, expedient and in the best interest of the City to retain, obtain or employ the Consultant to render and perform professional services in the manner set forth in this Agreement; and

WHEREAS the City caused a public announcement to be made, distributed and published, requesting proposals, for the selection of a provider of professional services in the manner set forth in this Agreement.

WHEREAS, the Consultant has submitted a proposal and the City conducted a competitive selection procedure in accordance with "Consultants' Competitive Negotiation Act" established pursuant to section 287.055, Florida Statutes.

WITNESSETH

For and in consideration of the foregoing premises and the mutual covenants herein contained, it is agreed by and between the parties hereto as follows:

ARTICLE 1. SCOPE OF AGREEMENT

This Agreement sets forth the general terms and conditions pursuant to which City retains Consultant to provide Professional Engineering Consulting Services associated with City Projects on an as required basis for the City. The Scope of Services for this Agreement is described in detail in Exhibit "A", Scope of Services.

ARTICLE 2. COMPENSATION

- A. Compensation payable to Consultant for services rendered and expenditures incurred in providing the services identified in Exhibit "A" shall be established for each written Work Assignment issued in accordance with Article 5.6
- B. Compensation to Consultant shall be computed based on actual service units and/or hours performed times unit fee rate, plus reimbursable expenses up to the maximum compensation authorized for each Work Assignment to provide services as defined in Exhibit "A."

- C. The unit fee rates shall be the total compensation for the services and shall contain all costs to include salaries, office operation, transportation, equipment, overhead, general and administrative, incidental expenses, fringe benefits, operating margin and subcontractor costs.
- D. "Task", as used in this Agreement, refers to particular categories/groupings of services described in Exhibit "A."

### ARTICLE 3. INVOICES AND TIME OF PAYMENT

Consultant shall provide City with an invoice which shall include all compensation due Consultant as of the date of the invoice and in accordance with the following:

- A. Consultant shall provide City with invoices not more frequently than once a month for each calendar month in which services are provided.
- B. Consultant's invoice shall be in a form acceptable to City, provide specific details with respect to actual service units and/or hours of work incurred and include other such detail as may reasonably be requested by City.
- C. If Consultant's service units and/or actual hours of work performed exceed the amount due based upon the percentage of each phase or task that has been completed, Consultant's invoice shall indicate the adjustment Consultant deems appropriate. City payment shall be based upon the actual percentage of each phase or task of work that has been completed as of the date the invoice is prepared.
- D. Total compensation to Consultant for services and reimbursable expenses shall not exceed the amounts provided in the Work Assignment.
- E: The City agrees to pay the Consultant for the herein described services at a rate of compensation according to the unit rates stated in the Unit Price Schedule, Exhibit "B" attached hereto and made a part hereof and as detailed in the applicable "Work Assignment", Exhibit "C." The City shall have the right to retain from any payment due the Consultant under this Agreement an amount sufficient to satisfy any amount of liquidated damages due and owing to the City by the Consultant on any other agreement between the Consultant and the City.
- F. Payment shall be made only after receipt and approval of goods and services.
- G. If any Work Assignment requires units of deliverables, then such units must be received and accepted in writing by the Contract Manager prior to payment.

- H. Any penalty for delay in payment shall be in accordance with the Florida Prompt Payment Act (Section 218.70, et seq., Florida Statutes).
- I. Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the City at all times during the period of this Agreement and for three years after final payment is made. Copies of these documents and records shall be furnished to the City upon request. Records of costs incurred include the Consultant's general accounting records and the project records, together with supporting documents and records of the Consultant and all subcontractors performing work on the project; and all other records of the Consultant and subcontractors considered necessary by the City for a proper audit of costs.
- J. Except where Exhibit "A" provides that payment shall not be made until a Work Assignment or task has been completed or for payment based on actual hours of work, Consultant shall provide City with an invoice based on Consultant's good faith estimate of the percent of task completed. Consultant shall indicate on the invoice the adjustment Consultant deems to be appropriate.
- K. Any dispute between City and Consultant with regard to the percent of a Work Assignment or task that has been completed or Consultant's invoice shall be resolved in accordance with the provision of Article 10 of this Agreement.
- L. Payment.
- 1) Consultant shall provide the City with an invoice not more frequently than once a month, which shall include all compensation due Consultant for work accomplished pursuant to all Work Assignments. Consultants invoice shall be in a form acceptable to City and provide specific details with respect to actual service units and/or hours of work incurred. If Consultant's service units and/or actual hours of work performed exceed the amount due based upon the percentage of each phase or task that has been completed, Consultant's invoice shall indicate the adjustment Consultant deems appropriate. City's payment shall be based upon the actual percentage of each phase of work that has been completed as of the date the invoice is prepared.
  - 2) City shall give Consultant prompt notice of any dispute with respect to Consultant's invoice and shall, within the time established above, remit payment for the undisputed amount to the Consultant. Final payment for any Task shall not be made until accepted in accordance with the provisions of Article 27 of this Agreement.
  - 3) The City shall remit payment for each invoice within forty five (45) days after the receipt of an acceptable invoice. City shall give Consultant prompt notice of any dispute with respect to Consultant's invoice and shall, within the time established above, remit payment for the undisputed amount to the Consultant.

- 4) The Consultant agrees to permit full and open inspection of payroll records and other expenditures in connection with all work upon the request of the City and to maintain all financial records related to this Agreement for a period of three (3) years after termination or completion of the performance of this Agreement.
- M. All costs of providing the scope of services described in Exhibit "A" shall be the responsibility of the Consultant, with the exception of reimbursement by City for the following direct costs:
- 1) Expense of reproduction beyond the costs associated with providing reports and routine correspondence at the rates provided in Exhibit "B".
  - 2) Actual charges for long distance telephone calls, including applicable local, state and federal taxes, but excluding those made to Manatee, Sarasota, Pinellas or Hillsborough Counties, as documented by copies of original invoices.
  - 3) Actual charges for application fees not specifically identified to be paid by the City charged in the process of obtaining any permits outlined in the Work Assignment as documented by copies of original invoices.
  - 4) Actual charges for courier service at the request of the City, at rates not to exceed \$9.00 per package and to be documented by copies of original invoices.
  - 5) Actual charges for chemistry lab supply fees.

#### ARTICLE 4. DURATION OF AGREEMENT

##### A. Term.

- a) Agreement shall remain in full force and effect for one (1) year from the date of full execution with respect to the rights and duties of City and Consultant to negotiate and authorize Work Assignments and, with respect to all Work Assignments authorized during the effective period of this Agreement, until all Work Assignments have been completed.
- b) This Agreement may be renewed for Five (5) additional periods, each of one (1) year, upon mutual agreement of City and Consultant as evidenced by execution of an addendum which shall establish adjustments in attached Exhibit "B" as authorized by Article 7.

##### B. Commencement.

The services to be rendered by the Consultant shall be commenced, subsequent to full execution of this Agreement, only upon receipt of a written "Work Assignment" in accordance with the provisions of Article 6 of this Agreement. The "Work Assignment" document shall be substantially in the form of Exhibit "C," attached hereto and made a part hereof.

## ARTICLE 5. TERMINATION AND DEFAULT

- A. This Agreement maybe terminated by the City in whole or in part at any time such termination is in the best interest of the City. The City also reserves the right to seek termination or cancellation of this Agreement in the event the Consultant shall be placed in either voluntary or involuntary bankruptcy. The City further reserves the right to terminate or cancel this Agreement in the event the Consultant makes an assignment for the benefit of creditors. This Agreement may be terminated by the Consultant only by mutual consent of both parties.
- B. If the City determines that the performance of the Consultant is not satisfactory, the City shall have the option of (1) immediately terminating the Agreement, or (2) notifying the Consultant of the deficiency with a requirement that the deficiency be corrected within a specified time, otherwise the Agreement will be terminated at the end of such time.
- C. If the City requires termination of this Agreement for reasons other than unsatisfactory performance of the Consultant, the .City shall notify the Consultant of such termination, with instructions as to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.
- D. If this Agreement is terminated before performance is completed, the Consultant shall be paid only for that work satisfactorily performed for which costs can be substantiated. All work in progress will become the property of the City and will be promptly delivered to the City by the Consultant.
- E. If termination shall apply only to additional work Assignments, City may terminate this Agreement upon delivery of written notice to the Consultant.
- F. Should City elect to terminate this Agreement in its entirety, Consultant shall be entitled to compensation for all services rendered or performed pursuant to any fully authorized Work Assignment through the date of termination, together with all authorized costs and expenses incurred in connection therewith provided City has given Consultant written notice ten (10) days in advance of the date of such termination and provided that services rendered and costs and expenses incurred do not exceed the maximum amount of compensation authorized for any phase of work based upon the percentage of the phase completed or, where applicable, any price established for a specific task.

## ARTICLE 6. WORK ASSIGNMENTS

Consultant shall provide services only after receipt of a written Work Assignment issued in accordance with this article and in accordance with the form provided in attached Exhibit "C". Work Assignments shall be signed by Consultant and City and shall constitute supplemental agreements entered into under the terms and conditions of this Agreement.

Each Work Assignment shall establish the following:

- A. A title for the project and a general description of the purpose for the work.
- B. The maximum total compensation and reimbursable expenses that will be paid to Consultant by City upon completion of the Work Assignment.
- C. A clear indication of the services to be furnished for a fixed fee and the services to be furnished based upon time and charges provided; however, that where services are based upon time and charges, the Work Assignment shall establish the maximum compensation and Consultant shall not exceed the maximum compensation established for such services.
- D. From the services listed on attached Exhibit "A," the services to be provided under the Work Assignment, the unit price and the number of units. Any specific services based upon maximum compensation and billed based upon actual time and charges shall be clearly identified.
- E. The agreed to date of completion for the Work Assignment. Where identified services within a Work Assignment must be completed by a specific date prior to completion of the entire Work Assignment, such date shall be established. .
- F. Any services that will be performed by a subcontractor or a sub-consultant, the identity of the subcontractor or sub-consultant, if selected, and if not selected the methodology to be employed by Consultant in selection of subcontractor or sub-consultant.
- G. Any additional details that may be required to describe the duties and obligations of the parties with respect to a particular Work Assignment.
- H. Any supplemental information, not in conflict with the provisions of this Agreement, such as technical specifications, deliverables associated with the Work Assignment or any service.
- I. The identity of the person(s) who will serve as Consultant's Work Assignment Manager and the City's Project Work Assignment Manager if different from the Contract Manager and Agent identified in this Agreement.
- J. Where a Work Assignment calls for the preparation of plans, specifications, maps, and/or reports, these items as well as all data collected, together with summaries and charts derived there from, shall be considered works made for hire and shall become the property of the City without restriction or limitation on their use; and shall be made available, upon request, to the City at any time. The Consultant shall not copyright any material or product developed under this Agreement. The City shall have the right to visit for the purpose of inspecting the work of the Consultant at any time.



- K. All final plans, documents, reports, studies and other data prepared by the Consultant will bear the endorsement of a person in the full employ of the Consultant.
- L. The City will be entitled at all times to be advised, at its request, as to the status of work being done by the Consultant and of the details thereof and communication shall be maintained by the Consultant With representatives of the City.
- M. Extension of Work Assignments. . It shall be the responsibility of the Consultant to ensure at all times that sufficient time remains in the project schedule within which to complete services on the project. In the event there have been delays which would affect the Work Assignment completion date, the Consultant shall promptly submit a written request to the City's Contract Manager which identifies the reason(s) for the delay and the amount of time related to each reason. The Contract Manager will promptly review the request and make a determination as to granting all or part of the requested extension. If the Contract Manager determines that an extension of a Work Assignment deadline is appropriate, he/she shall issue a "Letter of Extension" to the Consultant.

#### ARTICLE 7. NEGOTIATION OF WORK ASSIGNMENT

- A. For each project, grouping of substantially similar engineering/architectural activities for a group of facilities, feasibility studies or special projects, City shall negotiate each Work Assignment based upon estimated service units, projected by the Consultant and in accordance with the rate schedule provided in attached Exhibit "B." Compensation for each Work Assignment shall be based on actual service units performed, but in no event shall Consultant be entitled to reimbursement in excess of the amount established in a Work Assignment. City's Contract Manager may authorize, in writing, in advance, adjustments in the compensation for particular phases or tasks established in the Work Assignment provided such adjustments do not exceed the maximum compensation and reimbursable expenditures authorized by the respective political entity for the particular Work Assignment.
- B. If this Agreement is renewed or extended as authorized under Article 3, Consultant's rate schedule, provided in Exhibit "B" may be adjusted on the anniversary date of the execution of this Agreement using the Bureau of Labor Statistics Consumer Price Index (CPI-U), U.S.A. 1982-84 equals 100. The adjustment shall be calculated by dividing the index on the anniversary date of the previous year's index and subtracting 1.00. If on the anniversary date, the Index shows a change from the Index of the previous year, this percentage, not to exceed four (4%) percent annually, will be used to adjust the rates found in Exhibit "B" This adjustment shall be applicable to work under Work Assignments negotiated after the date of the rate adjustment, and shall not apply to: Consultant's compensation for any previously agreed to Work Assignment unless the Work Assignment specifically authorizes such an adjustment.

## ARTICLE 8. COVENANTS OF THE CITY

The City hereby covenants and agrees:

- A. That the Mayor or his designee is hereby appointed as the City Contract Manager with respect to the services to be performed by the Consultant pursuant to this Agreement. The City Contract Manager shall have the authority to transmit instructions, receive information, interpret and define the policy of the City and make decisions pertinent to services covered by this Agreement. The City Contract Manager shall have the right, from time to time, to designate such other employees of The City of Palmetto as he desires, to serve in his absence. The City reserves the right to designate a different Agent, provided that the Consultant is given written notice thereof.
- B. The City shall make available at no cost to the Consultant, available information relative to the project that is useful in the performance of the Scope of Services.
- C. The City shall give prompt notice to the Consultant whenever the City observes or otherwise becomes aware of any defect in the performance of work under this Agreement.
- D. The City shall give careful and reasonable consideration to the findings and recommendations of the Consultant and shall respond and issue notices to proceed in a timely manner so as not to unduly delay the Consultant's work called for by this Agreement.
- E. The City shall perform activities in this Article at no cost to the Consultant.
- F. Nothing contained in this agreement shall be construed as prohibiting the Consultant from performing professional services, for another entity, inside the limits of the City of Palmetto. Any conflict of interest will be handled in accordance with Paragraph E of Article 9.

## ARTICLE 9. COVENANTS OF THE CONSULTANT

Consultant hereby covenants and agrees:

- A. That Robert J. Lombardo, P.E. is hereby appointed as the City Engineer and as Consultant's Agent with respect to the services to be performed by the Consultant pursuant to this Agreement. The Consultant's Agent shall have the authority without limitation, to make representations on behalf of Consultant, receive information, and interpret and define the needs of Consultant and make decisions pertinent to services covered by the Agreement. Consultant's Agent shall have the right, from time to time, to designate such other employees of Consultant's as they desires, to serve in their absence. Consultant reserves the right to designate a different agent, provided that the City is given written notice thereof

- B. That the Work shall be performed in accordance with the terms and conditions of this Agreement.
- C That all employees assigned to render services under this Agreement shall be duly qualified, registered, licensed or certified to provide the services required. All services shall comply with such reasonable supplemental written memoranda and directives provided by the Contract Manager, which are not in conflict with this Agreement.
- D. That Consultant shall be responsible for collecting all existing data required for the successful completion of each Work Assignment.
- E. That Consultant shall not knowingly engage in any contractual or professional obligations that create a conflict of interest with respect to the services provided pursuant to this Agreement. In the event of an appearance of conflict, the Consultant shall provide the City written notice of said appearance to afford the City sufficient time to retain an independent consultant to act on the City's behalf.
- F. The Consultant shall be entitled to rely upon that information, which may be provided them from time to time, from the City or others on behalf of the City. Consultant shall, however, call to the City's attention any errors or deficiencies noted in such information provided and assist, to the extent practicable, the City in the identification and resolution of same. Information referred to above includes, but is not limited to, water, wastewater and reclaimed water infrastructure information, hydro geologic, biological, geological, environmental, ecological data and the like, including all other information to be provided to the Consultant by others and necessary for the execution of Consultant's work under the Agreement. The City shall, however, hold Consultant fully responsible for verifying, to the extent practicable, documents and information provided by the City and identifying its obvious deficiencies concerning documents and information provided. The Consultant agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed under this Agreement.

#### ARTICLE 10. DISPUTE RESOLUTION

Disputes shall be resolved as follows: good faith negotiations by the designated agents of the parties and if not resolved by such designated agents after twenty-one (21) days, Consultant shall submit his claim, with the basis for the dispute, in writing to the City of Palmetto Purchasing Agent for a determination and handling in accordance with the provisions of the City of Palmetto Procurement Code. Any dispute resolution agreed to by City's Contract Manager or the City of Palmetto Purchasing Agent, constituting a material change in this Agreement will not be final until approved by the City Commission. If such dispute involves the percentage of task completed by Consultant, City shall, as promptly as reasonably possible after resolution of such dispute, forward payment to Consultant of any amount determined to be due and owing.

The services shall be performed by the Consultant to the reasonable satisfaction of, the City, and all questions, difficulties and disputes of any nature whatsoever that, may arise under or by reason of this Agreement, the prosecution and fulfillment of the services hereunder and the character, quality, amount and value thereof, which cannot be settled by mutual agreement of the parties, shall be settled by recourse to litigation under Florida law. Any such lawsuit shall be filed only in Manatee County, Florida.

#### ARTICLE 11. PROPERTY OF THE CITY

All reports, technical information, working data tabulation, background information, and information provided, obtained or prepared by the Consultant and equipment and supplies purchased outright pursuant to this Agreement, are the property of the City without restriction or limitation on their use and shall be made available upon request of the City at any reasonable time, including all finished and unfinished documents and other material prepared or obtained by the Consultant.

The City shall have the right to use, without restriction or limitation for City government purposes and without additional charge, Consultant development software programs used in conjunction with the duties and responsibilities of Consultant under this Agreement. Except for the rights stated above, City shall not own or claim any right, title or interest in Consultant's software programs.

#### ARTICLE 12. INDEMNIFICATION

The Consultant hereby agrees to indemnify, defend, save and hold harmless the City from all costs, expenses, claims, demands, liabilities, judgments and suits of any nature whatsoever, arising out of, because of, or due to any negligent error, omission, or act of professional malpractice by the Consultant, or .due to the breach of this Agreement by the Consultant, their sub-consultants, agents or employees, It is specifically understood and agreed that the provisions of this Article are not intended to cover or indemnify the City for its own negligence or breach of Contract.

#### ARTICLE 13. INSURANCE COVERAGE

- A. PROFESSIONAL LIABILITY. The Consultant shall have and maintain during the period of this Agreement, a professional liability insurance policy or policies affording professional liability coverage for the professional services to be rendered in accordance with this Agreement, in the minimum amount of \$500,000.00. As an alternative to a professional liability insurance policy, the Consultant may submit an irrevocable letter of credit, naming the City as beneficiary and issued pursuant to Section 337.106 and Chapter 675, Florida Statutes, in the amount of \$500,000.00. The Consultant shall maintain professional liability coverage for a minimum of three years after completion of the services rendered herein.

B. COMMERCIAL GENERAL LIABILITY. The Consultant shall have and maintain during the period of this Agreement, commercial general liability insurance policy or policies affording minimum coverages as follows:

General aggregate	
Products/Completed Operations aggregate.....	\$300,000
Personal and advertising injury .....	\$300,000
Each occurrence.....	\$300,000

C. BUSINESS AUTO POLICY. The Consultant shall have and maintain, during the period of this Agreement, a business auto insurance policy or policies affording minimum coverages as follows:

Each occurrence per bodily injury and property damage liability.....	\$300,000
Annual aggregate (if applicable) .....	3 x each occurrence limit 11

D. WORKERS' COMPENSATION... The Consultant shall also carry and keep in force Workers' Compensation insurance as required under the applicable Workers' Compensation laws and statutes.

E. CERTIFICATION OF INSURANCE AND COPIES OF POLICIES. A Certificate of Insurance evidencing the insurance coverage specified in the four above paragraphs A., B., C, and D., shall be filed with the Purchasing Agent before operations are begun. The required certificate of insurance shall name the types of policy, policy number, date of expiration, amount of coverage, companies affording coverages. Insurance shall remain in force at least one (1) year after completion and acceptance of the project by the City in the amounts and types as stated herein, including coverage for all products and services completed under this contract. If the initial insurance expires prior to the completion of operations and or services by the Consultant, a renewal certificate of insurance shall be furnished by the proposer and delivered to the Purchasing Agent thirty (30) days prior to the date of their expiration.

#### ARTICLE 14. LITIGATION SERVICES

The Consultant shall:

- A. Provide, if required by City, any personnel performing services under this Agreement to testify in any litigation proceeding.
- B. Upon notice by the Office of the City Attorney that litigation services are necessary, coordinate and communicate directly with the Office of the City Attorney.
- C. Perform litigation services as directed by the Office of the City Attorney that may include but are not limited to:

- 1) Pre-deposition, pretrial or pre-hearing preparation.
- 2) Preparation of court exhibits.
- 3) Attendance and testimony at depositions, pretrial hearings, or other court hearings.
- 4) Any other services deemed necessary by the assigned attorney to successfully litigate and defend the City's position in court.
- 5) If notified by the Office of the City Attorney in writing, the Consultant agrees to provide litigation services up to and including the date of the completion of litigation at the contract billing rate not to exceed the Consultant's fee rate listed in Exhibit "B". The hourly billing rates shall contain all costs to include salaries, overhead, general and administrative, incidental expenses, fringe benefits and operating margin.
- 6) The Consultant's travel expenses will be submitted and paid in accordance with Section 112.061, Florida Statutes, provided prior approval of the travel is obtained from the City Attorney or the City Attorney's designee.
- 7) The Consultant shall submit monthly statements for litigation services rendered, providing detailed accounting sufficient for pre-audit and specifying services performed, the dates of the services, hours expended for each service, the name of the person who performed the service and a breakdown of approved expenses incurred with all receipts and invoices attached.
- 8) The Consultant acknowledges and agrees that in order for both parties herein to close their books and records, he/she will clearly state "Final Invoice" on the last billing to the City, which will indicate that all services have been performed and all charges and costs have been invoiced to the City under this Agreement.
- 9) The Consultant shall submit all litigation services invoices (original and one copy) to the City Attorney or the City Attorney's designee.

#### ARTICLE 15. INFORMATION REPORTS

The Consultant shall provide all information and reports required by City policies, procedures, regulations, rules, orders and/or instructions. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish the information, the Consultant shall certify such to the City, as appropriate, and shall set forth what efforts have been made to obtain the information.

## ARTICLE 16. WARRANTY OF QUALIFICATIONS

The Consultant warrants that the Consultant is, and will remain for the term of this Agreement, certified to perform engineering/architectural Professional Services pursuant to Chapter 471, Chapter 481 and Section 287.055, Florida Statutes. The Consultant warrants to hold and save the City harmless from any and all losses that may be occasioned or suffered by the City as a result of the Consultant's failure to be so certified. Failure to be so certified shall be cause for the Consultant to be found in default of this Agreement and shall be grounds for immediate unilateral cancellation of this Agreement by the City. All written reports in connection with architectural/engineering professional services submitted to the City shall bear the signature of and be approved by a Florida state certified architect and/or engineer.

## ARTICLE 17. LEGAL RESTRAINTS AND LIMITATIONS

The Consultant acknowledges that the City, as a unit of local government and a political subdivision of the State of Florida, is subject to restraints, limitations, regulations and controls imposed or administered pursuant to numerous applicable laws, ordinances, rules and regulations of federal, state, regional and certain local governmental agencies or authorities. The Consultant agrees that all professional services rendered or performed by the Consultant pursuant to the provisions of this Agreement shall be in compliance therewith.

## ARTICLE 18. ASSIGNMENT AND SUBCONTRACTS

It is expected that the Consultant shall have standard in-house capability to provide all the services required by this Agreement. The Consultant shall not sublet, assign or transfer any work under this Agreement to another consultant or contractor, without the prior written consent of the City.

## ARTICLE 19. SOLICITATION OF CONTRACT

The Consultant warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the Consultant to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gift, contingent fee, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability or at its discretion to deduct from the contract price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gifts, or contingent fee.

## ARTICLE 20. NOTICES

All notices, requests and authorizations provided for herein shall be in writing and shall be delivered by hand or mailed through the U.S. Mail, addressed as follows:

To the City: City of Palmetto  
Public Works Department  
600 17th Street West  
Palmetto, Florida 34221  
(941) 723-4580

To the Consultant:  
Lombardo, Foley & Kolarik, Inc.  
825 4th St. W.  
Palmetto, FL 34221  
Robert J. Lombardo, P.E., President  
(941) 722-4561

#### ARTICLE 21. GOVERNING LAW

This Agreement shall be governed by the laws of the State of Florida. Any action filed regarding this Agreement will be filed only in Manatee County, Florida.

#### ARTICLE 22. SUB-CONSULTANTS

It is expected that the Consultant shall have standard in-house capability to provide all the services required by this Agreement except for the work to be performed by the sub-consultants specified in Article 24, Key Personnel. However, should the Consultant find it necessary to utilize the services of additional sub-consultants, the Consultant shall first obtain the written approval of the City. The Consultant shall also require each sub-consultant to adhere to applicable provisions of this Agreement. The utilization of any such sub-consultant by the Consultant shall not relieve the Consultant from any liability or responsibility to the City pursuant to the provisions of this Agreement or obligate the City to the payment of any compensation to the sub-consultant or additional compensation to the Consultant.

#### ARTICLE 23. NON-DISCRIMINATION PROCEDURES

During the performance of this Agreement, the Consultant agrees as follows:

- A. The Consultant will not discriminate against any employee or applicant for employment because of race, creed, sex, color, national origin or age, and will take affirmative action to insure that all employees and applicants are afforded equal employment opportunities without discrimination because of race, creed, sex, color, national origin or age. Such action will be taken with reference to, but shall not be limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of training or retraining, (including apprenticeship and on-the-job training).
- B. No person in the United States shall, on the grounds of race, creed, sex, color, national origin or age, be excluded from participation in, be denied the proceeds of, or be subject to discrimination in the performance of this Contract.



#### ARTICLE 24. KEY PERSONNEL

The following Key personnel are hereby assigned to the project by the Consultant and shall not be removed from the project until alternate personnel acceptable to the City are approved, in writing, by the City:

- Robert J. Lombardo, P.E. - President
- John R. Foley, P.E. – Vice President
- Kenneth C. Kolarik, PSM – Vice President - Surveying
- Walter R. De Goes, P.E. – Project Manager

#### ARTICLE 25. PROFESSIONAL LIABILITY

The Consultant recognizes that the registered persons practicing engineering services with the professional association or corporation referred to in this Agreement as the Consultant, as provided by Florida Statutes, are not relieved from personal liability for their negligent professional acts and that such personal liability shall not relieve Consultant or Consultant's association or corporation from liability.

#### ARTICLE 26. LEGAL QUALIFICATION. AND ETHICAL CONSIDERATIONS

The Consultant warrants that it is a regionally known and recognized engineering firm, and that it is duly permitted by the laws of the State of Florida to render the professional services required under this Agreement, in the State of Florida. The Consultant recognizes that in rendering or performing professional services pursuant to the provisions of this Agreement, the Consultant is working for the residents of The City of Palmetto, Florida, subject to public observation, scrutiny and inquiry, and based upon said recognition the Consultant shall, in all of its relationships with the City pursuant to this Agreement, conduct itself in accordance with all of the recognized applicable ethical standards set by national societies of professionals, and the reasonable traditions of professional consultants.

#### ARTICLE 27. ACCEPTANCE

When the services of the Consultant required for any project are complete, the Consultant shall notify the City in writing. Thereupon the City, within thirty (30) days, shall either provide its written acceptance or give the Consultant written notice of any unfinished or improperly performed services to be finished or corrected; if such written notice of acceptance or exception is not given within such period of time, the services shall be deemed to have been accepted by the City. However, acceptance of the work performed by the Consultant shall not be construed to be an acceptance of improper, defective or deficient work.

## ARTICLE 28. FORCE MAJEURE

Neither party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations or any of them is delayed or prevented by Force Majeure. Force Majeure shall include, but not be limited to, hostility, revolution, civil commotion, strike, epidemic, accident, fire, flood, wind, earthquake, explosion, lack of or failure of transportation facilities, any law, proclamation, regulation, ordinance or other act of government, or any act of God or any cause whether of the same or different nature, existing or future; provided that the cause, whether or not enumerated in this Article, is beyond the control and without the fault or negligence of the party seeking relief under this Article.

## ARTICLE 29. DRUG FREE WORKPLACE

The Consultant agrees to maintain its drug free workplace program throughout the term of this contract.

## ARTICLE 30. MISCELLANEOUS

- A. The Consultant and the City agree that the Consultant, its employees, and subcontractors are not employees or agents of the City as a result of this Agreement or in the performance of any duties pursuant to this Agreement.
- B. All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.
- C. This Agreement embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto.
- D. It is understood and agreed by the parties hereto that if any part, term or provision of this Agreement is, by the courts held to be illegal or in conflict with any law, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.
- E. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. It is further agreed that venue for any legal or equitable action arising from or related to this Agreement shall be in Manatee County, Florida.
- F. The following Exhibits are attached hereto and made a part hereof:
  - 1. Exhibit "A": Scope of Services
  - 2. Exhibit "B": Fee Rate Schedule
  - 3. Exhibit "C": Sample "Work Assignment"

The Consultant agrees to perform or render services in accordance with this Agreement for Professional Engineering Consulting Services for General Engineering Projects according to the method of compensation as set forth within this Agreement, upon authorization by The City of Palmetto.

CONSULTANT:

LOMBARDO, FOLEY & KOLARIK, INC

BY: *[Signature]*

TITLE: Principal

ATTEST:

\_\_\_\_\_

APPROVED AS TO FORMAT AND CORRECTNESS:

CITY OF PALMETTO ATTORNEY

BY: \_\_\_\_\_  
City Attorney

APPROVED, this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

ATTEST:

CITY OF PALMETTO, FLORIDA

\_\_\_\_\_  
James R. Freeman, City Clerk

BY: \_\_\_\_\_  
Shirley Bryant, Mayor

\_\_\_\_\_

## EXHIBIT "A"

Lombardo, Foley & Kolarik, Inc.

### SCOPE OF SERVICES

- A. The Consultant shall perform, on an as required basis, all of the services necessary for projects that require engineering services for design and specifications, services during bidding, services during construction, record drawings and permits for construction and operation of general engineering projects and related facilities, renovations/additions to existing facilities, special projects and to conduct feasibility studies. Engineering service specialties shall include but are not limited to, civil, structural, environmental, and biological. Other service specialties shall include but are not limited to, architecture, remedial investigations, and mapping and surveying. As projects are identified, the City will issue Work Assignments to the Consultant to perform the requested services as outlined in Article 6. Projects may be assigned individually or in groups.
- B. The Consultant shall be responsible for all engineering functions as defined in this Agreement. All engineering projects shall be performed in accordance with the guidelines, standards, procedures and directives that are a part of this Agreement either directly or incorporated herein by reference.

C. Project Control.

The Consultant shall:

- 1) Develop and maintain a project reporting system tracking all critical events, both scheduled and actual, for project, if necessary. Said report shall be submitted to the Contract Manager on an as required basis.
- 2) As a minimum, participate in project meetings on an as required basis with the Contract Manager and the Consultant's Agent to relate current status of overall project schedule; noting exceptions and suggesting actions required to correct schedule exceptions.

D. Quality Control.

The Consultant shall:

- 1) Provide quality assurance and performance tracking of each project.
- 2) Insure delivery schedules and the integrity of the products.

E. Personnel.

- 1) The consultant shall provide a full cadre of qualified personnel as necessary to effectively carry out its responsibilities under this Agreement. The Consultant shall utilize only competent personnel, who are qualified by experience and education, and who are acceptable to the Contract Manager. The Consultant shall not make changes in the professional personnel working on activities pursuant to this Agreement without the written notification of the Contract Manager.
- 2) The Consultant's agent shall be present for project decision meetings as requested by the Contract.

F. Engineering Consulting Services:

The Consultant shall:

1. Provide engineering services for general engineering projects.
2. Provide engineering services including, but not limited to:
  - a. Civil
  - b. Ecological
  - c. Environmental
  - d. Hydro geological
  - e. Structural
  - f. Value Engineering
  - g. Biological
3. Provide other professional services, as required including, but not limited to:
  - a. Architectural (via sub-consultants)
  - b. Landscape Architecture
  - c. Surveying and Mapping
  - d. Planning
  - e. Geographic Information Systems
  - f. Quality Control
  - g. Remedial Investigations
  - h. Regulatory liaison
  - i. Contamination Assessments
  - j. Laboratory Services (via sub-consultants)
  - k. Ecological Assessments
  - l. Permitting
  - m. CADD Services
  - n. Environmental monitoring of permit requirements

4. Comply with all applicable Federal and State laws, City ordinances and regulations in the performance of these services.

G. Ordering of Services:

Tasks or sub-tasks shall refer to the sequential ordering of Consultant's services under a Work Assignment and generally as detailed in this Exhibit 'A' which should as applicable, be titled as follows:

1. TASK: Conceptual Design (Studies and Reports).

a) Prior to starting the Preliminary Design Phase for any project, the Consultant shall submit to the City for approval, a Design Memorandum/Report, which shall include, but not be limited to the following:

- Project feasibility
- Design parameters
- Engineering constraints and limitations
- Facility sizing
- Subsurface evaluation
- Alternatives
- Regulatory requirements
- Opinion of probable construction costs
- Project schedule
- Project staging plan
- Funding sources, if applicable

b) The Consultant shall initiate and coordinate meetings with City of Palmetto staff and regulatory agencies, as applicable.

c) The Design Memorandum/Report will be used to support the permitting and subsequent design and construction services tasks for the project.

d) As applicable to project requirements, the Consultant shall conduct an analysis and provide the City with a summary report.

e) Deliverables: The Consultant shall submit to the City, three (3) hard copies and one (1) electronic copy of the Design Memorandum/Report together with the necessary single line diagrams, maps, sketches and other information.

2. TASK: Preliminary Design Phase (0-60% Complete)

a) Based on the City approved Design Memorandum/Report the Consultant shall initiate the preliminary design phase to include, but not limited to, the following sub-tasks/functions:

- Design survey
- Aerial photography
- Additional geotechnical evaluations, as required
- Coordination with utility companies
- Final infrastructure sizing
- Possible environmental impacts and mitigation alternatives
- Coordination with the affected regulatory agencies
- Preparation of technical specifications
- Evaluation of maintenance of traffic requirements
- Preliminary designs for special crossings and potential conflicts
- Preparation of plan and profile sheets
- Definition of existing rights-of-way, easements and required easements

b) Deliverables:

- Three (3) sets of preliminary plans and details
- Three (3) copies of preliminary technical specifications
- Two (2) copies of the geotechnical report
- Two (2) copies of the design calculations
- Two (2) copies of correspondence with regulatory agencies
- Two (2) copies of correspondence with power company
- Two (2) copies of correspondence with other utility companies
- One (1) electronic copy of all

### 3. TASK: Final Design Phase (60- 100% complete)

a) The Consultant shall finalize the Contract Documents (plans, technical specifications and front-end documents) for bidding and construction based on input from the City and affected regulatory agencies. Permit applications and supporting documentation shall be prepared and submitted at the 90% stage. The Consultant shall finalize the coordination efforts with the utility companies and regulatory agencies in this phase.

b) The Consultant shall prepare the measurement and payment section and schedule of bid items specifically for the project, including an estimate of construction costs. All constructions details, special crossings and easement requirements shall be finalized.

c) Deliverables:

- All regulatory permit applications, i.e. FDOT, SWFWMD, DEP, DNR, etc.
- Three (3) sets of final plans including profiles, special crossings and details.
- Three (3) copies of final technical specifications and front end documents.
- Two (2) copies of the final geotechnical report
- Two (2) copies of the final design calculations
- Two (2) copies of correspondence with power company
- Two (2) copies of correspondence with other utility companies
- One (1) electronic copy of all

4. TASK: Construction Phase. The Consultant shall provide the following engineering services, as required, during construction:

- a) Participate in pre-bid conference and prepare minutes of meeting. Assist the City in preparation of agenda.
- b) Assist the City in evaluating bids.
- c) Prepare construction contract documents.
- d) Conduct pre-construction conference and prepare minutes of meeting.
- e) Review and approve shop drawings.
- f) Visit project site(s) at appropriate stages of the work to observe the progress of the work and reports observations to the City.
- g) Provide recommendations of changes, if necessary, which may be required within the scope of the project during construction. Prepare Discretionary Item Work Directive changes, and change orders, if required, for City approval.
- h) Conduct frequent project site visits and prepare punch list items to be corrected or completed at the substantial and final completion stages of the work.



- i) Review monthly pay requests submitted by Contractor and make recommendations for payments.
- j) In coordination with the City, prepare responses to resident complaints and maintain a record of complaints and action taken.
- k) Prepare and furnish the City a final set of reproducible record drawings from data provided by the contractor and the project representative. All information gathered by Consultant shall be field verified and a certified set of record drawings shall be submitted to the City. The Consultant shall be responsible for supplying the City certified record drawings and all certifications to all state agencies. All record drawings shall conform to City requirements.
- l) Visit the project site prior to the end of the one year construction warranty period and prepare a punch list of items to be corrected prior to the warranty expiration date.

#### 5. SUBMITTALS:

- a) Conceptual Phase
  - Design Memorandum/Report
  - Master Plan
  - Requirements listed in 1. a)
- b) Preliminary Design Phase
  - 30% Plans
  - 60% Plans
- c) Final Design Phase
  - 90% Plans and Technical Specifications
  - 100% Contract Documents
- d) Construction Phase
  - Shop Drawings
  - Field Observation Reports
  - Construction Meeting Minutes
  - Pay Requests
  - Record Drawings

EXHIBIT "B"

Lombardo, Foley & Kolarik, Inc.

FEE RATE SCHEDULE

	<u>Standard Services</u>	<u>Development Review Services</u>
Principal or Professional Engineer	\$ 185 per hour	\$ 167 per hour
Professional Land Surveyor	\$ 158 per hour	\$ 142 per hour
Land Planner	\$ 132 per hour	\$ 119 per hour
Professional Landscape Architect/Environmentalist	\$ <u>Sub</u> per hour	\$ <u>Sub</u> per hour
Expert Witness Testimony (Trial, Arbitration/Deposition)	\$ 250 per hour	N/A
Graduate Engineer or Senior Designer	\$ 127 per hour	\$ 114 per hour
Technician, Designer, Senior Drafter or Field Representative	\$ 90 per hour	N/A
Junior Drafter	\$ 74 per hour	N/A
Survey Crew (Four Man Crew)	\$ 127 per hour	N/A
Survey Crew (Three Man Crew)	\$ 111 per hour	N/A
Survey Crew (Two Man Crew)	\$ 95 per hour	N/A
Aide (Technical Secretary)	\$ 53 per hour	N/A
Special Surveying Equipment:     Boat and motor	\$ 95 per day	N/A
Materials:		
Plans, including submittals per sheet 24 x 36	\$ 0.40 each	\$ 0.40 each
Mylars 24" x 36"	\$ 0.60 each	\$ 0.60 each
Photocopies (specifications, etc.)	\$ 0.10 each	\$ 0.10 each
Sticky back reproductions	\$ 1.00 each	\$ 1.00 each
CD's	\$ 0.60 each	\$ 0.60 each

Out of County travel, long distance telephone calls, facsimile transmittals, special mailings (next day delivery), governmental maps, deeds, reductions, etc., and other out of pocket project expenses, will be billed at actual expense incurred.

Submittal fees required by governmental agencies are the responsibility of the client, at the time of submittal.

Development review services include attendance at DRC meetings, review of plans, or record plats, from applicants and attendance at City Council meetings regarding said review.

EXHIBIT "C"

Lombardo, Foley & Kolarik, Inc.  
WORK ASSIGNMENT \_\_\_\_#

Pursuant to the City of Palmetto Agreement for Professional Engineering Services, entered into by and between the CITY OF PALMETTO (City) and Lombardo, FOLEY & KOLARIK, INC. (Consultant), the City hereby authorizes the following professional services under said Agreement:

TITLE OF PROJECT:

DESCRIPTION OF AUTHORIZED SERVICES:

METHOD OF COMPENSATION: The compensation to the Consultant for the performance of the above identified services shall be pursuant to the Rate Schedule as defined in said Agreement, to the extent set forth as follows:

Time and Material, not to exceed: \$ \_\_\_\_\_

The Consultant agrees to perform the professional services outlined above at the method of compensation set forth above, upon receipt of authorization from the City of Palmetto.

Attest:

LOMBARDO, FOLEY & KOLARIK, INC.

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

\_\_\_\_\_

\_\_\_\_\_

Secretary

(Printed name/title)

Date

The City of Palmetto hereby authorized the professional services outlined above at the method of compensation set forth above.

CITY OF PALMETTO, FLORIDA

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

\_\_\_\_\_

(Printed name/title)

Date



# WADE TRIM

August 5, 2010

Mr. Allen Tusing, Director  
 Department of Public Works  
 City of Palmetto  
 600 17<sup>th</sup> Street West  
 Palmetto, FL 34221

Re: Agreement for Professional Engineering Consulting Services

Dear Mr. Tusing:

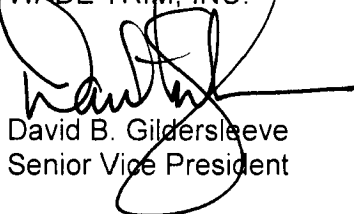
On behalf of all of Wade Trim's professional and support staff, thank you and the Selection Committee for selecting us for this continuing assignment. We have reviewed the draft Agreement provided in your July 6, 2010 letter and have enclosed the completed Agreement with several noted revisions, subject to your review and approval. Also enclosed is a listing of key personnel, a Fee Rate Schedule, and Certificate of Liability. Please note the rates provided reflect maximums for each category identified in the list provided by the City. For clarification, the Agreement provides that expert witness testimony cannot exceed the hourly rates provided by the Consultant on the Fee Rate Schedule. Therefore, the rate for Expert Witness Testimony (Trial, Arbitration/Deposition) will be at the prevailing rate of the individual providing the expert testimony consistent with the fee schedule.

Please be assured that our desire is to be as cost sensitive, responsive and flexible in providing professional services under this Agreement. Consequently, we are available at your convenience to discuss the Agreement, staff assignments and the suggested fees.

We look forward to a long and productive professional association with the City.

Sincerely,

WADE TRIM, INC.



David B. Gildersleeve  
 Senior Vice President

DBG:jjc

AAA-1000 10M

P:\AAA1000\Dgildersleeve\Final\palmetto,contract,transmittal,letter,tusing.docx

Enclosures

cc: Frank Woodard II, Deputy Director, City of Palmetto  
 Thomas Brzezinski, PE, Wade Trim

**Wade Trim, Inc.**  
 Renaissance 5  
 8745 Henderson Road, Suite 220  
 Tampa, FL 33634

813.882.8366  
 888.499.9624  
 813.884.5990 fax  
 www.wadetrim.com



AGREEMENT  
PROFESSIONAL ENGINEERING CONSULTING SERVICES  
FOR GENERAL ENGINEERING PROJECTS

THIS AGREEMENT is made and entered into by and between the CITY OF PALMETTO, a Florida Municipal Corporation, hereinafter referred to as the "City," with offices located at 516 8th Avenue West, Palmetto, Florida 34221, and Wade Trim, Inc., hereinafter called "the Consultant," duly authorized to conduct business in the State of Florida, with offices located at 8745 Henderson Road, Suite 220, Tampa, FL 33634.

WHEREAS, the City has determined that it is necessary, expedient and in the best interest of the City to retain, obtain or employ the Consultant to render and perform professional services in the manner set forth in this Agreement; and

WHEREAS the City caused a public announcement to be made, distributed and published, requesting proposals, for the selection of a provider of professional services in the manner set forth in this Agreement.

WHEREAS, the Consultant has submitted a proposal and the City conducted a competitive selection procedure in accordance with "Consultants' Competitive Negotiation Act" established pursuant to section 287.055, Florida Statutes.

WITNESSETH

For and in consideration of the foregoing premises and the mutual covenants herein contained, it is agreed by and between the parties hereto as follows:

ARTICLE 1. SCOPE OF AGREEMENT

This Agreement sets forth the general terms and conditions pursuant to which City retains Consultant to provide Professional Engineering Consulting Services associated with City Projects on an as required basis for the City. The Scope of Services for this Agreement is described in detail in Exhibit "A", Scope of Services.

ARTICLE 2. COMPENSATION

- A. Compensation payable to Consultant for services rendered and expenditures incurred in providing the services identified in Exhibit "A" shall be established for each written Work Assignment issued in accordance with Article 6.
- B. Compensation to Consultant shall be computed based on actual service units and/or hours performed times unit fee rate, plus reimbursable expenses up to the maximum compensation authorized for each Work Assignment to provide services as defined in Exhibit "A."

- C. The unit fee rates shall be the total compensation for the services and shall contain all costs to include salaries, office operation, transportation, equipment, overhead, general and administrative, incidental expenses, fringe benefits, operating margin and subcontractor costs.
- D. "Task", as used in this Agreement, refers to particular categories/groupings of services described in Exhibit "A."

### ARTICLE 3. INVOICES AND TIME OF PAYMENT

Consultant shall provide City with an invoice which shall include all compensation due Consultant as of the date of the invoice and in accordance with the following:

- A. Consultant shall provide City with invoices not more frequently than once a month for each calendar month in which services are provided.
- B. Consultant's invoice shall be in a form acceptable to City, provide specific details with respect to actual service units and/or hours of work incurred and include other such detail as may reasonably be requested by City.
- C. If Consultant's service units and/or actual hours of work performed exceed the amount due based upon the percentage of each phase or task that has been completed, Consultant's invoice shall indicate the adjustment Consultant deems appropriate. City payment shall be based upon the actual percentage of each phase or task of work that has been completed as of the date the invoice is prepared.
- D. Total compensation to Consultant for services and reimbursable expenses shall not exceed the amounts provided in the Work Assignment.
- E: The City agrees to pay the Consultant for the herein described services at a rate of compensation according to the unit rates stated in the Fee Rate Schedule, Exhibit "B" attached hereto and made a part hereof and as detailed in the applicable "Work Assignment", Exhibit "C." The City shall have the right to retain from any payment due the Consultant under this Agreement an amount sufficient to satisfy any amount of liquidated damages due and owing to the City by the Consultant on any other agreement between the Consultant and the City.
- F. Payment shall be made only after receipt and approval of goods and services.
- G. If any Work Assignment requires units of deliverables, then such units must be received and accepted in writing by the Contract Manager prior to payment.

- H. Any penalty for delay in payment shall be in accordance with the Florida Prompt Payment Act (Section 218.70, et seq., Florida Statutes).
- I. Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the City at all times during the period of this Agreement and for three years after final payment is made. Copies of these documents and records shall be furnished to the City upon request. Records of costs incurred include the Consultant's general accounting records and the project records, together with supporting documents and records of the Consultant and all subcontractors performing work on the project; and all other records Of the Consultant and subcontractors considered necessary by the City for a proper audit of costs.
- J. Except where Exhibit "A" provides that payment shall not be made until a Work Assignment or task has been completed or for payment based on actual hours of work, Consultant shall provide City with an invoice based on Consultant's good faith estimate of the percent of task completed. Consultant shall indicate on the invoice the adjustment Consultant deems to be appropriate.
- K. Any dispute between City and Consultant with regard to the percent of a Work Assignment or task that has been completed or Consultant's invoice shall be resolved in accordance with the provision of Article 9 of this Agreement.
- L. Payment.
  - 1) Consultant shall provide the City with an invoice not more frequently than once a month, which shall include all compensation due Consultant for work accomplished pursuant to all Work Assignments. Consultants invoice shall be in a form acceptable to City and provide specific details with respect to actual service units and/or hours of work incurred. If Consultant's service units and/or actual hours of work performed exceed the amount due based upon the percentage of each phase or task that has been completed, Consultant's invoice shall indicate the adjustment Consultant deems appropriate. City's payment shall be based upon the actual percentage of each phase of work that has been completed as of the date the invoice is prepared.
  - 2) City shall give Consultant prompt notice of any dispute with respect to Consultant's invoice and shall, within the time established above, remit payment for the undisputed amount to the Consultant. Final payment for any Task shall not he made until accepted in accordance with the provisions of Article 27 of this Agreement.
  - 3) The City shall remit payment for each invoice within forty five (45) days after the receipt of an acceptable invoice. City shall give Consultant prompt notice of any dispute with respect to Consultant's invoice and shall, within the time established above, remit payment for the undisputed amount to the Consultant.



4) The Consultant agrees to permit full and open inspection of payroll records and other expenditures in connection with all work upon the request of the City and to maintain all financial records related to this Agreement for a period of three (3) years after termination or completion of the performance of this Agreement.

M. All costs of providing the scope of services described in Exhibit "A" shall be the responsibility of the Consultant, with the exception of reimbursement by City for the following direct costs:

1) Expense of reproduction beyond the costs associated with providing reports and routine correspondence at the rates provided in Exhibit "B".

2) Actual charges for long distance telephone calls, including applicable local, state and federal taxes, but excluding those made to Manatee, Sarasota, Pinellas or Hillsborough Counties, as documented by copies of original invoices.

3) Actual charges for application fees not specifically identified to be paid by the City charged in the process of obtaining any permits outlined in the Work Assignment as documented by copies of original invoices.

4) Actual charges for courier service at the request of the City, at rates not to exceed \$9.00 per package and to be documented by copies of original invoices.

5) Actual charges for chemistry lab supply fees.

#### ARTICLE 4. DURATION OF AGREEMENT

##### A. Term.

a) Agreement shall remain in full force and effect for one (1) year from the date of full execution with respect to the rights and duties of City and Consultant to negotiate and authorize Work Assignments and, with respect to all Work Assignments authorized during the effective period of this Agreement, until all Work Assignments have been completed.

b) This Agreement may be renewed for Five (5) additional periods, each of one (1) year, upon mutual agreement of City and Consultant as evidenced by execution of an addendum which shall establish adjustments in attached Exhibit "B" as authorized by Article 6.

##### B. Commencement.

The services to be rendered by the Consultant shall be commenced, subsequent to full execution of this Agreement, only upon receipt of a written "Work Assignment" in accordance with the provisions of Article 5 of this Agreement. The "Work Assignment" document shall be substantially in the form of Exhibit "C," attached hereto and made a part hereof.

## ARTICLE 5. TERMINATION AND DEFAULT

- A. This Agreement maybe terminated by the City in whole or in part at any time such termination is in the best interest of the City. The City also reserves the right to seek termination or cancellation of this Agreement in the event the Consultant shall be placed in either voluntary or involuntary bankruptcy. The City further reserves the right to terminate or cancel this Agreement in the event the Consultant makes an assignment for the benefit of creditors. This Agreement may be terminated by the Consultant only by mutual consent of both parties.
- B. If the City determines that the performance of the Consultant is not satisfactory, the City shall have the option of (1) immediately terminating the Agreement, or (2) notifying the Consultant of the deficiency with a requirement that the deficiency be corrected within a specified time, otherwise the Agreement will be terminated at the end of such time.
- C. If the City requires termination of this Agreement for reasons other than unsatisfactory performance of the Consultant, the .City shall notify the Consultant of such termination, with instructions as to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.
- D. If this Agreement is terminated before performance is completed, the Consultant shall be paid only for that work satisfactorily performed for which costs can be substantiated. All work in progress will become the property of the City and will be promptly delivered to the City by the Consultant.
- E. If termination shall apply only to additional work Assignments, City may terminate this Agreement upon delivery of written notice to the Consultant.
- F. Should City elect to terminate this Agreement in its entirety, Consultant shall be entitled to compensation for all services rendered or performed pursuant to any fully authorized Work Assignment through the date of termination, together with all authorized costs and expenses incurred in connection therewith provided City has given Consultant written notice ten (10) days in advance of the date of such termination and provided that services rendered and costs and expenses incurred do not exceed the maximum amount of compensation authorized for any phase of work based upon the percentage of the phase completed or, where applicable, any price established for a specific task.

## ARTICLE 6. WORK ASSIGNMENTS

Consultant shall provide services only after receipt of a written Work Assignment issued in accordance with this article and in accordance with the form provided in attached Exhibit "C". Work Assignments shall be signed by Consultant and City and shall constitute supplemental agreements entered into under the terms and conditions of this Agreement.

Each Work Assignment shall establish the following:

- A. A title for the project and a general description of the purpose for the work.
- B. The maximum total compensation and reimbursable expenses that will be paid to Consultant by City upon completion of the Work Assignment.
- C. A clear indication of the services to be furnished for a fixed fee and the services to be furnished based upon time and charges provided; however, that where services are based upon time and charges, the Work Assignment shall establish the maximum compensation and Consultant shall not exceed the maximum compensation established for such services.
- D. From the services listed on attached Exhibit "A," the services to be provided under the Work Assignment, the unit price and the number of units. Any specific services based upon maximum compensation and billed based upon actual time and charges shall be leady identified.
- E. The agreed to date of completion for the Work Assignment. Where identified services within a Work Assignment must be completed by a specific date prior to completion of the entire Work Assignment, such date shall be established. .
- F. Any services that will be performed by a subcontractor or a sub-consultant, the identity of the subcontractor or sub-consultant, if selected, and it not selected the methodology to be employed by Consultant in selection of subcontractor or sub-consultant.
- G. Any additional details that may be required to describe the duties and obligations of the parties with respect to a particular Work Assignment.
- H. Any supplemental information, not in conflict with the provisions of this Agreement, such as technical specifications, deliverables associated with the Work Assignment or any service.
- I. The identity of the person(s) who will serve as Consultant's Work Assignment Manager and the City's Project Work Assignment Manager if different from the Contract Manager and Agent identified in this Agreement.
- J. Where a Work Assignment calls for the preparation of plans, specifications, maps, and/or reports, these items as well as all data collected, together with summaries and charts derived there from, shall be considered works made for hire and shall become the property of the City without restriction or limitation on their use; and shall be made available, upon request, to the City at any time. The Consultant shall not copyright any material or product developed under this Agreement. The City shall have the right to visit for the purpose of inspecting the work of the Consultant at any time.

- K. All final plans, documents, reports, studies and other data prepared by the Consultant will bear the endorsement of a person in the full employ of the Consultant.
- L. The City will be entitled at all times to be advised, at its request, as to the status of work being done by the Consultant and of the details thereof and communication shall be maintained by the Consultant With representatives of the City.
- M. Extension of Work Assignments. . It shall be the responsibility of the Consultant to ensure at all times that sufficient time remains in the project schedule within which to complete services on the project. In the event there have been delays which would affect the Work Assignment completion date, the Consultant shall promptly submit a written request to the City's Contract Manager which identifies the reason(s) for the delay and the amount of time related to each reason. The Contract Manager will promptly review the request and make a determination as to granting all or part of the requested extension. If the Contract Manager determines that an extension of a Work Assignment deadline is appropriate, he/she shall issue a "Letter of Extension" to the Consultant.

#### ARTICLE 7. NEGOTIATION OF WORK ASSIGNMENT

- A. For each project, grouping of substantially similar engineering/architectural activities for a group of facilities, feasibility studies or special projects, City shall negotiate each Work Assignment based upon estimated service units, projected by the Consultant and in accordance with the rate schedule provided in attached Exhibit "B." Compensation for each Work Assignment shall be based on actual service units performed, but in no event shall Consultant be entitled to reimbursement in excess of the amount established in a Work Assignment. City's Contract Manager may authorize, in writing, in advance, adjustments in the compensation for particular phases or tasks established in the Work Assignment provided such adjustments do not exceed the maximum compensation and reimbursable expenditures authorized by the respective political entity for the particular Work Assignment.
- B. If this Agreement is renewed or extended as authorized under Article 3, Consultant's rate schedule, provided in Exhibit "B" may be adjusted on the anniversary date of the execution of this Agreement using the Bureau of Labor Statistics Consumer Price Index (CPI-U), U.S.A. 1982-84 equals 100. The adjustment shall be calculated by dividing the index on the anniversary date of the previous year's index and subtracting 1.00. If on the anniversary date, the Index shows a change from the Index of the previous year, this percentage, not to exceed four (4%) percent annually, will be used to adjust the rates found in Exhibit "B" This adjustment shall be applicable to work under Work Assignments negotiated after the date of the rate adjustment, and shall not apply to: Consultant's compensation for any previously agreed to Work Assignment unless the Work Assignment specifically authorizes such an adjustment.

## ARTICLE 8. COVENANTS OF THE CITY

The City hereby covenants and agrees:

- A. That the Mayor or his designee is hereby appointed as the City Contract Manager with respect to the services to be performed by the Consultant pursuant to this Agreement. The City Contract Manager shall have the authority to transmit instructions, receive information, interpret and define the policy of the City and make decisions pertinent to services covered by this Agreement. The City Contract Manager shall have the right, from time to time, to designate such other employees of The City of Palmetto as he desires, to serve in his absence. The City reserves the right to designate a different Agent, provided that the Consultant is given written notice thereof.
- B. The City shall make available at no cost to the Consultant, available information relative to the project that is useful in the performance of the Scope of Services.
- C. The City shall give prompt notice to the Consultant whenever the City observes or otherwise becomes aware of any defect in the performance of work under this Agreement.
- D. The City shall give careful and reasonable consideration to the findings and recommendations of the Consultant and shall respond and issue notices to proceed in a timely manner so as not to unduly delay the Consultant's work called for by this Agreement.
- E. The City shall perform activities in this Article at no cost to the Consultant.
- F. Nothing contained in this agreement shall be construed as prohibiting the Consultant from performing professional services, for another entity, inside the limits of the City of Palmetto. Any conflict of interest will be handled in accordance with Paragraph E of Article 9.

## ARTICLE 9. COVENANTS OF THE CONSULTANT

Consultant hereby covenants and agrees:

- A. That Thomas S. Brzezinski, PE, Executive Vice President is hereby appointed as the City Engineer and as Consultant's Agent with respect to the services to be performed by the Consultant pursuant to this Agreement. The Consultant's Agent shall have the authority without limitation, to make representations on behalf of Consultant, receive information, and interpret and define the needs of Consultant and make decisions pertinent to services covered by the Agreement. Consultant's Agent shall have the right, from time to time, to designate such other employees of Consultant's as they desires, to serve in their absence. Consultant reserves the right to designate a different agent, provided that the City is given written notice thereof

- B. That the Work shall be performed in accordance with the terms and conditions of this Agreement.
- C That all employees assigned to render services under this Agreement shall be duly qualified, registered, licensed or certified to provide the services required. All services shall comply with such reasonable supplemental written memoranda and directives provided by the Contract Manager, which are not in conflict with this Agreement.
- D. That Consultant shall be responsible for collecting all existing data required for the successful completion of each Work Assignment.
- E. That Consultant shall not knowingly engage in any contractual or professional obligations that create a conflict of interest with respect to the services provided pursuant to this Agreement. In the event of an appearance of conflict, the Consultant shall provide the City written notice of said appearance to afford the City sufficient time to retain an independent consultant to act on the City's behalf.
- F. The Consultant shall be entitled to rely upon that information, which may be provided them from time to time, from the City or others on behalf of the City. Consultant shall, however, call to the City's attention any errors or deficiencies noted in such information provided and assist, to the extent practicable, the City in the identification and resolution of same. Information referred to above includes, but is not limited to, water, wastewater and reclaimed water infrastructure information, hydro geologic, biological, geological, environmental, ecological data and the like, including all other information to be provided to the Consultant by others and necessary for the execution of Consultant's work under the Agreement. The City shall, however, hold Consultant fully responsible for verifying, to the extent practicable, documents and information provided by the City and identifying its obvious deficiencies concerning documents and information provided. The Consultant agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed under this Agreement.

#### ARTICLE 10. DISPUTE RESOLUTION

Disputes shall be resolved as follows: good faith negotiations by the designated agents of the parties and if not resolved by such designated agents after twenty-one (21) days, Consultant shall submit his claim, with the basis for the dispute, in writing to the City of Palmetto Purchasing Agent for a determination and handling in accordance with the provisions of the City of Palmetto Procurement Code. Any dispute resolution agreed to by City's Contract Manager or the City of Palmetto Purchasing Agent, constituting a material change in this Agreement will not be final until approved by the City Commission. If such dispute involves the percentage of task completed by Consultant, City shall, as promptly as reasonably possible after resolution of such dispute, forward payment to Consultant of any amount determined to be due and owing.

The services shall be performed by the Consultant to the reasonable satisfaction of, the City, and all questions, difficulties and disputes of any nature whatsoever that, may arise under or by reason of this Agreement, the prosecution and fulfillment of the services hereunder and the character, quality, amount and value thereof, which cannot be settled by mutual agreement of the parties, shall be settled by recourse to litigation under Florida law. Any such lawsuit shall be filed only in Manatee County, Florida.

#### ARTICLE 11. PROPERTY OF THE CITY

All reports, technical information, working data tabulation, background information, and information provided, obtained or prepared by the Consultant and equipment and supplies purchased outright pursuant to this Agreement, are the property of the City without restriction or limitation on their use and shall be made available upon request of the City at any reasonable time, including all finished and unfinished documents and other material prepared or obtained by the Consultant.

The City shall have the right to use, without restriction or limitation for City government purposes and without additional charge, Consultant development software programs used in conjunction with the duties and responsibilities of Consultant under this Agreement. Except for the rights stated above, City shall not own or claim any right, title or interest in Consultant's software programs.

#### ARTICLE 12. INDEMNIFICATION

The Consultant hereby agrees to indemnify, defend, save and hold harmless the City from all costs, expenses, claims, demands, liabilities, judgments and suits of any nature whatsoever, arising out of, because of, or due to any negligent error, omission, or act of professional malpractice by the Consultant, or due to the breach of this Agreement by the Consultant, their sub-consultants, agents or employees, It is specifically understood and agreed that the provisions of this Article are not intended to cover or indemnify the City for its own negligence or breach of Contract.

#### ARTICLE 13. INSURANCE COVERAGE

- A. PROFESSIONAL LIABILITY. The Consultant shall have and maintain during the period of this Agreement, a professional liability insurance policy or policies affording professional liability coverage for the professional services to be rendered in accordance with this Agreement, in the minimum amount of \$500,000.00. As an alternative to a professional liability insurance policy, the Consultant may submit an irrevocable letter of credit, naming the City as beneficiary and issued pursuant to Section 337.106 and Chapter 675, Florida Statutes, in the amount of \$500,000.00. The Consultant shall maintain professional liability coverage for a minimum of three years after completion of the services rendered herein.

B. COMMERCIAL GENERAL LIABILITY. The Consultant shall have and maintain during the period of this Agreement, commercial general liability insurance policy or policies affording minimum coverages as follows:

General aggregate	
Products/Completed Operations aggregate.....	\$300,000
Personal and advertising injury .....	\$300,000
Each occurrence.....	\$300,000

C. BUSINESS AUTO POLICY. The Consultant shall have and maintain, during the period of this Agreement, a business auto insurance policy or policies affording minimum coverages as follows:

Each occurrence per bodily injury and property damage liability.....	\$300,000
Annual aggregate (if applicable) .....	3 x each occurrence limit 11

D. WORKERS' COMPENSATION... The Consultant shall also carry and keep in force Workers' Compensation insurance as required under the applicable Workers' Compensation laws and statutes.

E. CERTIFICATION OF INSURANCE AND COPIES OF POLICIES. A Certificate of Insurance evidencing the insurance coverage specified in the four above paragraphs A., B., C, and D., shall be filed with the Purchasing Agent before operations are begun. The required certificate of insurance shall name the types of policy, policy number, date of expiration, amount of coverage, companies affording coverages. Insurance shall remain in force at least one (1) year after completion and acceptance of the project by the City in the amounts and types as stated herein, including coverage for all products and services completed under this contract. If the initial insurance expires prior to the completion of operations and or services by the Consultant, a renewal certificate of insurance shall be furnished by the proposer and delivered to the Purchasing Agent thirty (30) days prior to the date of their expiration.

#### ARTICLE 14. LITIGATION SERVICES

The Consultant shall:

- A. Provide, if required by City, any personnel performing services under this Agreement to testify in any litigation proceeding.
- B. Upon notice by the Office of the City Attorney that litigation services are necessary, coordinate and communicate directly with the Office of the City Attorney.
- C. Perform litigation services as directed by the Office of the City Attorney that may include but are not limited to:



- 1) Pre-deposition, pretrial or pre-hearing preparation.
- 2) Preparation of court exhibits.
- 3) Attendance and testimony at depositions, pretrial hearings, or other court hearings.
- 4) Any other services deemed necessary by the assigned attorney to successfully litigate and defend the City's position in court.
- 5) If notified by the Office of the City Attorney in writing, the Consultant agrees to provide litigation services up to and including the date of the completion of litigation at the contract billing rate not to exceed the Consultant's fee rate listed in Exhibit "B". The hourly billing rates shall contain all costs to include salaries, overhead, general and administrative, incidental expenses, fringe benefits and operating margin.
- 6) The Consultant's travel expenses will be submitted and paid in accordance with Section 112.061, Florida Statutes, provided prior approval of the travel is obtained from the City Attorney or the City Attorney's designee.
- 7) The Consultant shall submit monthly statements for litigation services rendered, providing detailed accounting sufficient for pre-audit and specifying services performed, the dates of the services, hours expended for each service, the name of the person who performed the service and a breakdown of approved expenses incurred with all receipts and invoices attached.
- 8) The Consultant acknowledges and agrees that in order for both parties herein to close their books and records, he/she will clearly state "Final Invoice" on the last billing to the City, which will indicate that all services have been performed and all charges and costs have been invoiced to the City under this Agreement.
- 9) The Consultant shall submit all litigation services invoices (original and one copy) to the City Attorney or the City Attorney's designee.

#### ARTICLE 15. INFORMATION REPORTS

The Consultant shall provide all information and reports required by City policies, procedures, regulations, rules, orders and/or instructions. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish the information, the Consultant shall certify such to the City, as appropriate, and shall set forth what efforts have been made to obtain the information.

## ARTICLE 16. WARRANTY OF QUALIFICATIONS

The Consultant warrants that the Consultant is, and will remain for the term of this Agreement, certified to perform engineering/architectural Professional Services pursuant to Chapter 471, Chapter 481 and Section 287.055, Florida Statutes. The Consultant warrants to hold and save the City harmless from any and all losses that may be occasioned or suffered by the City as a result of the Consultant's failure to be so certified. Failure to be so certified shall be cause for the Consultant to be found in default of this Agreement and shall be grounds for immediate unilateral cancellation of this Agreement by the City. All written reports in connection with architectural/engineering professional services submitted to the City shall bear the signature of and be approved by a Florida state certified architect and/or engineer.

## ARTICLE 17. LEGAL RESTRAINTS AND LIMITATIONS

The Consultant acknowledges that the City, as a unit of local government and a political subdivision of the State of Florida, is subject to restraints, limitations, regulations and controls imposed or administered pursuant to numerous applicable laws, ordinances, rules and regulations of federal, state, regional and certain local governmental agencies or authorities. The Consultant agrees that all professional services rendered or performed by the Consultant pursuant to the provisions of this Agreement shall be in compliance therewith.

## ARTICLE 18. ASSIGNMENT AND SUBCONTRACTS

It is expected that the Consultant shall have standard in-house capability to provide all the services required by this Agreement. The Consultant shall not sublet, assign or transfer any work under this Agreement to another consultant or contractor, without the prior written consent of the City.

## ARTICLE 19. SOLICITATION OF CONTRACT

The Consultant warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the Consultant to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gift, contingent fee, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability or at its discretion to deduct from the contract price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gifts, or contingent fee.

## ARTICLE 20. NOTICES

All notices, requests and authorizations provided for herein shall be in writing and shall be delivered by hand or mailed through the U.S. Mail, addressed as follows:

To the City: City of Palmetto  
Public Works Department  
600 17th Street West  
Palmetto, Florida 34221  
(941) 723-4580

To the Consultant:  
Wade Trim, Inc.  
8745 Henderson Road, Suite 220  
Tampa, FL 33634  
Thomas S. Brzezinski, PE  
(813) 882-8366

#### ARTICLE 21. GOVERNING LAW

This Agreement shall be governed by the laws of the State of Florida. Any action filed regarding this Agreement will be filed only in Manatee County, Florida.

#### ARTICLE 22. SUB-CONSULTANTS

It is expected that the Consultant shall have standard in-house capability to provide all the services required by this Agreement except for the work to be performed by the sub-consultants specified in Article 24, Key Personnel. However, should the Consultant find it necessary to utilize the services of additional sub-consultants, the Consultant shall first obtain the written approval of the City. The Consultant shall also require each sub-consultant to adhere to applicable provisions of this Agreement. The utilization of any such sub-consultant by the Consultant shall not relieve the Consultant from any liability or responsibility to the City pursuant to the provisions of this Agreement or obligate the City to the payment of any compensation to the sub-consultant or additional compensation to the Consultant.

#### ARTICLE 23. NON-DISCRIMINATION PROCEDURES

During the performance of this Agreement, the Consultant agrees as follows:

- A. The Consultant will not discriminate against any employee or applicant for employment because of race, creed, sex, color, national origin or age, and will take affirmative action to insure that all employees and applicants are afforded equal employment opportunities without discrimination because of race, creed, sex, color, national origin or age. Such action will be taken with reference to, but shall not be limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of training or retraining, (including apprenticeship and on-the-job training).
- B. No person in the United States shall, on the grounds of race, creed, sex, color, national origin or age, be excluded from participation in, be denied the proceeds of, or be subject to discrimination in the performance of this Contract.

#### ARTICLE 24. KEY PERSONNEL

The following Key personnel are hereby assigned to the project by the Consultant and shall not be removed from the project until alternate personnel acceptable to the City are approved, in writing, by the City:

- Thomas S. Brzezinski, PE
- Bradley Hubbard, PE
- Larry Bishop, PE
- Tim Roane, PE
- Larry Josephson, PE
- Sharon Heal Eichler, RLA, LEED AP
- David B. Gildersleeve, Senior Vice President

#### ARTICLE 25. PROFESSIONAL LIABILITY

The Consultant recognizes that the registered persons practicing engineering services with the professional association or corporation referred to in this Agreement as the Consultant, as provided by Florida Statutes, are not relieved from personal liability for their negligent professional acts and that such personal liability shall not relieve Consultant or Consultant's association or corporation from liability.

#### ARTICLE 26. LEGAL QUALIFICATION. AND ETHICAL CONSIDERATIONS

The Consultant warrants that it is a regionally known and recognized engineering firm, and that it is duly permitted by the laws of the State of Florida to render the professional services required under this Agreement, in the State of Florida. The Consultant recognizes that in rendering or performing professional services pursuant to the provisions of this Agreement, the Consultant is working for the residents of The City of Palmetto, Florida, subject to public observation, scrutiny and inquiry, and based upon said recognition the Consultant shall, in all of its relationships with the City pursuant to this Agreement, conduct itself in accordance with all of the recognized applicable ethical standards set by national societies of professionals, and the reasonable traditions of professional consultants.

#### ARTICLE 27. ACCEPTANCE

When the services of the Consultant required for any project are complete, the Consultant shall notify the City in writing. Thereupon the City, within thirty (30) days, shall either provide its written acceptance or give the Consultant written notice of any unfinished or improperly performed services to be finished or corrected; if such written notice of acceptance or exception is not given within such period of time, the services shall be deemed to have been accepted by the City. However, acceptance of the work performed by the Consultant shall not be construed to be an acceptance of improper, defective or deficient work.

## ARTICLE 28. FORCE MAJEURE

Neither party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations or any of them is delayed or prevented by Force Majeure. Force Majeure shall include, but not be limited to, hostility, revolution, civil commotion, strike, epidemic, accident, fire, flood, wind, earthquake, explosion, lack of or failure of transportation facilities, any law, proclamation, regulation, ordinance or other act of government, or any act of God or any cause whether of the same or different nature, existing or future; provided that the cause, whether or not enumerated in this Article, is beyond the control and without the fault or negligence of the party seeking relief under this Article.

## ARTICLE 29. DRUG FREE WORKPLACE

The Consultant agrees to maintain its drug free workplace program throughout the term of this contract.

## ARTICLE 30. MISCELLANEOUS

- A. The Consultant and the City agree that the Consultant, its employees, and subcontractors are not employees or agents of the City as a result of this Agreement or in the performance of any duties pursuant to this Agreement.
- B. All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.
- C. This Agreement embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto.
- D. It is understood and agreed by the parties hereto that if any part, term or provision of this Agreement is, by the courts held to be illegal or in conflict with any law, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.
- E. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. It is further agreed that venue for any legal or equitable action arising from or related to this Agreement shall be in Manatee County, Florida.
- F. The following Exhibits are attached hereto and made a part hereof:
  1. Exhibit "A": Scope of Services
  2. Exhibit "B": Fee Rate Schedule
  3. Exhibit "C": Sample "Work Assignment"

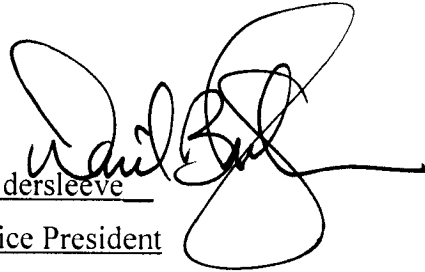
The Consultant agrees to perform or render services in accordance with this Agreement for Professional Engineering Consulting Services for General Engineering Projects according to the method of compensation as set forth within this Agreement, upon authorization by The City of Palmetto.

CONSULTANT:

Wade Trim, Inc.

BY: David B. Gildersleeve

TITLE: Senior Vice President



ATTEST:

Jessica Clayton  
JESSICA CLAYTOR

APPROVED AS TO FORMAT AND CORRECTNESS:

CITY OF PALMETTO ATTORNEY

BY: \_\_\_\_\_  
City Attorney

APPROVED, this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

ATTEST:

CITY OF PALMETTO, FLORIDA

\_\_\_\_\_  
James R. Freeman, City Clerk

BY: \_\_\_\_\_  
Lawrence E. Bustle, Jr., Mayor

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EXHIBIT "A"

Wade Trim, Inc.

SCOPE OF SERVICES

- A. The Consultant shall perform, on an as required basis, all of the services necessary for projects that require engineering services for design and specifications, services during bidding, services during construction, record drawings and permits for construction and operation of general engineering projects and related facilities, renovations/additions to existing facilities, special projects and to conduct feasibility studies. Engineering service specialties shall include but are not limited to, civil, structural, environmental, and biological. Other service specialties shall include but are not limited to, architecture, remedial investigations, and mapping and surveying. As projects are identified, the City will issue Work Assignments to the Consultant to perform the requested services as outlined in Article 6. Projects may be assigned individually or in groups.
- B. The Consultant shall be responsible for all engineering functions as defined in this Agreement. All engineering projects shall be performed in accordance with the guidelines, standards, procedures and directives that are a part of this Agreement either directly or incorporated herein by reference.

C. Project Control.

The Consultant shall:

- 1) Develop and maintain a project reporting system tracking all critical events, both scheduled and actual, for project, if necessary. Said report shall be submitted to the Contract Manager on an as required basis.
- 2) As a minimum, participate in project meetings on an as required basis with the Contract Manager and the Consultant's Agent to relate current status of overall project schedule; noting exceptions and suggesting actions required to correct schedule exceptions.

D. Quality Control.

The Consultant shall:

- 1) Provide quality assurance and performance tracking of each project.
- 2) Insure delivery schedules and the integrity of the products.

E. Personnel.

- 1) The consultant shall provide a full cadre of qualified personnel as necessary to effectively carry out its responsibilities under this Agreement. The Consultant shall utilize only competent personnel, who are qualified by experience and education, and who are acceptable the Contract Manager. The Consultant shall not make changes in the professional personnel working on activities pursuant to this Agreement without the written notification of the Contract Manager.
- 2) The Consultant's agent shall be present for project decision meetings as request by the Contract.

F. Engineering Consulting Services:

The Consultant shall:

1. Provide engineering services for general engineering projects.
2. Provide engineering services including, but not limited to:
  - a. Civil
  - b. Ecological
  - c. Environmental
  - d. Hydro geological
  - e. Structural
  - f. Value Engineering
  - g. Biological
3. Provide other professional services, as required including, but not limited to:
  - a. Architectural (via sub-consultants)
  - b. Landscape Architecture
  - c. Surveying and Mapping
  - d. Planning
  - e. Geographic Information Systems
  - f. Quality Control
  - g. Remedial Investigations
  - h. Regulatory liaison
  - i. Contamination Assessments
  - j. Laboratory Services (via sub-consultants)
  - k. Ecological Assessments
  - l. Permitting
  - m. CADD Services
  - n. Environmental monitoring of permit requirements



4. Comply with all applicable Federal and State laws, City ordinances and regulations in the performance of these services.

G. Ordering of Services:

Tasks or sub-tasks shall refer to the sequential ordering of Consultant's services under a Work Assignment and generally as detailed in this Exhibit 'A' which should as applicable, be titled as follows:

1. TASK: Conceptual Design (Studies and Reports).

a) Prior to starting the Preliminary Design Phase for any project, the Consultant shall submit to the City for approval, a Design Memorandum/Report, which shall include, but not be limited to the following:

- Project feasibility
- Design parameters
- Engineering constraints and limitations
- Facility sizing
- Subsurface evaluation
- Alternatives
- Regulatory requirements
- Opinion of probable construction costs
- Project schedule
- Project staging plan
- Funding sources, if applicable

b) The Consultant shall initiate and coordinate meetings with City of Palmetto staff and regulatory agencies, as applicable.

c) The Design Memorandum/Report will be used to support the permitting and subsequent design and construction services tasks for the project.

d) As applicable to project requirements, the Consultant shall conduct an analysis and provide the City with a summary report.

e) Deliverables: The Consultant shall submit to the City, three (3) hard copies and one (1) electronic copy of the Design Memorandum/Report together with the necessary single line diagrams, maps, sketches and other information.

2. TASK: Preliminary Design Phase (0-60% Complete)

a) Based on the City approved Design Memorandum/Report the Consultant shall initiate the preliminary design phase to include, but not limited to, the following sub-tasks/functions:

- Design survey
- Aerial photography
- Additional geotechnical evaluations, as required
- Coordination with utility companies
- Final infrastructure sizing
- Possible environmental impacts and mitigation alternatives
- Coordination with the affected regulatory agencies
- Preparation of technical specifications
- Evaluation of maintenance of traffic requirements
- Preliminary designs for special crossings and potential conflicts
- Preparation of plan and profile sheets
- Definition of existing rights-of-way, easements and required easements

b) Deliverables:

- Three (3) sets of preliminary plans and details
- Three (3) copies of preliminary technical specifications
- Two (2) copies of the geotechnical report
- Two (2) copies of the design calculations
- Two (2) copies of correspondence with regulatory agencies
- Two (2) copies of correspondence with power company
- Two (2) copies of correspondence with other utility companies
- One (1) electronic copy of all

### 3. TASK: Final Design Phase (60- 100% complete)

a) The Consultant shall finalize the Contract Documents (plans, technical specifications and front-end documents) for bidding and construction based on input from the City and affected regulatory agencies. Permit applications and supporting documentation shall be prepared and submitted at the 90% stage. The Consultant shall finalize the coordination efforts with the utility companies and regulatory agencies in this phase.

b) The Consultant shall prepare the measurement and payment section and schedule of bid items specifically for the project, including an estimate of construction costs. All construction details, special crossings and easement requirements shall be finalized.

c) Deliverables:

- All regulatory permit applications, i.e. FDOT, SWFWMD, DEP, DNR, etc.
- Three (3) sets of final plans including profiles, special crossings and details.
- Three (3) copies of final technical specifications and front end documents.
- Two (2) copies of the final geotechnical report
- Two (2) copies of the final design calculations
- Two (2) copies of correspondence with power company
- Two (2) copies of correspondence with other utility companies
- One (1) electronic copy of all

4. TASK: Construction Phase. The Consultant shall provide the following engineering services, as required, during construction:

- a) Participate in pre-bid conference and prepare minutes of meeting. Assist the City in preparation of agenda.
- b) Assist the City in evaluating bids.
- c) Prepare construction contract documents.
- d) Conduct pre-construction conference and prepare minutes of meeting.
- e) Review and approve shop drawings.
- f) Visit project site(s) at appropriate stages of the work to observe the progress of the work and reports observations to the City.
- g) Provide recommendations of changes, if necessary, which may be required within the scope of the project during construction. Prepare Discretionary Item Work Directive changes, and change orders, if required, for City approval.
- h) Conduct frequent project site visits and prepare punch list items to be corrected or completed at the substantial and final completion stages of the work.

- i) Review monthly pay requests submitted by Contractor and make recommendations for payments.
- j) In coordination with the City, prepare responses to resident complaints and maintain a record of complaints and action taken.
- k) Prepare and furnish the City a final set of reproducible record drawings from data provided by the contractor and the project representative. All information gathered by Consultant shall be field verified and a certified set of record drawings shall be submitted to the City. The Consultant shall be responsible for supplying the City certified record drawings and all certifications to all state agencies. All record drawings shall conform to City requirements.
- l) Visit the project site prior to the end of the one year construction warranty period and prepare a punch list of items to be corrected prior to the warranty expiration date.

#### 5. SUBMITTALS:

##### a) Conceptual Phase

- Design Memorandum/Report
- Master Plan
- Requirements listed in 1. a)

##### b) Preliminary Design Phase

- 30% Plans
- 60% Plans

##### c) Final Design Phase

- 90% Plans and Technical Specifications
- 100% Contract Documents

##### d) Construction Phase

- Shop Drawings
- Field Observation Reports
- Construction Meeting Minutes
- Pay Requests
- Record Drawings

EXHIBIT "B"

Wade Trim, Inc.

FEE RATE SCHEDULE

Principal or Professional Engineer	\$ <u>143.00</u> per hour
Professional Land Surveyor or Land Planner	\$ <u>125.00</u> per hour
Professional Landscape Architect/Environmentalist	\$ <u>135.00</u> per hour
Expert Witness Testimony (Trial, Arbitration/Deposition)	\$ _____ per hour *
Graduate Engineer or Senior Designer	\$ <u>120.00</u> per hour
Technician, Designer, Senior Drafter or Field Representative	\$ <u>80.00</u> per hour
Junior Drafter	\$ <u>47.00</u> per hour
Survey Crew (Four Man Crew)	\$ <u>160.00</u> per hour
Survey Crew (Three Man Crew)	\$ <u>141.00</u> per hour
Survey Crew (Two Man Crew)	\$ <u>124.00</u> per hour
Aide (Technical Secretary)	\$ <u>45.00</u> per hour
Special Surveying Equipment:      Boat and motor	\$ <u>120.00</u> per day
Materials:      Plans, including submittals (24" x 36")	\$ <u>1.10</u> each/sheet
Mylars	\$ <u>11.00</u> each
Photocopies (specifications, etc.)	\$ <u>.10</u> each B/W 25 each color
Sticky back reproductions	\$ <u>0</u> each
CD's	\$ <u>5.00</u> each

Out of County travel, long distance telephone calls, facsimile transmittals, special mailings (next day delivery), governmental maps, deeds, reductions, etc., and other out of pocket project expenses, will be billed at actual expense incurred.

Submittal fees required by governmental agencies are the responsibility of the client, at the time of submittal.

\*Note: Hourly rate of professional w/o surcharge for testimony.

EXHIBIT "C"

Wade Trim, Inc.

WORK ASSIGNMENT \_\_\_\_#

Pursuant to the City of Palmetto Agreement for Professional Engineering Services, entered into by and between the CITY OF PALMETTO (City) and Wade Trim, Inc. (Consultant), the City hereby authorizes the following professional services under said Agreement:

TITLE OF PROJECT:

DESCRIPTION OF AUTHORIZED SERVICES:

METHOD OF COMPENSATION: The compensation to the Consultant for the performance of the above identified services shall be pursuant to the Rate Schedule as defined in said Agreement, to the extent set forth as follows:

Time and Material, not to exceed: \$ \_\_\_\_\_

The Consultant agrees to perform the professional services outlined above at the method of compensation set forth above, upon receipt of authorization from the City of Palmetto.

Attest:	Wade Trim, Inc. By: _____
_____	_____
Secretary	(Printed name/title)                      Date

The City of Palmetto hereby authorized the professional services outlined above at the method of compensation set forth above.

CITY OF PALMETTO, FLORIDA

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

\_\_\_\_\_

(Printed name/title)                      Date

